

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; to
7 provide for a transfer; to provide an exemption; and to 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		
	Base Level	Enhancements	Appropriation
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 Crop harmonization board	50,000	0	50,000

1	Total all funds	\$21,316,349	\$1,241,420	\$22,557,769
2	Less estimated income	14,094,466	271,457	14,365,923
3	Total general fund	\$7,221,883	\$969,963	\$8,191,846
4	Full-time equivalent positions	74.50	0.50	75.00
5	Crop harmonization board	50,000	25,000	75,000
6	Total all funds	\$21,316,349	\$1,676,748	\$22,993,097
7	Less estimated income	14,094,466	706,785	14,801,251
8	Total general fund	\$7,221,883	\$969,963	\$8,191,846
9	Full-time equivalent positions	74.50	2.50	77.00

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

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

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

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

21 **FUND.** The estimated income line item in section 1 of this Act includes the sum of
22 ~~\$4,627,709~~ \$5,103,037, or so much of the sum as may be available, from the environment and
23 rangeland protection fund for the purpose of defraying the expenses of various agriculture
24 department programs, for the biennium beginning July 1, 2011, and ending June 30, 2013.

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

30 **SECTION 5. TRANSFER - ENVIRONMENT AND RANGELAND PROTECTION FUND -**
31 **MINOR USE PESTICIDE FUND.** The agriculture commissioner shall transfer \$200,000 from the

1 environment and rangeland protection fund to the minor use pesticide fund during the biennium
2 beginning July 1, 2011, and ending June 30, 2013.

3 **SECTION 6. ESTIMATED INCOME - GAME AND FISH FUND - TRANSFER.** The
4 estimated income line item in section 1 of this Act includes the sum of \$1,068,261, ~~or so much~~
5 ~~of the sum as may be necessary~~, from the game and fish department operating fund which the
6 game and fish department shall transfer to the agriculture commissioner for the purpose of
7 defraying the expenses of various agriculture department programs, for the biennium beginning
8 July 1, 2011, and ending June 30, 2013.

9 **SECTION 7. ESTIMATED INCOME - STATE WATER COMMISSION - TRANSFER.** The
10 estimated income line item in section 1 of this Act includes the sum of \$250,000 which the state
11 water commission shall transfer to the agriculture commissioner for the wildlife services
12 program, for the biennium beginning July 1, 2011, and ending June 30, 2013.

13 **SECTION 8. EXEMPTION - JOHNE'S DISEASE CONTROL.** The amount appropriated for
14 Johne's disease control in section 1 of chapter 61 of the 2009 Session Laws is not subject to
15 section 54-44.1-11 and any unexpended appropriations may be continued into the biennium
16 beginning July 1, 2011, and ending June 30, 2013.

17 **SECTION 9. AMENDMENT.** Section 4-01-21 of the North Dakota Century Code is amended
18 and reenacted as follows:

19 **4-01-21. Salary of agriculture commissioner.**

20 The annual salary of the agriculture commissioner is ~~eighty-five~~ninety-two thousand eight
21 hundred ~~thirty~~twenty-six dollars through June 30, ~~2010~~2012, and ~~ninety~~ninety-five thousand
22 ~~onesix~~ hundred ~~twenty~~twoten dollars thereafter.

23 **SECTION 10. AMENDMENT.** Section 4-01-23 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **4-01-23. (Effective July 1, 2011) Sustainably grown in North Dakota - Application -**
26 **Logo - Promotion of commodities.**

- 27 1. The agriculture commissioner ~~shall~~may implement a program to promote agricultural
28 commodities that are sustainably grown in North Dakota.
- 29 2. Alf a program referenced in subsection 1 is implemented, the program must require
30 that a producer may apply to file an application with the commissioner and upon
31 demonstrating. If the producer demonstrates that the producer's growing practices

1 with respect to a particular commodity meet the commissioner's established criteria for
2 sustainability, the commissioner shall authorize the producer to label and market the
3 commodity as being sustainably grown in North Dakota.

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

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

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

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

- 16 a. Increased efficiencies in soil and nutrient preservation;
- 17 b. Decreased reliance on tillage and other soil-depleting practices;
- 18 c. Increased efficiencies in the use of water;
- 19 d. Increased efficiencies in the use of other necessary and measurable agricultural
- 20 inputs;
- 21 e. Increased yield efficiencies; and
- 22 f. Greater economic benefit to producers.

23 **SECTION 11. AMENDMENT.** Subsection 2 of section 5-01-17 of the North Dakota Century
24 Code is amended and reenacted as follows:

25 2. A domestic winery may sell wine produced by that winery at on sale or off sale, in retail
26 lots, and not for resale, and may sell or direct ship its wine to persons inside or outside
27 of the state in a manner consistent with the laws of the place of the sale or delivery in
28 total quantities not in excess of twenty-five thousand gallons [94625 liters] in a
29 calendar year; glassware; wine literature and accessories; and cheese, cheese
30 spreads, and other snack food items. A licensee may dispense free samples of the
31 wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be

1 made on Sundays between twelve noon and twelve midnight. The state tax
2 commissioner may issue special events permits for not more than twenty days per
3 calendar year to a domestic winery allowing the winery, subject to local ordinance, to
4 give free samples of its wine and to sell its wine by the glass or in closed containers, at
5 ~~a designated trade show, convention, festival, or a similar event approved by the state~~
6 ~~tax commissioner~~ off premises events. ~~In addition, the agriculture commissioner may~~
7 ~~issue special events permits to promote the wine industry in this state.~~ A domestic
8 winery may not engage in any wholesaling activities. All sales and deliveries of wines
9 to any other retail licensed premises in this state may be made only through a licensed
10 North Dakota liquor wholesaler. For any month in which a domestic winery has made
11 sales to a North Dakota wholesaler, that domestic winery shall file a report with the
12 state tax commissioner no later than the last day of each calendar month reporting
13 sales made during the preceding calendar month. When the last day of the calendar
14 month falls on a Saturday, Sunday, or legal holiday, the due date is the first working
15 day thereafter.

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

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

1 ordinance, to give free samples of its product and to sell its product by the glass or in
2 closed containers, ~~at a designated trade show, convention, festival, or similar event~~
3 ~~approved by the tax commissioner~~ at off premises events. ~~In addition, the agriculture~~
4 ~~commissioner may issue special events permits to promote the spirits industry in this~~
5 ~~state.~~ A domestic distillery may not engage in any wholesaling activities. All sales and
6 deliveries of spirits to any other retail licensed premises in this state may be made only
7 through a licensed North Dakota liquor wholesaler. However, a domestic distillery may
8 sell distilled spirits to a domestic winery if the distilled spirits were produced from
9 products provided to the domestic distillery by the domestic winery. No later than the
10 last business day of a calendar month, a farm distillery that has made sales to a North
11 Dakota wholesaler during the preceding calendar month shall file a report with the tax
12 commissioner reporting those sales.

13 **SECTION 13. AMENDMENT.** Section 19-20.1-03 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **19-20.1-03. Registration.**

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

30 **SECTION 14. AMENDMENT.** Section 19-20.1-03.1 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **19-20.1-03.1. License required - Penalty.**

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

14 **SECTION 15. AMENDMENT.** Section 19-20.1-06 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **19-20.1-06. Inspection fees and tonnage reports.**

17 There must be paid to the commissioner for all fertilizers, soil amendments, or plant
18 amendments distributed in this state an inspection fee at the rate of twenty cents per ton
19 [907.18 kilograms]. The inspection fee may not be less than ten dollars. Sales to manufacturers
20 or exchanges between them are exempt from the inspection fee. Fees collected under this
21 section must be used for the payment of the costs of inspection, sampling, and analysis, and
22 ~~other expenses necessary for the administration of this chapter~~ forwarded to the state treasurer
23 for deposit in the environment and rangeland protection fund.

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

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

12 **SECTION 16. EMERGENCY.** Section 3 of this Act is declared to be an emergency
13 measure.