

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1009
(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the agriculture commissioner; to provide for a transfer; to amend and reenact sections 4.1-01-02, 4.1-01-17, 4.1-83-22, 4.1-83-23, 4.1-83-28, and 54-12-08 of the North Dakota Century Code and section 7 of chapter 34 of the 2019 Session Laws, relating to the salary of the agriculture commissioner, the pipeline restoration and reclamation oversight program, insolvency of livestock dealers, the ability of state agencies to employ attorney positions, and the waterbank program; to provide for a report; to provide for a legislative management study; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the agriculture commissioner for the purpose of defraying the expenses of the agriculture commissioner, for the biennium beginning July 1, 2021, and ending June 30, 2023.

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$14,232,746	\$1,484,380	\$15,717,126
Operating expenses	6,592,780	255,272	6,848,052
Capital assets	15,000	0	15,000
Grants	8,823,774	5,908,000	14,731,774
Environmental impact mitigation	5,000,000	(5,000,000)	0
Agricultural products utilization commission	1,760,417	2,700,000	4,460,417
North Dakota trade office	0	1,600,000	1,600,000
Board of animal health	865,718	0	865,718
Wildlife services	1,457,400	0	1,457,400
Pipeline restoration and reclamation oversight program	200,000	0	200,000
Crop harmonization board	<u>75,000</u>	<u>0</u>	<u>75,000</u>
Total all funds	\$39,022,835	\$6,947,652	\$45,970,487
Less estimated income	<u>28,322,406</u>	<u>4,188,369</u>	<u>32,510,775</u>
Total general fund	\$10,700,429	\$2,759,283	\$13,459,712
Full-time equivalent positions	78.00	1.00	79.00

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-EIGHTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-sixth legislative assembly for the 2019-21 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2019-21</u>	<u>2021-23</u>
Master customer database	\$110,000	\$0
Grain insolvency litigation	100,000	0
Agricultural products utilization commission	2,000,000	2,700,000
Soil health grants	0	700,000
Grasslands grazing grants	<u>0</u>	<u>5,000,000</u>
Total all funds	\$2,210,000	\$8,400,000
Less estimated income	<u>2,000,000</u>	<u>8,400,000</u>
Total general fund	\$210,000	\$0

The 2021-23 biennium one-time funding amounts are not a part of the entity's base budget for the 2023-25 biennium. The agriculture commissioner shall report to the appropriations committees of the sixty-eighth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2021, and ending June 30, 2023.

SECTION 3. APPROPRIATION - TRANSFER - GENERAL FUND TO BIOSCIENCE INNOVATION GRANT FUND - ONE-TIME FUNDING. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$5,500,000, or so much of the sum as may be necessary, which the office of management and budget shall transfer to the bioscience innovation grant fund for the biennium beginning July 1, 2021, and ending June 30, 2023. The agriculture commissioner shall use these funds for providing bioscience innovation grants. This funding is considered a one-time funding item.

SECTION 4. APPROPRIATION - TRANSFER - GENERAL FUND TO FEDERAL ENVIRONMENTAL LAW IMPACT REVIEW FUND - ONE-TIME FUNDING. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be necessary, which the office of management and budget shall transfer to the federal environmental law impact review fund for the biennium beginning July 1, 2021, and ending June 30, 2023. The agriculture commissioner shall use these funds for defraying costs associated with federal environmental legislation or regulations which detrimentally impact or potentially impact the state's agricultural, energy, or oil production sectors. This funding is considered a one-time funding item.

SECTION 5. ESTIMATED INCOME - TRANSFER - BANK OF NORTH DAKOTA PROFITS - AGRICULTURAL PRODUCTS UTILIZATION COMMISSION - ONE-TIME FUNDING. The estimated income line item in section 1 of this Act includes the sum of \$2,700,000 which the Bank of North Dakota shall transfer from the Bank's current earnings and undivided profits to the agriculture commissioner for deposit in the agricultural products utilization commission fund for defraying the expenses of the agricultural products utilization commission for the biennium beginning July 1, 2021, and ending June 30, 2023. This funding is considered a one-time funding item.

SECTION 6. ESTIMATED INCOME - TRANSFER - BANK OF NORTH DAKOTA PROFITS ADDITIONAL INCOME - SOIL HEALTH COVER CROP GRANT PROGRAM - ONE-TIME FUNDING. The estimated income line item in section 1 of this Act includes the sum of \$700,000, of which the Bank of North Dakota shall transfer \$300,000 from the Bank's current earnings and undivided profits to the agriculture commissioner for deposit in the agriculture commissioner's operating fund and \$400,000 is from federal or other funds available to the agriculture commissioner for defraying the expenses of the soil health cover crop grant program for the biennium beginning July 1, 2021, and ending June 30, 2023. During the 2021-23 biennium, the agriculture commissioner shall submit an application to the North Dakota outdoor heritage advisory board for funding from the outdoor heritage fund for the soil health cover crop grant program, which the North Dakota outdoor heritage advisory board shall consider pursuant to section 54-17.8-03. The agriculture commissioner shall establish guidelines for the use of grant funding provided for this program. This funding is considered a one-time funding item.

SECTION 7. ESTIMATED INCOME - TRANSFER - STATE WATER COMMISSION. The estimated income line item in section 1 of this Act includes the sum of \$125,000, which the state water commission shall transfer to the agriculture commissioner for the purpose of defraying the expenses of the wildlife services program.

SECTION 8. TRANSFER - ENVIRONMENT AND RANGELAND PROTECTION FUND - MINOR USE PESTICIDE FUND. The agriculture commissioner shall transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the biennium beginning July 1, 2021, and ending June 30, 2023.

SECTION 9. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - GRASSLANDS GRAZING GRANT PROGRAM - ONE-TIME FUNDING - MATCHING FUNDS. The estimated income line item in section 1 of this Act includes the sum of \$5,000,000 from the strategic investment and improvements fund for the purpose of providing grassland grazing grants to an organization representing cooperative grazing associations in the state. To be eligible for a grant under this program, an organization must provide one dollar of matching funds from nonstate sources for every four dollars of grant funding. An organization that receives a grant under this program may distribute the funding to cooperative grazing associations for eligible infrastructure projects, which must be located on national grasslands within the state. Eligible infrastructure projects include water development; fencing; conservation initiatives; compliance with federal permitting requirements, including fees for professional services; and other projects to enhance wildlife habitat, capture carbon, or increase the health of grasslands. Program participants shall develop and implement a grazing land plan in compliance with local soil conservation district guidance and the plan must be approved by the local soil conservation district. The agriculture commissioner shall establish additional guidelines for the program.

SECTION 10. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item in section 1 of this Act includes the sum of \$6,899,395 from the environment and rangeland protection fund for the purpose of defraying the expenses of various agriculture commissioner programs.

SECTION 11. ESTIMATED INCOME - GAME AND FISH FUND. The estimated income line item in section 1 of this Act includes the sum of \$619,329 from the game and fish department operating fund for the purpose of defraying the expenses of various agriculture commissioner programs.

SECTION 12. TRADE OFFICE - MATCHING FUND REQUIREMENT. The North Dakota trade office line item and the general fund appropriation in section 1 of this Act include \$1,600,000 of funding related to the North Dakota trade office. The agriculture commissioner may spend sixty percent of this amount without requiring any matching funds from the trade office. Any additional amounts may be spent only to the extent the North Dakota trade office provides one dollar of matching funds from private or other public sources for each one dollar provided by the agriculture commissioner. Matching funds may include money spent by businesses or organizations to pay salaries to export assistants, providing training to export assistants, or to purchase computer equipment as part of the North Dakota trade office's export assistant program.

SECTION 13. AMENDMENT. Section 4.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

4.1-01-02. Salary of agriculture commissioner.

The annual salary of the agriculture commissioner is one hundred ~~sixteen~~twenty-one thousand ~~eight~~five hundred ~~thirty-six~~fifty-three dollars through June 30, ~~2020~~2022, and one hundred ~~nineteen~~twenty-three thousand ~~seventy-nine~~fifty-seven hundred ~~fifty-seven~~eighty-four dollars after that date.

SECTION 14. AMENDMENT. Section 4.1-01-17 of the North Dakota Century Code is amended and reenacted as follows:

4.1-01-17. Pipeline restoration and reclamation oversight ~~pilot~~ program - Generally.

1. The commissioner shall establish a ~~pilot~~ program providing technical assistance and support to surface owners and surface tenants on pipeline restoration and followup support to surface owners and surface tenants on pipeline reclamation.
2. The commissioner may contract for ombudsmen to be a resource for technical assistance and followup on pipeline issues. The ombudsmen may not investigate or assist with any pipeline installed before January 1, 2006, or regulated by the public service commission under title 49, and may not assist in easement negotiations.

3. The ~~pilot~~ program may provide technical education, support, and outreach on pipeline-related matters in coordination with other entities.
4. The commissioner may contract with local individuals, deemed trustworthy by the surface owners and surface tenants, to be ombudsmen. The commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.
5. The names of surface owners and surface tenants who receive assistance under the program are closed records as defined in section 44-04-17.1.

SECTION 15. AMENDMENT. Section 4.1-83-22 of the North Dakota Century Code is amended and reenacted as follows:

4.1-83-22. Appointment of trustee.

1. ~~Upon the insolvency of a livestock dealer, the agriculture commissioner may apply to the district court of the county in which the dealer maintains its principal place of business for appointment as the trustee.~~
2. ~~Upon notice to the livestock dealer, as the court shall prescribe but not exceeding ten days, or upon a written waiver of notice by the dealer, the court shall hear and make a determination regarding the application in a summary manner.~~
3. ~~If the court determines that the livestock dealer is insolvent within the meaning of this chapter and that it would be in the best interest of persons holding claims against the dealer for the purchase price of livestock sold to the dealer or to the dealer's agent that the agriculture commissioner execute the trust, the court shall issue an order appointing the commissioner as the trustee, without bond.~~
4. ~~Upon being appointed as the trustee shall provide notice to the livestock dealer and may immediately suspend, close, or take control of assets held in the trust fund pursuant to section 4.1-83-21, or take any combination of these actions as the agriculture commissioner deems necessary to begin orderly liquidation of trust fund assets as set forth in this chapter.~~
2. Upon establishing the trust fund, the agriculture commissioner shall perform the duties of a trustee as set forth in this chapter.

SECTION 16. AMENDMENT. Section 4.1-83-23 of the North Dakota Century Code is amended and reenacted as follows:

4.1-83-23. Possession of records and property - Notice to file claims.

1. ~~a. Upon being appointed trustee~~establishing the trust fund, the agriculture commissioner shall take possession of all accounts and records pertaining to the livestock dealer's business. After reviewing the records, the agriculture commissioner may return to the dealer any records that are not necessary to the settlement of claims under this chapter.
- ~~b. Upon being appointed trustee~~establishing the trust fund, the agriculture commissioner shall take possession of all livestock purchased by the dealer under the dealer's license and remaining in the dealer's possession.
2. The agriculture commissioner, as trustee, shall publish a notice once each week for three consecutive weeks in the official newspaper of each county in which the livestock dealer was conducting business, directing any person having a claim against the dealer to file the claim and all supporting documentation with the commissioner no later than forty-five days from the last date of publication. Any person failing to meet the filing requirements set forth in the notice is barred from participating in any funds marshalled by the agriculture commissioner under this chapter.

SECTION 17. AMENDMENT. Section 4.1-83-28 of the North Dakota Century Code is amended and reenacted as follows:

4.1-83-28. Report of amounts payable - Distribution of trust fund.

1. Upon recovery of the trust fund, or so much of the fund as is recoverable or necessary to pay the outstanding claims, the agriculture commissioner shall file with the ~~court~~claimants a report showing the amount payable on each claim, after recognition of all proper liens, pledges, assignments, and deductions.
2. If the trust fund is insufficient to pay all claims in full, the agriculture commissioner shall prorate the fund among the claimants.
3. ~~The court shall notify the claimants by mail regarding the proposed distribution and direct that the claimants show cause why the report and distribution should not be approved.~~
4. After holding a hearing on the matter, the ~~court~~agriculture commissioner shall:
 - a. Approve or modify the report; and
 - b. Issue an order directing that the trust fund be distributed; ~~and~~
 - c. ~~Discharge the agriculture commissioner from all duties as trustee.~~

SECTION 18. AMENDMENT. Section 54-12-08 of the North Dakota Century Code is amended and reenacted as follows:

54-12-08. Assistant and special assistant attorneys general - Appointment - Revocation - Compensation.

1. After consultation with the head of the state department or institution or with the state board, commission, committee, or agency affected, the attorney general may appoint assistant or special assistant attorneys general to represent the state board, commission, committee, or agency. A state officer, head of any state department, whether elected or appointed, or state department, board, commission, committee, or agency may not employ legal counsel, and no person may act as legal counsel in any matter, action, or proceeding in which the state or any state department, board, commission, committee, or agency is interested or is a party, except upon written appointment by the attorney general. Workforce safety and insurance, the department of transportation, the state tax commissioner, the public service commission, the insurance commissioner, the agriculture commissioner, and the securities commissioner may employ attorneys to represent them. These entities shall pay the salaries and expenses of the attorneys they employ within the limits of legislative appropriations. The attorneys that represent these entities must be special assistant attorneys general appointed by the attorney general pursuant to this section. Absent good cause, the attorney general shall appoint as special assistant attorneys general licensed attorneys selected by these entities. The attorney general may revoke the appointment only for good cause or upon the request of the entity. Good cause means an inadequate level of experience, competence, or ethical standards.
2. The powers conferred upon special assistant attorneys general are the same as are exercised by the regular assistant attorneys general, unless the powers are limited specifically by the terms of the appointment. Except as otherwise provided by this section, an appointment is revocable at the pleasure of the attorney general. The appointment may be made with or without compensation, and when compensation is allowed by the attorney general for services performed, the compensation must be paid out of the funds appropriated therefor.
3. The attorney general may require payment for legal services rendered by any assistant or special assistant attorney general to any state official, board, department, agency, or commission and those entities shall make the required payment to the attorney general.

Moneys received by the attorney general in payment for legal services rendered must be deposited into the attorney general's operating fund. General fund moneys may not be utilized for the payment of legal services provided by the attorneys employed by the attorney general, except for those payments required of the department of human services, state department of health, department of environmental quality, and the state hospital.

4. An assistant or special assistant attorney general appointed to represent the state board of higher education or an institution under the control of the state board of higher education may access and examine any record under the control of the state board of higher education. For purposes of reviewing records under the Family Educational Rights and Privacy Act [20 U.S.C. 1232g; 34 CFR 99] or any other federal privacy law, the assistant or special assistant attorney general is considered a state educational official authorized to access student records.

SECTION 19. ESTIMATED INCOME - PIPELINE RESTORATION AND RECLAMATION. The estimated income line item in section 1 of this Act includes the sum of \$200,000 from the abandoned oil and gas well plugging and site reclamation fund for the purpose of defraying the expenses of the pipeline restoration and reclamation program.

SECTION 20. AMENDMENT. Section 7 of chapter 34 of the 2019 Session Laws is amended and reenacted as follows:

SECTION 7. WATERBANK PROGRAM - MATCHING FUNDS. The salaries and wages line item in section 1 of this Act includes up to \$50,000 from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.

SECTION 21. WATERBANK PROGRAM - MATCHING FUNDS. The salaries and wages line item in section 1 of this Act includes up to \$50,000 from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.

SECTION 22. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA BEEF COMMISSION. During the 2021-22 interim, the legislative management shall consider studying the North Dakota beef commission, including its operations and the selection of commission members. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly.

SECTION 23. EMERGENCY. Sections 15, 16, and 17 of this Act are declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1009 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 77 Nays 14 Absent 3

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 46 Nays 1 Absent 0

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,
at _____ o'clock _____ M.

Secretary of State