

**FIRST ENGROSSMENT  
with House Amendments  
ENGROSSED SENATE BILL NO. 2009**

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 agriculture  
2 commissioner; to amend and reenact sections 4-01-21 and 4-01-23, subsection 2 of section  
3 5-01-17, subsection 2 of section 5-01-19, and sections 19-20.1-03, 19-20.1-03.1, and  
4 19-20.1-06 of the North Dakota Century Code, relating to the salary of the agriculture  
5 commissioner, the promotion of sustainably grown commodities, domestic wineries and  
6 domestic distilleries, and fertilizer distribution registration, licensing, and inspection fees; and to  
7 declare an emergency.

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

9 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds  
10 as may be necessary, are appropriated out of any moneys in the general fund in the state  
11 treasury, not otherwise appropriated, and from special funds derived from federal funds and  
12 other income, to the agriculture commissioner for the purpose of defraying the expenses of that  
13 agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

		Adjustments or	
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
15 Salaries and wages	\$8,566,196	\$1,146,168	\$9,712,364
17 Operating expenses	6,094,603	356,850	6,451,453
18 Capital assets	5,000	12,000	17,000
19 Grants	2,969,825	201,003	3,170,828
20 State board of animal health	2,563,325	(414,273)	2,149,052
21 Wildlife services	1,067,400	(1,067,400)	0
22 Wildlife depredation	0	1,000,000	1,000,000
23 Crop harmonization board	<u>50,000</u>	<u>0</u>	<u>50,000</u>
24 Total all funds	\$21,316,349	\$1,234,348	\$22,550,697

1	Less estimated income	<u>14,094,466</u>	<u>562,985</u>	<u>14,657,451</u>
2	Total general fund	\$7,221,883	\$671,363	\$7,893,246
3	Full-time equivalent positions	74.50	2.50	77.00

4       **SECTION 2. ONE-TIME FUNDING.** The following amounts reflect the one-time funding  
5 items approved by the sixty-first legislative assembly for the 2009-11 biennium:

6	<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
7	Johne's disease	<u>\$245,500</u>	<u>\$0</u>
8	Total general fund	\$245,500	\$0

9       **SECTION 3. APPROPRIATION - 2009-11 BIENNIUM - WILDLIFE SERVICES.** There is  
10 appropriated out of any special funds received from the game and fish department, not  
11 otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to  
12 the agriculture commissioner for the purpose of providing funding for the wildlife services  
13 program, for the period beginning with the effective date of this Act and ending June 30, 2011.

14       **SECTION 4. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION**  
15 **FUND.** The estimated income line item in section 1 of this Act includes the sum of \$5,078,037,  
16 or so much of the sum as may be available, from the environment and rangeland protection  
17 fund for the purpose of defraying the expenses of various agriculture department programs, for  
18 the biennium beginning July 1, 2011, and ending June 30, 2013.

19       **SECTION 5. ESTIMATED INCOME - GAME AND FISH FUND.** The estimated income line  
20 item in section 1 of this Act includes the sum of \$599,461, or so much of the sum as may be  
21 necessary, from the game and fish department operating fund for the purpose of defraying the  
22 expenses of various agriculture department programs, for the biennium beginning July 1, 2011,  
23 and ending June 30, 2013.

24       **SECTION 6. WILDLIFE DEPREDATION.** The agriculture commissioner shall establish a  
25 program to assist in wildlife depredation control for the biennium beginning July 1, 2011, and  
26 ending June 30, 2013. The agriculture commissioner may use the funding included in the  
27 wildlife depredation line item in section 1 of this Act to contract with a private entity or hire  
28 temporary employees for wildlife depredation control and to establish a bounty program to  
29 mitigate wildlife depredation issues.

30       **SECTION 7. AMENDMENT.** Section 4-01-21 of the North Dakota Century Code is amended  
31 and reenacted as follows:

1       **4-01-21. Salary of agriculture commissioner.**

2       The annual salary of the agriculture commissioner is ~~eighty-five~~ninety-two thousand eight  
3       hundred ~~thirty-two~~six dollars through June 30, ~~2010~~2012, and ~~ninety~~ninety-five thousand  
4       ~~one~~six hundred ~~twenty-two~~ten dollars thereafter.

5       **SECTION 8. AMENDMENT.** Section 4-01-23 of the North Dakota Century Code is amended  
6       and reenacted as follows:

7       **4-01-23. (Effective July 1, 2011) Sustainably grown in North Dakota - Application -**  
8       **Logo - Promotion of commodities.**

9       1. The agriculture commissioner ~~shall~~may implement a program to promote agricultural  
10       commodities that are sustainably grown in North Dakota.

11       2. Alf a program referenced in subsection 1 is implemented, the program must require  
12       that a producer may apply to file an application with the commissioner and upon  
13       demonstrating. If the producer demonstrates that the producer's growing practices  
14       with respect to a particular commodity meet the commissioner's established criteria for  
15       sustainability, the commissioner shall authorize the producer to label and market the  
16       commodity as being sustainably grown in North Dakota.

17       3. The commissioner ~~shall~~may develop and make available for the use of authorized  
18       producers a logo indicating that the commodity is sustainably grown in North Dakota.  
19       The commissioner ~~shall~~may actively support and promote the sale and use of  
20       products identified as sustainably grown in North Dakota.

21       4. The commissioner may establish and charge producers a fee for participating in the  
22       program. The commissioner shall forward all fees collected under this section to the  
23       state treasurer for deposit in the general fund.

24       5. The agriculture commissioner may engage in research and provide education to  
25       members of the public regarding agricultural commodities that are sustainably grown  
26       in this state.

27       6. For purposes of this section, "sustainably grown" means that a crop is grown using  
28       research-based practices that result in:

- 29       a. Increased efficiencies in soil and nutrient preservation;  
30       b. Decreased reliance on tillage and other soil-depleting practices;  
31       c. Increased efficiencies in the use of water;

- 1           d. Increased efficiencies in the use of other necessary and measurable agricultural
- 2           inputs;
- 3           e. Increased yield efficiencies; and
- 4           f. Greater economic benefit to producers.

5           **SECTION 9. AMENDMENT.** Subsection 2 of section 5-01-17 of the North Dakota Century  
6 Code is amended and reenacted as follows:

- 7           2. A domestic winery may sell wine produced by that winery at on sale or off sale, in retail  
8 lots, and not for resale, and may sell or direct ship its wine to persons inside or outside  
9 of the state in a manner consistent with the laws of the place of the sale or delivery in  
10 total quantities not in excess of twenty-five thousand gallons [94625 liters] in a  
11 calendar year; glassware; wine literature and accessories; and cheese, cheese  
12 spreads, and other snack food items. A licensee may dispense free samples of the  
13 wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be  
14 made on Sundays between twelve noon and twelve midnight. The state tax  
15 commissioner may issue special events permits for not more than twenty days per  
16 calendar year to a domestic winery allowing the winery, subject to local ordinance, to  
17 give free samples of its wine and to sell its wine by the glass or in closed containers, at  
18 ~~a designated trade show, convention, festival, or a similar event approved by the state~~  
19 ~~tax commissioner~~ off premises events. A domestic winery may not engage in any  
20 wholesaling activities. All sales and deliveries of wines to any other retail licensed  
21 premises in this state may be made only through a licensed North Dakota liquor  
22 wholesaler. For any month in which a domestic winery has made sales to a North  
23 Dakota wholesaler, that domestic winery shall file a report with the state tax  
24 commissioner no later than the last day of each calendar month reporting sales made  
25 during the preceding calendar month. When the last day of the calendar month falls on  
26 a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter.

27           **SECTION 10. AMENDMENT.** Subsection 2 of section 5-01-19 of the North Dakota Century  
28 Code is amended and reenacted as follows:

- 29           2. A domestic distillery may sell spirits produced by that distillery at on sale or off sale, in  
30 retail lots, and not for resale, and may sell or direct ship its spirits to persons inside or  
31 outside the state in a manner consistent with the laws of the place of the sale or

1 delivery in total quantities not in excess of twenty-five thousand gallons [94625 liters]  
2 in a calendar year. Direct sales within this state are limited to two and thirty-eight  
3 hundredths gallons [9 liters] or less per month per person for personal use and not for  
4 resale. The packaging must conform with the labeling requirements in section 5-01-16.  
5 A licensee may dispense free samples of the spirits offered for sale. Subject to local  
6 ordinance, sales at on sale and off sale may be made on Sundays between twelve  
7 noon and twelve midnight. A domestic distillery may hold events inside and outside its  
8 premises, but only on contiguous property under common ownership, allowing free  
9 samples of its spirits and to sell its spirits by the glass or in closed containers. The tax  
10 commissioner may issue special events permits for not more than twenty days per  
11 calendar year to a domestic distillery allowing the domestic distillery, subject to local  
12 ordinance, to give free samples of its product and to sell its product by the glass or in  
13 closed containers, ~~at a designated trade show, convention, festival, or similar event~~  
14 ~~approved by the tax commissioner~~ off premises events. A domestic distillery may not  
15 engage in any wholesaling activities. All sales and deliveries of spirits to any other  
16 retail licensed premises in this state may be made only through a licensed North  
17 Dakota liquor wholesaler. However, a domestic distillery may sell distilled spirits to a  
18 domestic winery if the distilled spirits were produced from products provided to the  
19 domestic distillery by the domestic winery. No later than the last business day of a  
20 calendar month, a farm distillery that has made sales to a North Dakota wholesaler  
21 during the preceding calendar month shall file a report with the tax commissioner  
22 reporting those sales.

23 **SECTION 11. AMENDMENT.** Section 19-20.1-03 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25 **19-20.1-03. Registration.**

26 Each brand and grade of fertilizer, material, foliar fertilizer, micronutrient, specialty fertilizer,  
27 soil amendment, or plant amendment must be registered in the name of the person whose  
28 name appears upon the label before being offered for sale or distributed in this state. The  
29 application for registration must be submitted to the commissioner on a form furnished by the  
30 commissioner and must be accompanied by a fee of fifty dollars. Upon approval by the  
31 commissioner, a certificate of registration must be furnished to the applicant. Registrations

1 cover a two-year period beginning July first and ending June thirtieth of every even-numbered  
2 year. Distribution of fertilizer products without prior registration or renewal received after July  
3 thirty-first must be assessed a penalty of twenty-five dollars per product. A distributor is not  
4 required to register any brand of fertilizer, soil amendment, or plant amendment that is already  
5 registered under this chapter by another person, providing the label complies with the issued  
6 registration. Compost that is transferred between parties without compensation is exempt from  
7 these requirements. The agriculture commissioner shall forward all fees received under this  
8 section to the state treasurer for deposit in the environment and rangeland protection fund.

9 **SECTION 12. AMENDMENT.** Section 19-20.1-03.1 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **19-20.1-03.1. License required - Penalty.**

12 A person may not distribute any fertilizer, soil amendment, or plant amendment in this state  
13 without first obtaining a distributor's license from the commissioner. However, a distributor's  
14 license is not required for those distributors selling only specialty fertilizers. A license must be  
15 obtained for each location or mobile mechanical unit used by a distributor in the state. The  
16 application for the license must be submitted on a form furnished by the commissioner and  
17 must be accompanied by a fee of one hundred dollars. A license covers a two-year period  
18 beginning July first and ending June thirtieth of every even-numbered year. License renewal  
19 applications received after July thirty-first may be assessed a penalty fee of twenty dollars.  
20 Licenses are not transferable, and each license must be conspicuously posted at each location  
21 and must accompany each mobile mechanical unit operating in the state. The agriculture  
22 commissioner shall forward all fees received under this section to the state treasurer for deposit  
23 in the environment and rangeland protection fund.

24 **SECTION 13. AMENDMENT.** Section 19-20.1-06 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **19-20.1-06. Inspection fees and tonnage reports.**

27 There must be paid to the commissioner for all fertilizers, soil amendments, or plant  
28 amendments distributed in this state an inspection fee at the rate of twenty cents per ton  
29 [907.18 kilograms]. The inspection fee may not be less than ten dollars. Sales to manufacturers  
30 or exchanges between them are exempt from the inspection fee. Fees collected under this  
31 section must be used for the payment of the costs of inspection, sampling, and analysis, and

1 ~~other expenses necessary for the administration of this chapter~~forwarded to the state treasurer  
2 for deposit in the environment and rangeland protection fund.

3 Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in  
4 packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this  
5 section. If a person sells fertilizer, soil amendments, or plant amendments in packages of  
6 twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34  
7 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to  
8 the same inspection fee of twenty cents per ton [907.18 kilograms], including the minimum ten  
9 dollar fee, as provided in this chapter.

10 Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a  
11 nonlicensed person in this state shall file with the commissioner, on forms furnished by the  
12 commissioner, an annual statement for the calendar year, setting forth the number of net tons  
13 [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state  
14 during the period. A licensed end user shall report all sales and purchases and pay the  
15 appropriate tonnage tax. The statement is due on or before January thirty-first of the following  
16 year. The person filing the statement shall pay the inspection fee at the rate stated in this  
17 section. If the tonnage statement is not filed and the payment of inspection fee is not made by  
18 January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the  
19 amount must be assessed against the licensee, and the amount of fees due constitute a debt  
20 and become the basis of a judgment against the licensee.

21 **SECTION 14. EMERGENCY.** Section 3 of this Act is declared to be an emergency  
22 measure.