

**SECOND ENGROSSMENT
with Conference Committee Amendments**

Sixty-first
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2014

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of the state industrial
2 commission and the agencies under the management of the industrial commission; to create
3 and enact two new sections to chapter 54-18 of the North Dakota Century Code, relating to mill
4 and elevator profits and gain sharing; to amend and reenact section 54-17.5-01 of the North
5 Dakota Century Code, relating to education activities relating to the lignite industry; to repeal
6 section 16 of chapter 14 of the 2007 Session Laws, relating to a transfer from the North Dakota
7 mill and elevator association; to provide legislative intent; to provide an appropriation; to
8 provide a contingent appropriation; to provide an exemption; to authorize transfers; and to
9 declare an emergency.

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

11 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the
12 funds as may be necessary, are appropriated out of any moneys in the general fund in the state
13 treasury, not other otherwise appropriated, and from special funds derived from federal funds
14 and other income, to the state industrial commission and agencies under its control for the
15 purpose of defraying the expenses of the state industrial commission and agencies under its
16 control, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

17 Subdivision 1.

18 INDUSTRIAL COMMISSION

		Adjustments or		
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>	
19				
20				
21	Salaries and wages	\$7,207,544	\$2,323,453	\$9,530,997
22	Operating expenses	2,255,690	459,886	2,715,576
23	Capital assets	34,500	14,500	49,000
24	Grants - Lignite research	19,410,600	560,700	19,971,300

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1	and development			
2	State facility lignite	0	400,000	400,000
3	feasibility demonstration project			
4	Grants - Bond payments	29,475,016	(2,033,151)	27,441,865
5	Oil and gas division contingency	285,000	(285,000)	0
6	Biomass incentive and research	2,000,000	(2,000,000)	0
7	Renewable energy development	<u>20,000,000</u>	<u>(17,000,000)</u>	<u>3,000,000</u>
8	Total all funds	\$80,668,350	(\$17,559,612)	\$63,108,738
9	Less estimated income	<u>69,392,346</u>	<u>(20,083,862)</u>	<u>49,308,484</u>
10	Total general fund	\$11,276,004	\$2,524,250	\$13,800,254
11	Full-time equivalent positions	55.37	5.69	61.06

Subdivision 2.

BANK OF NORTH DAKOTA - OPERATIONS

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

Subdivision 3.

BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

24			Adjustments or	
25		<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
26	Partnership in assisting	\$8,000,000	\$0	\$8,000,000
27	community expansion fund			
28	Agriculture partnership in assisting	1,400,000	1,000,000	2,400,000
29	community expansion fund			
30	Beginning farmer revolving loan fund	950,000	0	950,000
31	Biofuels partnership in assisting	0	700,000	700,000

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1	community expansion fund			
2	Total all funds	\$10,350,000	\$1,700,000	\$12,050,000
3	Less beginning farmer	950,000	0	950,000
4	revolving loan fund			
5	Total general fund	\$9,400,000	\$1,700,000	\$11,100,000

6 Subdivision 4.

7 MILL AND ELEVATOR ASSOCIATION

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

16 Subdivision 5.

17 HOUSING FINANCE AGENCY

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

28 Subdivision 6.

29 BILL TOTAL

30			Adjustments or	
31		<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>

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

4 **SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO**

5 **SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time
6 funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the
7 2009-11 one-time funding items included in the grand total appropriation in section 1 of this Act:

8	<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
9	Biofuels partnership in assisting community expansion	\$4,200,000	\$700,000
10	Fossil restoration fund	250,000	0
11	Core and sample library repairs	230,000	0
12	State facility lignite feasibility	0	400,000
13	demonstration project		
14	Ag PACE disaster program	0	1,000,000
15	Recruitment/retention bonuses	0	185,000
16	Renewable energy development program	0	3,000,000
17	Fracturing sand and coalbed methane studies	<u>0</u>	<u>93,152</u>
18	Total general fund	\$4,680,000	\$5,378,512

19 The 2009-11 one-time funding amounts are not a part of the entity's base budget for the
20 2011-13 biennium. The industrial commission shall report to the appropriations committees of
21 the sixty-second legislative assembly on the use of this one-time funding for the biennium
22 beginning July 1, 2009, and ending June 30, 2011.

23 **SECTION 3. LEGISLATIVE INTENT - BOND PAYMENTS.** The amount of

24 \$27,441,865 included in subdivision 1 of section 1 of this Act in the grants - bond payments line
25 item must be paid from the following funding sources during the biennium beginning July 1,
26 2009, and ending June 30, 2011:

27	North Dakota university system	\$12,014,048
28	North Dakota university system - Energy conservation projects	1,869,248
29	Department of corrections and rehabilitation - State penitentiary	2,203,515
30	Department of corrections and rehabilitation - Energy conservation projects	18,580
31	State department of health	704,127

1	Job service North Dakota	747,772
2	Department of human services - State hospital	437,729
3	Department of human services - Developmental center at Grafton	501,657
4	Adjutant general	70,627
5	Information technology department - ConnectND	5,405,936
6	Office of management and budget	665,298
7	Office of the attorney general	765,882
8	State historical society	1,392,393
9	Parks and recreation	73,630
10	Research and extension service	<u>571,423</u>
11	Total	\$27,441,865

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

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

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

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

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

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

17 **SECTION 10. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING**
18 **PROGRAM - APPROPRIATION - LIGNITE MARKETING FEASIBILITY STUDY.** The amount
19 of \$1,500,000, or so much of the amount as may be necessary, included in the grants and
20 special funds appropriation line item in subdivision 1 of section 1 of this Act, is appropriated
21 from the lignite research fund for the purpose of contracting for an independent, nonmatching
22 lignite marketing feasibility study or studies that determine those focused priority areas where
23 near-term, market-driven projects, activities, or processes will generate matching private
24 industry investment and have the most potential of preserving existing lignite production and
25 industry jobs or that will lead to increased development of lignite and its products and create
26 new lignite industry jobs and economic growth for the general welfare of this state. Moneys
27 appropriated pursuant to this section may also be used for the purpose of contracting for
28 nonmatching studies and activities in support of the lignite vision 21 program; for litigation that
29 may be necessary to protect and promote the continued development of lignite resources; for
30 nonmatching externality studies and activities in externality proceedings; or other marketing,
31 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.

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

3 **54-17.5-01. Declaration of findings and public purpose.** The legislative assembly
4 finds and declares that North Dakota's lignite industry produces approximately thirty million tons
5 of lignite annually, contributing to our state's and nation's energy independence by generating
6 electricity for more than two million people in the northern great plains region and by producing
7 synthetic natural gas from coal that heats three hundred thousand homes and businesses in
8 eastern states, which is equivalent to over twenty thousand barrels of oil per day. The
9 legislative assembly further finds and declares that North Dakota's lignite industry generates
10 over ~~seventeen~~ twenty-eight thousand direct and indirect jobs for North Dakota, ~~over one~~
11 nearly three billion dollars in annual business volume, and over ~~sixty-five~~ one hundred three
12 million dollars in annual tax revenue. The legislative assembly further finds and declares that it
13 is an essential governmental function and public purpose to assist with the development and
14 wise use of North Dakota's vast lignite resources by supporting a lignite research, development,
15 and marketing program that promotes economic, efficient, and clean uses of lignite and
16 products derived from lignite in order to maintain and enhance development of North Dakota
17 lignite and its products; support educational activities relating to the lignite industry; preserve
18 and create jobs involved in the production and utilization of North Dakota lignite; ensure
19 economic stability, growth, and opportunity in the lignite industry; and maintain a stable and
20 competitive tax base for our state's lignite industry for the general welfare of North Dakota. The
21 legislative assembly further finds and declares that development of North Dakota's lignite
22 resources must be conducted in an environmentally sound manner that protects our state's air,
23 water, and soil resources as specified by applicable federal and state law.

24 **SECTION 14. STATE FACILITY LIGNITE FEASIBILITY DEMONSTRATION**
25 **PROJECT.** The state facility lignite feasibility demonstration project line item in subdivision 1 of
26 section 1 of this Act includes \$400,000 from the general fund for the purpose of demonstrating
27 the feasibility of using lignite at a state-owned facility equipped with coal-fired boilers generating
28 at least 200,000 pounds of steam at 125 pounds per square inch. The use of any funds
29 provided for in this section must be approved by the lignite research council and the industrial
30 commission after following the standard lignite research development program review and
31 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

1 funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer
2 available.

3 **SECTION 22. FEDERAL FISCAL STIMULUS BOND ALLOCATIONS - RECOVERY**
4 **ZONE ECONOMIC DEVELOPMENT BONDS - RECOVERY ZONE FACILITY BONDS -**

5 **QUALIFIED ENERGY CONSERVATION BONDS.** Any bond allocations made available to the
6 state of North Dakota under the federal American Recovery and Reinvestment Act of 2009 for
7 the national recovery zone economic development bond limitation, the national recovery zone
8 facility bond limitation, and the qualified energy conservation bond limitation must be
9 reallocated by this state as provided therein and as may be provided in any guidance issued by
10 the secretary of the treasury or the internal revenue service. Any such reallocation must be
11 made by the governor, or may be delegated by the governor to the industrial commission or
12 public finance authority.

13 **SECTION 23. DEPARTMENT OF MINERAL RESOURCES SHARE OF EQUITY**

14 **POOL.** The office of management and budget shall provide at least four percent of all general
15 fund salary equity pools that are appropriated for salary equity increases for state employees,
16 for the biennium beginning July 1, 2009, and ending June 30, 2011, to the department of
17 mineral resources for its nonclassified employees.

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

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