

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2014
(Appropriations Committee)
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state industrial commission and the agencies under the management of the industrial commission; to create and enact two new sections to chapter 54-18 of the North Dakota Century Code, relating to mill and elevator profits and gain sharing; to amend and reenact section 54-17.5-01 of the North Dakota Century Code, relating to education activities relating to the lignite industry; to repeal section 16 of chapter 14 of the 2007 Session Laws, relating to a transfer from the North Dakota mill and elevator association; to provide legislative intent; to provide an appropriation; to provide a contingent appropriation; to provide an exemption; to authorize transfers; 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 state industrial commission and agencies under its control for the purpose of defraying the expenses of the state industrial commission and agencies under its control, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,207,544	\$2,323,453	\$9,530,997
Operating expenses	2,255,690	459,886	2,715,576
Capital assets	34,500	14,500	49,000
Grants - Lignite research and development	19,410,600	560,700	19,971,300
State facility lignite feasibility demonstration project	0	400,000	400,000
Grants - Bond payments	29,475,016	(2,033,151)	27,441,865
Oil and gas division contingency	285,000	(285,000)	0
Biomass incentive and research	2,000,000	(2,000,000)	0
Renewable energy development	20,000,000	(17,000,000)	3,000,000
Total all funds	\$80,668,350	(\$17,559,612)	\$63,108,738
Less estimated income	69,392,346	(20,083,862)	49,308,484
Total general fund	\$11,276,004	\$2,524,250	\$13,800,254
Full-time equivalent positions	55.37	5.69	61.06

Subdivision 2.

BANK OF NORTH DAKOTA - OPERATIONS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Bank of North Dakota operations	\$35,271,867	\$6,490,407	\$41,762,274
Capital assets	1,900,000	(445,000)	1,455,000
Total from the Bank of North Dakota fund	\$37,171,867	\$6,045,407	\$43,217,274
Full-time equivalent positions	176.50	0.00	176.50

Subdivision 3.

BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Partnership in assisting community expansion fund	\$8,000,000	\$0	\$8,000,000
Agriculture partnership in assisting community expansion fund	1,400,000	1,000,000	2,400,000
Beginning farmer revolving loan fund	950,000	0	950,000
Biofuels partnership in assisting community expansion fund	0	700,000	700,000
Total all funds	<u>\$10,350,000</u>	<u>\$1,700,000</u>	<u>\$12,050,000</u>
Less beginning farmer revolving loan fund	950,000	0	950,000
Total general fund	<u>\$9,400,000</u>	<u>\$1,700,000</u>	<u>\$11,100,000</u>

Subdivision 4.

MILL AND ELEVATOR ASSOCIATION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$20,053,037	\$2,546,287	\$22,599,324
Operating expenses	16,262,572	720,346	16,982,918
Contingencies	300,000	25,000	325,000
Agriculture promotion	150,000	0	150,000
Total from mill and elevator fund	\$36,765,609	\$3,291,633	\$40,057,242
Full-time equivalent positions	131.00	0.00	131.00

Subdivision 5.

HOUSING FINANCE AGENCY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,696,712	\$1,285,116	\$5,981,828
Operating expenses	9,412,778	(735,197)	8,677,581
Grants	27,319,800	(1,095,440)	26,224,360
Housing finance agency contingencies	100,000	0	100,000
Total from housing finance agency fund	<u>\$41,529,290</u>	<u>(\$545,521)</u>	<u>\$40,983,769</u>
Full-time equivalent positions	43.00	3.00	46.00

Subdivision 6.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$20,676,004	\$4,224,250	\$24,900,254
Grand total special funds	<u>185,809,112</u>	<u>19,068,231</u>	<u>204,877,343</u>
Grand total all funds	\$206,485,116	\$23,292,481	\$229,777,597

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the grand total appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Biofuels partnership in assisting community expansion	\$4,200,000	\$700,000
Fossil restoration fund	250,000	0

Core and sample library repairs	230,000	0
State facility lignite feasibility demonstration project	0	400,000
Ag PACE disaster program	0	1,000,000
Recruitment/retention bonuses	0	185,000
Renewable energy development program	0	3,000,000
Fracturing sand and coalbed methane studies	0	<u>93,152</u>
Total general fund	\$4,680,000	\$5,378,512

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The industrial commission shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 3. LEGISLATIVE INTENT - BOND PAYMENTS. The amount of \$27,441,865 included in subdivision 1 of section 1 of this Act in the grants - bond payments line item must be paid from the following funding sources during the biennium beginning July 1, 2009, and ending June 30, 2011:

North Dakota university system	\$12,014,048
North Dakota university system - Energy conservation projects	1,869,248
Department of corrections and rehabilitation - State penitentiary	2,203,515
Department of corrections and rehabilitation - Energy conservation projects	18,580
State department of health	704,127
Job service North Dakota	747,772
Department of human services - State hospital	437,729
Department of human services - Developmental center at Grafton	501,657
Adjutant general	70,627
Information technology department - ConnectND	5,405,936
Office of management and budget	665,298
Office of the attorney general	765,882
State historical society	1,392,393
Parks and recreation	73,630
Research and extension service	<u>571,423</u>
Total	\$27,441,865

SECTION 4. APPROPRIATION. In addition to the amount appropriated to the housing finance agency in subdivision 5 of section 1 of this Act, there is appropriated any additional income or unanticipated income from federal or other funds which may become available to the agency for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 5. APPROPRIATION - EMERGENCY COMMISSION APPROVAL. In addition to the amount appropriated to the state industrial commission in subdivision 1 of section 1 of this Act, there is appropriated, with the approval of the emergency commission, funds that may become available to the commission from bonds authorized by law to be issued by the state industrial commission for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 6. CONTINGENT DEPARTMENT OF MINERAL RESOURCES FUNDING - EMERGENCY COMMISSION APPROVAL. Of the funds appropriated in the salaries and wages and operating expense line items in subdivision 1 of section 1 of this Act, \$515,207 are from the lands and minerals trust fund. If funds are required due to the average drilling rig count exceeding one hundred active rigs for each month in any consecutive three-month period, the oil and gas division may spend \$319,041 of these funds and hire up to two full-time equivalent positions, upon emergency commission approval. If funds are required due to receipt of an application for solution mining of potash or uranium, the geological survey division may spend \$196,166 of these funds and hire up to one full-time equivalent position, upon emergency commission approval.

SECTION 7. EXEMPTION. The biomass incentive and research fund is not subject to section 54-44.1-11 and any unexpended and unobligated balance in the fund at June 30, 2009, must be transferred to the renewable energy development fund.

SECTION 8. TRANSFER. The sum of \$471,633, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, may be transferred from the entities within the control of the state industrial commission to the industrial commission fund for administrative services rendered by commission. Transfers shall be made during the biennium beginning July 1, 2009, and ending June 30, 2011, upon order of the commission. Transfers from the student loan trust must be made to the extent permitted by sections 54-17-24 and 54-17-25.

SECTION 9. APPROPRIATION - TRANSFER. The funds appropriated in subdivision 3 of section 1 of this Act must be transferred by the Bank of North Dakota to the partnership in assisting community expansion fund; the agriculture partnership in assisting community expansion fund; and the biofuels partnership in assisting community expansion fund. The Bank of North Dakota may not be construed to be a general fund agency because of the appropriation made by subsection 3 of section 1 of this Act.

SECTION 10. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - APPROPRIATION - LIGNITE MARKETING FEASIBILITY STUDY. The amount of \$1,500,000, or so much of the amount as may be necessary, included in the grants and special funds appropriation line item in subdivision 1 of section 1 of this Act, is appropriated from the lignite research fund for the purpose of contracting for an independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects, activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and industry jobs or that will lead to increased development of lignite and its products and create new lignite industry jobs and economic growth for the general welfare of this state. Moneys appropriated pursuant to this section may also be used for the purpose of contracting for nonmatching studies and activities in support of the lignite vision 21 program; for litigation that may be necessary to protect and promote the continued development of lignite resources; for nonmatching externality studies and activities in externality proceedings; or other marketing, environmental, or transmission activities that assist with marketing of lignite-based electricity and lignite-based byproducts. Moneys not needed for the purposes stated in this section are available to the commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

SECTION 11. MILL AND ELEVATOR STUDY. The industrial commission shall obtain the services of a consultant to evaluate the state mill and elevator association during the 2009-10 interim. The evaluation must include a comparison to industry averages or standards of:

1. Financial data reflected on balance sheets and income statements;
2. Cashflow data;
3. Ratio analysis of working capital, operating efficiency, marketing, and other ratios;
4. Liquidity ratios to determine appropriate working capital needed for the mill;
5. Pretax income levels;
6. Business opportunities;
7. Capital investment and recommended net assets levels; and
8. Officer and employee compensation guidelines, including gain-sharing programs.

The industrial commission shall provide a summary report exclusive of proprietary information to the budget section on the results of the evaluation during the 2009-10 interim.

SECTION 12. Two new sections to chapter 54-18 of the North Dakota Century Code are created and enacted as follows:

Transfer of North Dakota mill and elevator profits to general fund. The industrial commission shall transfer to the state general fund fifty percent of the annual earnings and undivided profits of the North Dakota mill and elevator association after any transfers to other state agricultural-related programs. The moneys must be transferred on an annual basis in the amounts and at the times requested by the director of the office of management and budget.

Gain-sharing program. For the purpose of this section, "gain-sharing program" means a program approved annually by the industrial commission with provisions that promote profitability, productivity, and safety. Any gain-sharing program approved by the industrial commission must include provisions that ensure that no payouts occur unless mill and elevator profits exceed one million dollars and transfers will be made to the state general fund for that program year.

SECTION 13. AMENDMENT. Section 54-17.5-01 of the North Dakota Century Code is amended and reenacted as follows:

54-17.5-01. Declaration of findings and public purpose. The legislative assembly finds and declares that North Dakota's lignite industry produces approximately thirty million tons of lignite annually, contributing to our state's and nation's energy independence by generating electricity for more than two million people in the northern great plains region and by producing synthetic natural gas from coal that heats three hundred thousand homes and businesses in eastern states, which is equivalent to over twenty thousand barrels of oil per day. The legislative assembly further finds and declares that North Dakota's lignite industry generates over ~~seventeen~~ twenty-eight thousand direct and indirect jobs for North Dakota, ~~over one~~ nearly three billion dollars in annual business volume, and over ~~sixty-five~~ one hundred three million dollars in annual tax revenue. The legislative assembly further finds and declares that it is an essential governmental function and public purpose to assist with the development and wise use of North Dakota's vast lignite resources by supporting a lignite research, development, and marketing program that promotes economic, efficient, and clean uses of lignite and products derived from lignite in order to maintain and enhance development of North Dakota lignite and its products; support educational activities relating to the lignite industry; preserve and create jobs involved in the production and utilization of North Dakota lignite; ensure economic stability, growth, and opportunity in the lignite industry; and maintain a stable and competitive tax base for our state's lignite industry for the general welfare of North Dakota. The legislative assembly further finds and declares that development of North Dakota's lignite resources must be conducted in an environmentally sound manner that protects our state's air, water, and soil resources as specified by applicable federal and state law.

SECTION 14. STATE FACILITY LIGNITE FEASIBILITY DEMONSTRATION PROJECT. The state facility lignite feasibility demonstration project line item in subdivision 1 of section 1 of this Act includes \$400,000 from the general fund for the purpose of demonstrating the feasibility of using lignite at a state-owned facility equipped with coal-fired boilers generating at least 200,000 pounds of steam at 125 pounds per square inch. The use of any funds provided for in this section must be approved by the lignite research council and the industrial commission after following the standard lignite research development program review and approval process.

SECTION 15. AGRICULTURE PARTNERSHIP IN ASSISTING COMMUNITY EXPANSION DISASTER PROGRAM - RETURN OF FUNDS TO GENERAL FUND. The agriculture partnership in assisting community expansion fund line item in subdivision 3 of section 1 of this Act includes \$1,000,000 from the general fund which may be deposited in the agriculture partnership in assisting community expansion fund and used by the Bank of North Dakota to expand parameters for the agriculture partnership in assisting community expansion disaster program to assist those farmers and livestock producers that suffered extraordinary losses directly as a result of the weather-related events in the winter and spring of 2009, for the period beginning with the effective date of this Act and ending June 30, 2011. The Bank of North Dakota shall return any agriculture partnership in assisting community expansion disaster program funds not obligated by January 1, 2011, to the general fund.

The Bank of North Dakota may transfer funds available in the partnership in assisting community expansion and biofuels partnership in assisting community expansion programs to the agriculture partnership in assisting community expansion program for providing additional funds for the disaster program, for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 16. TRANSFER - BANK OF NORTH DAKOTA. The industrial commission, by June 30, 2011, shall transfer from the current earnings and undivided profits of the Bank of North Dakota to the general fund an amount equal to any general fund moneys deposited in the agriculture partnership in assisting community expansion fund and obligated for the disaster program provided for under section 15 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 17. HOUSING FINANCE AGENCY FINANCING - PILOT PROJECT. The housing finance agency may establish a pilot project using funds available in subdivision 5 of section 1 of this Act to provide incentives for private sector investment in single-family residential dwelling units and multifamily housing facilities in difficult-to-develop areas of the state, for the biennium beginning July 1, 2009, and ending June 30, 2011. The housing finance agency shall report to the budget section at its last interim meeting prior to the 2010 legislative assembly organizational session.

SECTION 18. LEGISLATIVE INTENT - LAND PURCHASE. It is the intent of the sixty-first legislative assembly that to the best of its ability the Bank of North Dakota ensure that properties adjacent to Bank of North Dakota property northwest of west street are developed for uses that are consistent with the mission and purpose of the Bank of North Dakota.

SECTION 19. LEGISLATIVE INTENT - COLLEGE SAVE PROGRAM INCENTIVE. It is the intent of the sixty-first legislative assembly that the Bank of North Dakota use administrative fee collections associated with the Bank's college SAVE program to provide incentives to establish 529 college savings plans under the Bank's college SAVE program.

SECTION 20. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL. The industrial commission may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds received and spent under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

SECTION 21. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the housing finance agency, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

HOME tax credit assistance program	\$4,860,574
Housing tax credit exchange program	<u>25,500,000</u>
Total federal funds	\$30,360,574

The housing finance agency may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

SECTION 22. FEDERAL FISCAL STIMULUS BOND ALLOCATIONS - RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS - RECOVERY ZONE FACILITY BONDS - QUALIFIED ENERGY CONSERVATION BONDS. Any bond allocations made available to the state of North Dakota under the federal American Recovery and Reinvestment Act of 2009 for the national recovery zone economic development bond limitation, the national recovery zone facility bond limitation, and the qualified energy conservation bond limitation must be reallocated by this state as provided therein and as may be provided in any guidance issued by the secretary of the treasury or the internal revenue service. Any such reallocation must be made by the governor, or may be delegated by the governor to the industrial commission or public finance authority.

SECTION 23. DEPARTMENT OF MINERAL RESOURCES SHARE OF EQUITY POOL. The office of management and budget shall provide at least four percent of all general fund salary equity pools that are appropriated for salary equity increases for state employees, for the biennium beginning July 1, 2009, and ending June 30, 2011, to the department of mineral resources for its nonclassified employees.

SECTION 24. REPEAL. Section 16 of chapter 14 of the 2007 Session Laws is repealed.

SECTION 25. EMERGENCY. The sum of \$1,000,000 from the general fund included in the agriculture partnership in assisting community expansion fund in subdivision 3 of section 1 of this Act and sections 13, 15, 20, 21, 22, and 24 of this Act are declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2014 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

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

Vote: Yeas 92 Nays 0 Absent 2

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at ____ o'clock _____ M.

Secretary of State