

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

354L0447

SENATE ENGROSSED NO. **SB 114** - 02/15/2005

Introduced by: Senators Duenwald, Hansen (Tom), Hanson (Gary), and Koskan and
Representatives Davis, Fryslie, Hackl, Hargens, and Jensen

1 FOR AN ACT ENTITLED, An Act to establish a refundable checkoff on pulse crops.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Council," the South Dakota Pulse Crop Council;

5 (2) "First purchaser," any person, firm, corporation, association, partnership, agent, or
6 broker buying, accepting for sale, or otherwise acquiring pulse crops after harvest
7 from a grower. A grower selling unharvested pulse crops or delivering pulse crops
8 from the farm on which they are produced to storage facilities, packing shed, or
9 processing plant is not a first purchaser;

10 (3) "Grower," any person who is the legal initial owner of pulse crops harvested from
11 more than ten acres;

12 (4) "Participating grower," a grower who has not requested a refund from the payment
13 of assessments on pulse crops under this Act for the current or previous year;

14 (5) "Pulse crops," lentils, dry peas, chickpeas, and lupines;

15 (6) "Secretary," the secretary of the Department of Agriculture.



1 Section 2. The South Dakota Pulse Crops Council is composed of five members who are
2 participating growers of dry peas, lentils, chickpeas, or lupines. The secretary shall make the
3 initial appointments to the council and the secretary or a designee may serve as a nonvoting ex
4 officio member. Initial appointments to the council shall include five participating growers,
5 including a dry pea grower, a chickpea grower, a lentil or lupine grower, and two at-large pulse
6 producers. If no grower representing one of these crops is available or willing to serve, then
7 another at-large grower shall be appointed.

8 Section 3. The term of the members of the council is three years. However, the initial
9 appointments shall be for staggered terms. Succeeding council members shall be nominated and
10 elected by participating growers pursuant to rules promulgated by the secretary pursuant to
11 chapter 1-26. No council member may serve more than two consecutive elected terms. If a
12 member ceases to be a participating grower, the secretary shall declare the member's office
13 vacant, and the secretary shall appoint a successor for the balance of the term of the office
14 vacated.

15 Section 4. The council shall annually elect a chair and vice-chair. A majority of voting
16 members constitutes a quorum. All meetings of the council shall be called by the chair.
17 However, special meetings may be called by three members of the council. The council shall
18 adopt procedures for the calling of special meetings.

19 Section 5. Compensation for the members of the council shall be paid pursuant to § 4-7-
20 10.4.

21 Section 6. Funds collected pursuant to this Act shall be deposited with the state treasurer in
22 a special fund known as the pulse crops fund. Expenditures of these funds shall be made in
23 accordance with the provisions of chapter 4-7.

24 Section 7. The council shall promote the development, marketing, processing, and

1 production of pulse crops in South Dakota. In the administration of this Act, the council may:

- 2 (1) Contract and cooperate with any person or with any governmental department or
3 agency for research, education, promotion, and transportation;
- 4 (2) Expend the funds collected pursuant to this Act and appropriated for its
5 administration;
- 6 (3) Appoint, discharge, fix compensation for, and prescribe the duties of personnel as
7 necessary, subject to approval of the secretary;
- 8 (4) Accept donations of funds, property, services, or other assistance from public or
9 private sources for the purpose of furthering the objectives of the council.

10 Section 8. The council shall promulgate rules pursuant to chapter 1-26 concerning:

- 11 (1) The procedures for obtaining a declaratory ruling;
- 12 (2) The procedures by which assessments are collected for pulse crops grown or sold to
13 a first purchaser;
- 14 (3) The procedures for obtaining a refund of the assessment;
- 15 (4) The procedures for collecting delinquent assessments and assessing penalties; and
- 16 (5) The record-keeping and reporting requirements of first purchasers.

17 Section 9. Nothing in this Act abrogates or limits the rights, powers, duties, and functions
18 of the Department of Agriculture or any other agency of the state.

19 Section 10. An assessment at the rate of one percent of the net market price is levied and
20 imposed on any pulse crop grown or sold in South Dakota to a first purchaser. The council may
21 enter into reciprocal agreements with other states that also have a pulse checkoff to remit the
22 assessment to the state where the crop is grown. This assessment is due on any identifiable lot
23 or quantity of a pulse crop.

24 Section 11. Each first purchaser of pulse crops shall collect the assessment imposed by this

1 Act by charging and collecting from the seller the assessment at the prescribed rate by deducting
2 the assessment from the purchase price of the crops subject to the assessment and purchased by
3 the first purchaser. The assessments shall be paid to the department within thirty days of the end
4 of each calendar quarter.

5 Section 12. Each first purchaser of pulse crops shall file an application or affidavit with the
6 council on forms prescribed and furnished by the council which contain the name under which
7 the first purchaser is transacting business within the state, the place of business, and the location
8 of loading places of the first purchaser.

9 Section 13. Each first purchaser shall keep a permanent record of all purchases of pulse
10 crops, which may be examined by the council at any reasonable time. The first purchaser shall
11 report to the council the quantity of pulse crops received by the first purchaser. The report and
12 remittance of the assessment shall be made at the times and in the manner prescribed by the
13 council in rules promulgated pursuant to chapter 1-26.

14 Section 14. In the case of a pledge or mortgage of pulse crops as security for a loan under
15 the federal price support program, the assessment established under section 10 of this Act shall
16 be deducted from the proceeds of the loan at the time the loan is made, or be deducted thereafter
17 by agencies of the federal government. The producer's note and loan agreement, producer's note
18 and supplemental loan agreement, or delivery instructions issued by the federal agency to the
19 grower fulfill the requirements for invoices, and these documents constitute proof of payment
20 of the assessment on the pulse crops. Forms supplemental or alternate to those approved in this
21 section that are provided by the Commodity Credit Corporation of the United States Department
22 of Agriculture and contain the necessary information may be used for the purposes of this
23 section. Identification numbers created by the Commodity Credit Corporation for use in lieu of
24 the name of the grower from whom the assessment was collected are approved, if authorized

1 officials of the State of South Dakota have access at all reasonable times to records in the United
2 States Department of Agriculture Farm Service Agency county offices showing the names of
3 growers to whom such identification numbers have been assigned.

4 Section 15. If pulse crops described in section 14 of this Act remain in farm storage for the
5 duration of the pledge or mortgage, the assessment paid at the time the loan was made
6 completely satisfies the assessment liability unless upon subsequent actual delivery of the pulse
7 crop from farm storage in satisfaction of the pledge, or mortgage in the amount of one dollar or
8 more, any underpayment is due solely to the necessity of estimating the quantity of the pulse
9 crops placed in farm storage.

10 Section 16. In connection with the collection of the pulse crop assessment on Commodity
11 Credit Corporation pulse loans disbursed and purchase agreement settlement made,
12 undercollections or overcollections of the pulse crop assessment amounting to one dollar or less
13 as a result of errors do not require collection of the underpayment or refund of the overpayment
14 by the Commodity Credit Corporation, and its responsibility in such cases is waived.

15 Section 17. If any first purchaser fails to pay the assessment provided in this Act, the council
16 may enforce collection in any appropriate court within this state.

17 Section 18. Any grower subject to the assessment provided in this Act, within sixty days
18 following the assessment, may apply to the council for a refund of the assessment. Upon return
19 of the refund application accompanied by a record of the assessment by the first purchaser, the
20 grower shall, within sixty days, be refunded the net amount of the assessment collected.
21 Additionally, a grower, who for any reason, pays the assessment more than once on the same
22 pulse crops, upon furnishing proof of this to the council, is entitled to a refund of the
23 overpayment.

24 Section 19. The council shall develop and disseminate information and instructions relating

1 to the purpose of the pulse crop assessment and manner in which refunds may be claimed.

2 Section 20. If fifteen percent of the participating growers, as disclosed by the records of the
3 council for the preceding year, petition the council, the council shall conduct a referendum
4 among the participating growers of the state to determine whether they wish the Legislature to
5 raise or reduce the assessment imposed by this Act. The referendum may be conducted only
6 among participating growers who have paid all assessments pursuant to this Act for the
7 preceding year, and the ballots shall be prepared by the council and mailed to each participating
8 grower at least thirty days before the last date for filing ballots. In addition, each ballot shall be
9 accompanied by a notice to each participating grower:

- 10 (1) Of the date of the filing of the petition by the growers for the referendum and the
11 number of signatures contained on the petition;
- 12 (2) Of the date and place where the council will open and tabulate the ballots. The date
13 may be not less than five days after the last date for filing the ballots;
- 14 (3) Of the last date upon which ballots may be filed with the council, or postmarked if
15 delivered to the council by mail; and
- 16 (4) That any participating grower may attend the meeting of the council at the time the
17 ballots are opened and the votes tabulated.

18 If a majority of the participating growers voting upon the question are in favor of the
19 proposed change, the council shall certify the result to the secretary with the request that the
20 secretary prepare a bill to submit to the next legislative session to modify this Act accordingly.
21 The results of the referendum are advisory only, and the Legislature is not obligated to adopt
22 legislation enacting the proposals contained in the referendum.

23 Section 21. The council may contract with the Public Utilities Commission to inspect the
24 records of licensed grain dealers to determine compliance with the assessment and checkoff

1 requirements of this Act. The contract shall cover the dealers to be inspected and the amount
2 the council shall reimburse the Public Utilities Commission for the inspections.

3 Section 22. That § 49-45-21 be amended to read as follows:

4 49-45-21. The commission may contract with the Wheat Commission pursuant to § 38-10-
5 41, with the South Dakota Oilseeds Council pursuant to § 38-27-19, the Soybean Research and
6 Promotion Council pursuant to § 38-29-14, ~~and~~ the South Dakota Corn Utilization Council
7 pursuant to § 38-32-24, and the South Dakota Pulse Crop Council pursuant to section 21 of this
8 Act. Under the terms of any such contract, the commission may inspect the records of licensed
9 grain dealers to determine compliance with assessment and checkoff requirements imposed by
10 chapters 38-10, 38-27, 38-29, and 38-32 and the provisions of this Act.