



North Dakota Legislative Council

Prepared for the Agriculture and Natural Resources Committee

LC# 23.9048.02000

October 2021

BACKGROUND MEMORANDUM - NORTH DAKOTA BEEF COMMISSION STUDY

[Section 22 of House Bill No. 1009 \(2021\)](#) directs the Legislative Management to study the North Dakota Beef Commission, including the operations of the Beef Commission and the selection of commission members. Representatives of the Independent Beef Association of North Dakota testified in support of the study. Testimony indicated concerns were raised regarding the membership of the Beef Commission, the need to study the membership and operations of the commission, and displeasure with the beef checkoff system. The testimony suggested the members of the commission should be elected rather than appointed by the Governor, and a need to diversify membership on the board to include representatives of all agricultural organizations in the state representing livestock producers rather than a few select organizations. The testimony indicated diversifying the membership of the commission would be consistent with other commodity groups in the state and surrounding states.

NORTH DAKOTA BEEF COMMISSION

History of the North Dakota Beef Commission and Federal Law

The Agricultural Marketing Act of 1937 [Pub. L. 75-137; 50 Stat. 246; 7 U.S.C. 674 et seq.] authorized the United States Secretary of Agriculture to set marketing quotas and price schedules, sign voluntary marketing agreements with producers, and issue marketing orders to establish and maintain orderly marketing conditions and prices for agricultural commodities in interstate commerce. The Act authorized commodity councils to regulate and market specific commodities, including the authority to establish a fee paid by producers to fund research and promotion of the relevant commodity. The federal Beef Promotion and Research Act, which was a part of the 1985 Farm Bill [Pub. L. 99-198; 99 Stat. 1354], authorized a mandatory national beef checkoff program. The assessment under the national program was, and still is, \$1 per head of cattle sold.

House Bill No. 1327 (1973), also known as the Beef Promotion Act, established the North Dakota Beef Commission to provide programs to increase the consumption of domestic beef through advertising and local and national sales promotion and education. The Act also was intended to support research and educational activities of the national livestock and meat board and its beef industry council with at least 50 percent of assessments collected; support research efforts toward solving problems, primarily health, involved in the production of North Dakota beef cattle with at least 25 percent of assessments collected; and enhance the sale of North Dakota cattle. In 1973, the North Dakota Beef Commission consisted of nine members appointed by the Governor, including three beef producers, one cattle feeder, one dairy producer, one public livestock market representative, and three representatives at-large. The terms of commission members were 3 years with a restriction that a member could not serve more than two-successive 3-year terms. The 1973 Act also required commission members to be United States citizens and residents of the state, be engaged in the phase of the cattle industry the individuals represented for 5 years, and derive a substantial portion of the individual's income from the cattle industry represented.

The 1973 Act was codified as North Dakota Century Code Chapter 4-34. Section 4-34-04 required the three beef producer members to be appointed by the Governor from nominations made by the North Dakota Stockmen's Association, the cattle feeder member to be appointed from nominations made by the North Dakota Cattle Feeders Association, the dairy producer member to be appointed from nominations by the North Dakota State Milk Producers Association, and the public livestock market representative be appointed from nominations by the North Dakota Livestock Auction Markets Association and the board of

governors at the West Fargo Stockyards. Section 4-34-06 required the commission to hold at least three meetings per year. Section 4-34-08 required an assessment of 10 cents per head of cattle sold within the state or from the state.

Current Statutory Provisions

As part of a rewrite of agriculture provisions in the Century Code, which began during the 2007-08 interim, provisions related to the North Dakota Beef Commission were repealed in House Bill No. 1025 (2009) and were moved into the newly created Chapter 4.1-03. In 2009, many of the statutory provisions related to the commission existed as enacted in 1973. In 2009, following the rewrite, the nine members of the commission who represented the various interests continued to be appointed by the Governor; however, several changes were made to the appointment process. The beef producer members still are required to be appointed by the Governor from a list of at least two names submitted by the North Dakota Stockmen's Association. However, the cattle feeder member is required to be appointed from a list of at least two names submitted by the North Dakota Stockmen's Association Feeder Council. The dairy producer is required to be appointed from a list of at least two names submitted by the Milk Producers Association of North Dakota. The public livestock market representative is required to be appointed from a list of at least two names submitted by the North Dakota Livestock Marketing Association, but removed the involvement of the board of governors of the West Fargo Stockyards. The 2009 rewrite also authorized the commission to appoint up to four nonvoting members for a term of 1 year each. The nonvoting members can serve an unlimited number of terms. By 2009, the assessment for cattle sold within the state or from the state increased to 50 cents per head sold or the amount set forth under federal law.

Chapter 4.1-03 provides the general provisions regarding the North Dakota Beef Commission, including definitions. Section 4.1-03-02 provides the membership and qualifications for membership on the North Dakota Beef Commission. The section has not been amended since its enactment in 2009. The section requires each commission member be a United States citizen and resident of the state, be actively engaged in the phase of the cattle industry the member represents, be actively engaged in the designated phase of the cattle industry for a period of 5 years, and be a participating producer with the exception of the representative of the public livestock market. Section 4.1-03-03 provides the term of commission members is 3 years with members prohibited from serving more than two consecutive terms. The section has not been amended since 2009. Section 4.1-03-07, which requires three annual meetings, has not been amended since its enactment in 2009.

Section 4.1-03-11, the beef checkoff assessment, which was amended by House Bill No. 1238 (2015), requires a person that sells cattle in the state or from the state to pay an assessment equal to the amount set forth under federal law and an additional state assessment of \$1 for each animal sold. The requirement to pay an additional assessment of \$1 per head sold included an expiration date clause whereby the additional assessment becomes ineffective if the Attorney General certifies to the North Dakota Beef Commission the amount of the assessment due under federal law has increased beyond the amount in effect on July 31, 2015. The amount of the assessment due under federal law in effect on July 31, 2015, was \$1 per head of cattle sold, and the amount due under federal law has not increased. Therefore, the requirement to pay an additional state assessment of \$1 per head sold remains in effect. As a result, a person that sells cattle in the state or from the state is required to pay \$1 per head sold for the federal beef checkoff assessment, and an additional \$1 per head sold under the state assessment, for a total of \$2 per each head of cattle sold. Under the federal program there is a 50/50 split of the proceeds. Of the \$1 required under federal law, 50 percent is remitted to the national program and 50 percent remains with the North Dakota Beef Commission. Of the \$2 total per head of cattle sold under the federal and state laws, \$1.50 is retained by the North Dakota Beef Commission and 50 cents is remitted to the national program.

MEMBERSHIP AND OPERATIONS OF OTHER COMMODITY COMMISSIONS North Dakota

Title 4.1 provides for the councils and commissions for other commodity groups in the state.

| Commodity Group | NDCC Chapter Authority | Membership | How Members are Determined | Membership Criteria | Terms | Meeting Requirements | Assessment State/Federal |
|--------------------------|------------------------|--|---|---|--|----------------------|---|
| Beef Commission | 4.1-03 | 9 members as follows: <ul style="list-style-type: none"> • 3 beef producers; • 1 cattle feeder; • 1 dairy producer; • 1 public livestock market representative; • 3 at-large members <p>The Beef Commission may appoint an additional 4 nonvoting members</p> | Gubernatorial appointment from names submitted by stakeholder groups | <ul style="list-style-type: none"> • United States citizen and resident of the state; • Actively engaged in the phase of the cattle industry represented; • Actively engaged in the phase of the cattle industry represented for 5 years; • A participating producer (except livestock market representative); • May not have obtained an assessment refund during the preceding 3 years | <ul style="list-style-type: none"> • 3 years; • Member may not serve more than 2 consecutive terms | At least 3 per year | <ul style="list-style-type: none"> • \$1 per head federal assessment (50% split between state and federal); • \$1 additional per head state assessment |
| Barley Council | 4.1-02 | 5 members as follows: <ul style="list-style-type: none"> • 1 individual from each of the 5 districts in the state | Elected from among the elected county representatives, who were elected by participating producers residing in the county, who make up the district | <ul style="list-style-type: none"> • Resident of the district represented; • Participating producer of the district represented; • May not have requested an assessment refund during the preceding year | <ul style="list-style-type: none"> • 4 years; • Member may not serve more than 3 consecutive terms | Not specified | <ul style="list-style-type: none"> • 20 mills per bushel of barley grown, delivered, or sold in the state; • No federal assessment specified |
| Corn Utilization Council | 4.1-04 | 7 members as follows: <ul style="list-style-type: none"> • 1 individual from each of the 7 districts in the state | Elected from among the elected county representatives, who were elected by participating producers residing in the county, who make up the district | <ul style="list-style-type: none"> • Resident of the district represented; • May not have requested an assessment refund during the preceding year | <ul style="list-style-type: none"> • 4 years; • Member may not serve more than 2 consecutive terms | Not specified | <ul style="list-style-type: none"> • 0.25% per bushel purchased by the first designated handler in the state; • No federal assessment specified |
| Dairy Promotion Council | 4.1-05 | 5 members as follows: <ul style="list-style-type: none"> • 2 producers; • The Chairman of the North Dakota division of the Midwest Dairy Association; | <ul style="list-style-type: none"> • Gubernatorial appointment of the producers from nominees submitted by the Milk Producers Association of North Dakota; | Not specified | 2 years for both gubernatorial and elected members | Not specified | <ul style="list-style-type: none"> • A state assessment of 10 cents per hundredweight of all milk sold by the producer and on any milk used by the producer to manufacture other products; |

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| | | <ul style="list-style-type: none"> • 2 individuals who are members of the North Dakota division of the Midwest Dairy Association <p>The commission may appoint up to 4 additional nonvoting members</p> | <ul style="list-style-type: none"> • The members of the North Dakota division of the Midwest Dairy Association are elected to the council by the North Dakota division of the Midwest Dairy Association | | | | <ul style="list-style-type: none"> • A federal assessment of 15 cents per hundredweight of all milk sold by the producer |
| Dry Bean Council | 4.1-06 | <p>6 members as follows:</p> <ul style="list-style-type: none"> • 1 individual from each of the 6 districts in the state | Elected from among the producers residing in the district | <ul style="list-style-type: none"> • United States citizen; • Resident of the district represented; • Participating producer of the district represented; • May not have requested an assessment refund during the preceding year | <ul style="list-style-type: none"> • 3 years; • Member may not serve more than 3 consecutive terms | Not specified | <ul style="list-style-type: none"> • A state assessment of 10 cents per hundredweight of all dry beans grown in the state, delivered in the state, or sold to a designated handler; • No federal assessment specified |
| Dry Pea and Lentil Council | 4.1-07 | <p>5 members as follows:</p> <ul style="list-style-type: none"> • 1 participating producer from each of the 5 districts in the state | Elected from among the elected county representatives, who were elected by participating producers residing in the county, who make up the district | <ul style="list-style-type: none"> • United States citizen; • Resident of the district represented; • Participating producer of the district represented; • May not have requested an assessment refund during the preceding 3 years | <ul style="list-style-type: none"> • 3 years; • Member may not serve more than 3 consecutive terms | Not specified | <ul style="list-style-type: none"> • A state assessment of 1% of the net value of dry peas and lentils grown in the state or sold to a first purchaser; • No federal assessment specified |
| Oilseed Council | 4.1-09 | <p>14 members as follows:</p> <ul style="list-style-type: none"> • 1 participating sunflower producer from each of the 7 districts in the state; • 1 participating canola producer from each of the 3 districts in the state; • 1 participating safflower producer; • 1 participating flax producer; | <ul style="list-style-type: none"> • The 10 sunflower and canola producers are elected from among the elected county representatives, who were elected by participating producers residing in the county, who make up the district; • The safflower, flax, and oilseed producers are appointed by the Governor; | <ul style="list-style-type: none"> • Resident of the district represented; • Participating producer of the district represented; • May not have requested an assessment refund during the preceding year | <ul style="list-style-type: none"> • 3 years; • Member may not serve more than 4 consecutive terms | Not specified | <ul style="list-style-type: none"> • A state assessment of 4 cents per hundredweight of all sunflowers and canola grown in the state or sold to a first purchaser; • A state assessment of 3 cents per bushel of flax grown in the state or sold to a first purchaser; • A state assessment of 3 cents per hundredweight on all other oilseeds grown in the state or sold to a first purchaser; |

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|-----------------|------------------------|---|---|---|--|----------------------|--|
| | | <ul style="list-style-type: none"> • 1 participating producer of an oilseed other than sunflower, canola, safflowers, or flax; or 1 participating producer of any oilseed if a participating producer of another oilseed cannot be appointed; • 1 individual appointed by the Director of the Agricultural Experiment Station | <ul style="list-style-type: none"> • 1 individual is appointed by the Director of the Agricultural Experiment Station | | | | <ul style="list-style-type: none"> • No federal assessment specified |
| Potato Council | 4.1-10 | 5 members as follows: <ul style="list-style-type: none"> • 1 participating producer from each of the 5 districts in the state | Elected from among the participating producers residing in the district | <ul style="list-style-type: none"> • United States citizen; • Resident of the district represented; • Participating producer of the district represented | <ul style="list-style-type: none"> • 3 years; • Member may not serve more than 2 consecutive terms | Not specified | <ul style="list-style-type: none"> • A state assessment of 3 cents per hundredweight of all potatoes grown in the state or sold to a designated handler; • The council has the authority to increase the assessment up to 0.5 cents per hundredweight annually up to a maximum of 4 cents per hundredweight; • A federal assessment of 3 cents per hundredweight of all potatoes grown in the state |
| Soybean Council | 4.1-11 | 12 members as follows: <ul style="list-style-type: none"> • 1 producer from each of the 12 districts in the state | Elected from among the elected county representatives, who were elected by participating producers residing in the county, who make up the district | <ul style="list-style-type: none"> • Resident of the district represented; • A producer | <ul style="list-style-type: none"> • 3 years; • Member may not serve more than 2 consecutive terms | Not specified | <ul style="list-style-type: none"> • A state assessment of 0.5% of the value of the sale on all soybeans sold to a designated handler (not being collected at this time); • A federal assessment of 0.5% of the net market value of each bushel of soybeans sold at the first point of sale (50% split between state and federal) |

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| Wheat Commission | 4.1-13 | 7 members as follows: <ul style="list-style-type: none"> • 1 individual from each of the 6 districts in the state; • 1 at-large member | <ul style="list-style-type: none"> • The individuals representing the districts are elected from among the elected county representatives, who were elected by participating producers residing in the county, who make up the district; • The at-large member is appointed by the Governor from 3 names submitted by a nominating committee convened by the Agriculture Commissioner | <ul style="list-style-type: none"> • Elected members must be a resident of the district represented, a qualified elector, and a producer; • The at-large member must be a resident of the state, a qualified elector, and a producer; • A member may not have requested an assessment refund during the preceding year | <ul style="list-style-type: none"> • 4 years; • Member may not serve more than 3 terms | At least 1 meeting per calendar quarter | <ul style="list-style-type: none"> • A state assessment of 15 mills per bushel by weight of all wheat grown in the state, delivered to the state, and sold to a first purchaser in the state; • No federal assessment specified |

Other States

Minnesota

The Minnesota Beef Council, which was established in 1969, consists of 16 members elected by qualified producers from nine districts across the state. Terms of office are 3 years. The council is not required to hold a specific number of meetings per year. Minnesota cattle producers pay the national checkoff assessment of \$1 per head of cattle sold, 50 percent of which is retained by the state. There is no additional state assessment.

South Dakota

The South Dakota Beef Council was established in 1954 for the purpose of beef promotion. In 1977, the council merged with the South Dakota Livestock Industry Committee and changed its name to the South Dakota Beef Industry Council. In 1986, the council became the qualified state beef council for the state. The council consists of 24 total volunteer board members, three members each selected by and serving on behalf of eight partner agricultural organizations. The partner organizations are the Livestock Auction Market Association, the Stockgrowers Association, the Farm Bureau Association, the Cattlemen's Association, the Cattlemen's Auxiliary, the Cattlewomen, the Beef Breeds Council, and the Farmers Union. Terms of office are 3 years. South Dakota cattle producers pay the national checkoff assessment of \$1 per head of cattle sold, 50 percent of which is retained by the state. There is no additional state assessment.

Montana

The Montana Beef Council, established in 1954 to market the Montana beef industry, consists of a 12-member board of directors appointed or elected to serve the following 11 membership organizations--Montana Stockgrowers, Cattlemen's Association, Cattlewomen, Livestock Auction Markets, Cattle Feeders, Meat Processor Association, Farm Bureau, Farmers Union, Retailers Association, Dairymen's Association, and Angus Association. Montana producers pay the national checkoff assessment of \$1 per head of cattle sold, 50 percent of which is retained by the state. There is no additional state assessment.

RELEVANT 2021 LEGISLATION

House Bill No. 1487 (2021) would have changed the state beef checkoff assessment from a mandatory assessment of \$1 for each animal sold in the state or from the state to a permissive assessment the producer could choose whether to pay. The bill failed to pass the House.

PREVIOUS LEGISLATIVE MANAGEMENT STUDIES OF THE NORTH DAKOTA BEEF COMMISSION

The 1981-82 interim Agriculture Committee studied the feasibility of combining the marketing efforts of the North Dakota Beef Commission with those of the other statutorily established agricultural products commissions to determine if combining marketing efforts would result in the increased efficiency and sale of North Dakota agricultural products, while allowing each commodity commission to retain autonomy. The committee made no recommendations regarding changes to the membership of the North Dakota Beef Commission or any other commodity group.

STUDY APPROACH

In conducting this study, the committee may wish to receive testimony from representatives of:

- The North Dakota Beef Commission regarding the operations and membership of the commission, the amount of revenue generated by the beef checkoff, and the use of checkoff revenue;
- Other commodity councils and commissions in the state regarding their membership and operations, how those entities differ from the North Dakota Beef Commission, and any efficiencies established by those entities;
- The organizations that submit nominations to the Governor for appointments to the North Dakota Beef Commission;
- Other interested agricultural groups and interested parties in the state, such as the Independent Beef Association of North Dakota regarding current perceived issues with the membership and operations of the North Dakota Beef Commission; and
- Equivalent commodity groups to the North Dakota Beef Commission in surrounding states regarding the membership and operations of each state's group, how the groups differ from the North Dakota Beef Commission, any perceived issues, and whether the groups have established efficiencies that North Dakota potentially may emulate.

The committee also may seek additional information from organizations such as the National Conference of State Legislatures regarding beef commissions and councils, membership, operations, revenue, and best practices in other states.