

Sixty-second
Legislative Assembly
of North Dakota

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>
16 Salaries and wages	\$8,566,196	\$818,632	\$9,384,828
17 Operating expenses	6,094,603	274,058	6,368,661
18 <u>Salaries and wages</u>	<u>\$8,566,196</u>	<u>\$1,146,168</u>	<u>\$9,712,364</u>
19 <u>Operating expenses</u>	<u>6,094,603</u>	<u>356,850</u>	<u>6,451,453</u>
20 Capital assets	5,000	12,000	17,000
21 Grants	2,969,825	201,003	3,170,828
22 State board of animal health	2,563,325	(414,273)	2,149,052
23 Wildlife services	1,067,400	350,000	1,417,400
24 <u>Wildlife services</u>	<u>1,067,400</u>	<u>(1,067,400)</u>	<u>0</u>

1	<u>Wildlife depredation</u>	<u>0</u>	<u>1,000,000</u>	<u>1,000,000</u>
2	Crop harmonization board	<u>50,000</u>	<u>0</u>	<u>50,000</u>
3	Total all funds	\$21,316,349	\$1,241,420	\$22,557,769
4	Less estimated income	14,094,466	271,457	14,365,923
5	Total general fund	\$7,221,883	\$969,963	\$8,191,846
6	Full-time equivalent positions	74.50	0.50	75.00
7	<u>Total all funds</u>	<u>\$21,316,349</u>	<u>\$1,234,348</u>	<u>\$22,550,697</u>
8	<u>Less estimated income</u>	<u>14,094,466</u>	<u>562,985</u>	<u>14,657,451</u>
9	<u>Total general fund</u>	<u>\$7,221,883</u>	<u>\$671,363</u>	<u>\$7,893,246</u>
10	<u>Full-time equivalent positions</u>	<u>74.50</u>	<u>2.50</u>	<u>77.00</u>

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

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

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

21 **SECTION 4. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION**

22 **FUND.** The estimated income line item in section 1 of this Act includes the sum of
23 ~~\$4,627,709~~\$5,078,037, or so much of the sum as may be available, from the environment and
24 rangeland protection fund for the purpose of defraying the expenses of various agriculture
25 department programs, for the biennium beginning July 1, 2011, and ending June 30, 2013.

26 ~~—SECTION 5. ANHYDROUS AMMONIA STORAGE INSPECTION FUND.~~ The estimated
27 ~~income line item in section 1 of this Act includes the sum of \$40,000, or so much of the sum as~~
28 ~~may be available, from the anhydrous ammonia storage inspection fund for the purpose of~~
29 ~~defraying the expenses of regulating anhydrous ammonia storage facilities, for the biennium~~
30 ~~beginning July 1, 2011, and ending June 30, 2013.~~

1 **SECTION 5. ESTIMATED INCOME - GAME AND FISH FUND.** The estimated income line
2 item in section 1 of this Act includes the sum of ~~\$1,068,261~~\$599,461, or so much of the sum as
3 may be necessary, from the game and fish department operating fund for the purpose of
4 defraying the expenses of various agriculture department programs, for the biennium beginning
5 July 1, 2011, and ending June 30, 2013.

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

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

14 **4-01-21. Salary of agriculture commissioner.**

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

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

20 **4-01-23. (Effective July 1, 2011) Sustainably grown in North Dakota - Application -**
21 **Logo - Promotion of commodities.**

- 22 1. The agriculture commissioner ~~shall~~may implement a program to promote agricultural
23 commodities that are sustainably grown in North Dakota.
- 24 2. Alf a program referenced in subsection 1 is implemented, the program must require
25 that a producer may apply to file an application with the commissioner and upon
26 demonstrating, if the producer demonstrates that the producer's growing practices
27 with respect to a particular commodity meet the commissioner's established criteria for
28 sustainability, the commissioner shall authorize the producer to label and market the
29 commodity as being sustainably grown in North Dakota.
- 30 3. The commissioner ~~shall~~may develop and make available for the use of authorized
31 producers a logo indicating that the commodity is sustainably grown in North Dakota.

1 The commissioner ~~shall~~may actively support and promote the sale and use of
2 products identified as sustainably grown in North Dakota.

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

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

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

11 a. Increased efficiencies in soil and nutrient preservation;

12 b. Decreased reliance on tillage and other soil-depleting practices;

13 c. Increased efficiencies in the use of water;

14 d. Increased efficiencies in the use of other necessary and measurable agricultural
15 inputs;

16 e. Increased yield efficiencies; and

17 f. Greater economic benefit to producers.

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

20 2. A domestic winery may sell wine produced by that winery at on sale or off sale, in retail
21 lots, and not for resale, and may sell or direct ship its wine to persons inside or outside
22 of the state in a manner consistent with the laws of the place of the sale or delivery in
23 total quantities not in excess of twenty-five thousand gallons [94625 liters] in a
24 calendar year; glassware; wine literature and accessories; and cheese, cheese
25 spreads, and other snack food items. A licensee may dispense free samples of the
26 wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be
27 made on Sundays between twelve noon and twelve midnight. The state tax
28 commissioner may issue special events permits for not more than twenty days per
29 calendar year to a domestic winery allowing the winery, subject to local ordinance, to
30 give free samples of its wine and to sell its wine by the glass or in closed containers, at
31 ~~a designated trade show, convention, festival, or a similar event approved by the state~~

1 ~~tax commissioner~~ off premises events. ~~In addition, the agriculture commissioner may~~
2 ~~issue special events permits to promote the wine industry in this state.~~ A domestic
3 winery may not engage in any wholesaling activities. All sales and deliveries of wines
4 to any other retail licensed premises in this state may be made only through a licensed
5 North Dakota liquor wholesaler. For any month in which a domestic winery has made
6 sales to a North Dakota wholesaler, that domestic winery shall file a report with the
7 state tax commissioner no later than the last day of each calendar month reporting
8 sales made during the preceding calendar month. When the last day of the calendar
9 month falls on a Saturday, Sunday, or legal holiday, the due date is the first working
10 day thereafter.

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

- 13 2. A domestic distillery may sell spirits produced by that distillery at on sale or off sale, in
14 retail lots, and not for resale, and may sell or direct ship its spirits to persons inside or
15 outside the state in a manner consistent with the laws of the place of the sale or
16 delivery in total quantities not in excess of twenty-five thousand gallons [94625 liters]
17 in a calendar year. Direct sales within this state are limited to two and thirty-eight
18 hundredths gallons [9 liters] or less per month per person for personal use and not for
19 resale. The packaging must conform with the labeling requirements in section 5-01-16.
20 A licensee may dispense free samples of the spirits offered for sale. Subject to local
21 ordinance, sales at on sale and off sale may be made on Sundays between twelve
22 noon and twelve midnight. A domestic distillery may hold events inside and outside its
23 premises, but only on contiguous property under common ownership, allowing free
24 samples of its spirits and to sell its spirits by the glass or in closed containers. The tax
25 commissioner may issue special events permits for not more than twenty days per
26 calendar year to a domestic distillery allowing the domestic distillery, subject to local
27 ordinance, to give free samples of its product and to sell its product by the glass or in
28 closed containers, at ~~a designated trade show, convention, festival, or similar event~~
29 ~~approved by the tax commissioner~~ off premises events. ~~In addition, the agriculture~~
30 ~~commissioner may issue special events permits to promote the spirits industry in this~~
31 ~~state.~~ A domestic distillery may not engage in any wholesaling activities. All sales and

1 deliveries of spirits to any other retail licensed premises in this state may be made only
2 through a licensed North Dakota liquor wholesaler. However, a domestic distillery may
3 sell distilled spirits to a domestic winery if the distilled spirits were produced from
4 products provided to the domestic distillery by the domestic winery. No later than the
5 last business day of a calendar month, a farm distillery that has made sales to a North
6 Dakota wholesaler during the preceding calendar month shall file a report with the tax
7 commissioner reporting those sales.

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

10 **19-20.1-03. Registration.**

11 Each brand and grade of fertilizer, material, foliar fertilizer, micronutrient, specialty fertilizer,
12 soil amendment, or plant amendment must be registered in the name of the person whose
13 name appears upon the label before being offered for sale or distributed in this state. The
14 application for registration must be submitted to the commissioner on a form furnished by the
15 commissioner and must be accompanied by a fee of fifty dollars. Upon approval by the
16 commissioner, a certificate of registration must be furnished to the applicant. Registrations
17 cover a two-year period beginning July first and ending June thirtieth of every even-numbered
18 year. Distribution of fertilizer products without prior registration or renewal received after July
19 thirty-first must be assessed a penalty of twenty-five dollars per product. A distributor is not
20 required to register any brand of fertilizer, soil amendment, or plant amendment that is already
21 registered under this chapter by another person, providing the label complies with the issued
22 registration. Compost that is transferred between parties without compensation is exempt from
23 these requirements. The agriculture commissioner shall forward all fees received under this
24 section to the state treasurer for deposit in the environment and rangeland protection fund.

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

27 **19-20.1-03.1. License required - Penalty.**

28 A person may not distribute any fertilizer, soil amendment, or plant amendment in this state
29 without first obtaining a distributor's license from the commissioner. However, a distributor's
30 license is not required for those distributors selling only specialty fertilizers. A license must be
31 obtained for each location or mobile mechanical unit used by a distributor in the state. The

1 application for the license must be submitted on a form furnished by the commissioner and
2 must be accompanied by a fee of one hundred dollars. A license covers a two-year period
3 beginning July first and ending June thirtieth of every even-numbered year. License renewal
4 applications received after July thirty-first may be assessed a penalty fee of twenty dollars.
5 Licenses are not transferable, and each license must be conspicuously posted at each location
6 and must accompany each mobile mechanical unit operating in the state. The agriculture
7 commissioner shall forward all fees received under this section to the state treasurer for deposit
8 in the environment and rangeland protection fund.

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

11 **19-20.1-06. Inspection fees and tonnage reports.**

12 There must be paid to the commissioner for all fertilizers, soil amendments, or plant
13 amendments distributed in this state an inspection fee at the rate of twenty cents per ton
14 [907.18 kilograms]. The inspection fee may not be less than ten dollars. Sales to manufacturers
15 or exchanges between them are exempt from the inspection fee. Fees collected under this
16 section must be used for the payment of the costs of inspection, sampling, and analysis, and
17 other expenses necessary for the administration of this chapter forwarded to the state treasurer
18 for deposit in the environment and rangeland protection fund.

19 Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in
20 packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this
21 section. If a person sells fertilizer, soil amendments, or plant amendments in packages of
22 twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34
23 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to
24 the same inspection fee of twenty cents per ton [907.18 kilograms], including the minimum ten
25 dollar fee, as provided in this chapter.

26 Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a
27 nonlicensed person in this state shall file with the commissioner, on forms furnished by the
28 commissioner, an annual statement for the calendar year, setting forth the number of net tons
29 [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state
30 during the period. A licensed end user shall report all sales and purchases and pay the
31 appropriate tonnage tax. The statement is due on or before January thirty-first of the following

1 year. The person filing the statement shall pay the inspection fee at the rate stated in this
2 section. If the tonnage statement is not filed and the payment of inspection fee is not made by
3 January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the
4 amount must be assessed against the licensee, and the amount of fees due constitute a debt
5 and become the basis of a judgment against the licensee.

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