

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1024

Page 1, line 2, after "quality" insert "; to create and enact chapter 23.1-16 of the North Dakota Century Code, relating to boiler inspections; to amend and reenact sections 23.1-12-02, 23.1-12-04, 23.1-12-05, 23.1-12-06, 23.1-12-10, 23.1-12-11, 23.1-12-14, 23.1-12-15, 23.1-12-17, 23.1-12-18, 23.1-12-19, 23.1-12-20, 23.1-12-23, 23.1-12-24, 23.1-12-25, 23.1-12-26, 23.1-12-27, 23.1-12-28, 23.1-12-29, and 23.1-12-30 of the North Dakota Century Code, relating to the duties of the department of environmental quality; to repeal chapter 26.1-22.1 of the North Dakota Century Code, relating to boiler inspections; to provide for a report; and to provide for a contingent effective date"

Page 1, replace lines 10 through 19 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	<u>38,987,520</u>	<u>7,428,412</u>	<u>46,415,932</u>
Total general fund	\$10,724,151	\$1,184,008	\$11,908,159
Full-time equivalent positions	152.50	13.00	165.50"

Page 1, line 20, after "**BUDGET**" insert "**- REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY**"

Page 1, line 22, after "biennium" insert "and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act"

Page 2, replace lines 1 through 3 with:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Environmental protection agency lawsuit	\$500,000	\$0
Air pollution program equipment	<u>0</u>	<u>1,040,000</u>
Total estimated income	\$500,000	\$1,040,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of environmental quality shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, after line 9, insert:

**"SECTION 4. STATE FIRE AND TORNADO FUND.** The estimated income line item included in section 1 of this Act includes \$879,312, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the state fire and tornado fund for the boiler inspection program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 5. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - CONTINGENT ONE-TIME FUNDING - FEDERAL PROGRAM SUPREMACY.** The estimated income line item included in section 1 of this Act includes \$1,040,000, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the strategic investment and improvements fund for one-time funding of air pollution program equipment related to the establishment of federal program supremacy, for the biennium beginning July 1, 2019, and ending June 30, 2021. The funding may be spent only upon certification by the director of the department of environmental quality to the director of the office of management and budget that the federal environmental protection agency has approved the department of environmental quality assuming the duties of federal air pollution programs.

**SECTION 6. CONTINGENT APPROPRIATION - FEDERAL PROGRAM SUPREMACY.** The amount of \$1,248,945 from the general fund and ten full-time equivalent positions included in section 1 of this Act are effective July 1, 2020, and may be spent only upon certification by the director of the department of environmental quality to the director of the office of management of budget that the federal environmental protection agency has approved the state assuming primacy over the quad O and quad Oa federal air pollution programs.

**SECTION 7. AMENDMENT.** Section 23.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-02. Definitions. (Contingent effective date - [See note](#))**

As used in this chapter, unless the context otherwise requires:

1. "Actually incurred" means, in the case of corrective action expenditures, the owner, operator, landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials, and only that person is receiving reimbursement from the fund.
2. "Administrator" means the manager of the state fire and tornado fund.
3. "Board" means the petroleum release compensation board.
4. "Commissioner" means the insurance commissioner.
- 5-3. "Corrective action" means an action required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term does not include the repair or replacement of equipment or preconstructed property.
- 6-4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
- 7-5. "Department" means the department of environmental quality.
- 8-6. "Fund" means the petroleum release compensation fund.
- 9-7. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.

- ~~40-8.~~ "Operator" means a person in control of, or having responsibility for, the daily operation of a tank under this chapter.
- ~~41-9.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- ~~42-10.~~ "Petroleum" means any of the following:
- a. Gasoline and petroleum products as defined in chapter 23.1-13.
  - b. Constituents of gasoline and fuel oil under subdivision a.
  - c. Oil sludge and oil refuse.
- ~~43-11.~~ "Portable tank" means a storage tank along with its piping and wiring that is not stationary or affixed, including a tank that is on skids.
- ~~44-12.~~ "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this chapter, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.
- ~~45-13.~~ "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum. The term does not include:
- a. Tanks owned by the federal government.
  - b. Tanks used for the transportation of petroleum.
  - c. A pipeline facility, including gathering lines:
    - (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
    - (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
    - (3) Regulated under state laws comparable to the provisions of law in paragraph 1 or 2, if the facility is an interstate pipeline facility.
  - d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this chapter.
  - e. A tank used for storing heating oil for consumptive use on the premises where stored.
  - f. A surface impoundment, pit, pond, or lagoon.
  - g. A flowthrough process tank.
  - h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.

- i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.
  - j. A tank used for the storage of propane.
  - k. A tank used to fuel rail locomotives or surface coal mining equipment.
  - l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.
  - m. A portable tank.
  - n. A tank with a capacity under one thousand three hundred twenty gallons [4996.728 liters] used to store lubricating oil.
- 46-14. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.
- 47-15. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action, or a person who suffers bodily injury or property damage caused by a petroleum release.

**SECTION 8. AMENDMENT.** Section 23.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-04. Administration of fund - Staff. (Contingent effective date - [See note](#))**

The ~~administrator~~department shall administer the fund according to this chapter. The ~~administrator~~department shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the ~~administrator~~department regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the ~~administrator~~department which may be appealed to the board, and to discuss all claims against the fund. The ~~administrator~~department may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the ~~administrator~~department regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the ~~administrator~~department. The claimant or the ~~administrator~~department may appeal the board's decision to the commissioner. ~~The decision of the commissioner may be appealed under chapter 28-32.~~

**SECTION 9. AMENDMENT.** Section 23.1-12-05 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-05. Adoption of rules. (Contingent effective date - [See note](#))**

The ~~administrator~~department shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the ~~administrator~~department, and any other rules as may be appropriate to administer this chapter.

**SECTION 10. AMENDMENT.** Section 23.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-06. Release discovery. (Contingent effective date - [See note](#))**

If the department has reason to believe a release has occurred, it shall ~~notify the administrator~~. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

**SECTION 11. AMENDMENT.** Section 23.1-12-10 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-10. Providing of information. (Contingent effective date - [See note](#))**

A person ~~the administrator or~~ the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or a person that may have information concerning a release shall, if requested by ~~the administrator or~~ the department, or any member, employee, or agent of ~~the administrator or~~ the department, furnish to the ~~administrator or~~ the department any information that person has or may reasonably obtain which is relevant to the release.

**SECTION 12. AMENDMENT.** Section 23.1-12-11 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-11. Examination of records. (Contingent effective date - [See note](#))**

Any employee of the ~~administrator or~~ the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person that has a duty to provide information to the ~~administrator or~~ the department under section 23.1-12-10; and
2. Enter upon public or private property to take action authorized by this section, including obtaining information from a person that has a duty to provide the information under section 23.1-12-10, conducting surveys and investigations, and taking corrective action.

**SECTION 13. AMENDMENT.** Section 23.1-12-14 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-14. Other remedies. (Contingent effective date - [See note](#))**

This chapter does not limit the powers of the administrator or department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

**SECTION 14. AMENDMENT.** Section 23.1-12-15 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-15. Revenue to the fund. (Contingent effective date - [See note](#))**

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any registration fees collected under section 23.1-12-17;
2. Any money recovered by the fund under section 23.1-12-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the administrator or department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

**SECTION 15. AMENDMENT.** Section 23.1-12-17 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-17. Registration fee. (Contingent effective date - [See note](#))**

1. ~~An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars. Upon the recommendation and approval of the petroleum tank release compensation fund board, the department shall classify tanks with respect to degree of hazard, determine the risks of each classification, and fix the registration fee for each classification at a rate sufficient to provide for:~~
  - a. The payment of the expenses of administration of the fund;
  - b. The reimbursement for corrective action provided under this chapter;  
and

- c. The maintenance by the fund of adequate reserves and surplus so the fund may be kept solvent at all times.
2. The department shall establish the schedule of registration fees by rules adopted in accordance with chapter 28-32.
- ~~2-3.~~ An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.
- ~~3-4.~~ An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the ~~commissioner~~department along with the application for registration with the fund. If the ~~commissioner~~department rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
- ~~4-5.~~ If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.
- ~~5-6.~~ The registration fees collected under this section must be paid to the ~~fund~~administratordepartment for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.
- ~~6-7.~~ If a registration payment is not received within sixty days of July first by the ~~commissioner~~department, a late fee of twenty-five dollars per tank per month must be imposed on the tank owner or operator.

**SECTION 16. AMENDMENT.** Section 23.1-12-18 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-18. Reimbursement for corrective action. (Contingent effective date - [See note](#))**

1. The ~~administrator~~department shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the

investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the ~~administrator~~department determines that:

- a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;
  - b. The department was given notice of the release as required by federal and state law;
  - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
  - d. The owner or operator, to the extent possible, fully cooperated with the department ~~and the administrator~~ in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:
- a. Findings reduced to judgment in federal or state district court or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
  - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
  - c. A written settlement entered into by the parties in which the ~~commissioner~~director of the department or the ~~commissioner's~~department's agent has participated. The settlement must be reviewed and approved by the ~~commissioner~~director of the department.
4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue, and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.

5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any moneys reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

**SECTION 17. AMENDMENT.** Section 23.1-12-19 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-19. Application for reimbursement. (Contingent effective date - [See note](#))**

An owner or operator that is a first-party claimant and that proposes to take corrective action or has undertaken corrective action in response to a release, the time of the release being unknown, may apply to the ~~administrator~~department for partial or full reimbursement under section 23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

**SECTION 18. AMENDMENT.** Section 23.1-12-20 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-20. ~~Administrator~~Department to determine costs. (Contingent effective date - [See note](#))**

A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the ~~administrator~~department has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

**SECTION 19. AMENDMENT.** Section 23.1-12-23 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-23. Recovery of expenses. (Contingent effective date - [See note](#))**

Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23.1-12-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions, may be recovered in a civil action in district court brought by the ~~administrator~~department against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

**SECTION 20. AMENDMENT.** Section 23.1-12-24 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-24. Costs exceeding reimbursement. (Contingent effective date - [See note](#))**

If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the ~~administrator or the~~ department from the federal government, ~~the administrator may pay the department the cost of themay pay the department's~~ corrective actions costs, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

**SECTION 21. AMENDMENT.** Section 23.1-12-25 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-25. Coordination of benefits. (Contingent effective date - [See note](#))**

If an owner or operator has an insurance policy that provides the same coverage as the fund, the ~~administrator of the fund~~ department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

**SECTION 22. AMENDMENT.** Section 23.1-12-26 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-26. Third-party damages - Participation in actions and review of settlements. (Contingent effective date - [See note](#))**

1. An owner or operator sued for damages resulting from a release shall notify the ~~administrator~~ department within fourteen days of being served with a summons and complaint. The owner or operator also shall advise the ~~administrator~~ department if any insurer is defending the owner or operator and provide to the ~~administrator~~ department the name of that insurer.
2. An owner or operator that, before litigation, enters negotiations with a third party that claims to have been damaged by a release, or that receives a demand for payment of damages to a third party that claims to have been damaged by a release, shall notify the ~~administrator~~ department within fourteen days of the demand or the negotiations.
3. The ~~administrator~~ department and the board shall review the conduct of any litigation or negotiation. The ~~administrator~~ department may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The ~~administrator~~ department and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

**SECTION 23. AMENDMENT.** Section 23.1-12-27 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-27. Third-party damages - Documentation. (Contingent effective date - [See note](#))**

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and supporting documents required by the ~~administrator~~department.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and supporting documents required by the ~~administrator~~department.
4. The ~~administrator~~department and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report to be submitted to the ~~administrator~~department. The ~~administrator~~department may require a third party that claims property damage to permit a property appraiser or claims adjuster retained by the ~~administrator~~department to inspect the property and report to the ~~administrator~~department.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23.1-12-18.
8. A third party may not bring an action against an owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of a corrective action plan approved by the department, the department shall determine whether the release threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

**SECTION 24. AMENDMENT.** Section 23.1-12-28 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-28. Matching federal funds. (Contingent effective date - [See note](#))**

The ~~administrator~~department and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the ~~administrator~~department and the board determine the allowance appropriate.

**SECTION 25. AMENDMENT.** Section 23.1-12-29 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-29. Fund appropriations. (Contingent effective date - [See note](#))**

Money in the fund is continuously appropriated to the ~~administrator~~department for the purpose of making reimbursements under this chapter.

**SECTION 26. AMENDMENT.** Section 23.1-12-30 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-30. Investment of fund. (Contingent effective date - [See note](#))**

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The ~~commissioner~~department may purchase a contract for reinsurance of any risk to be paid by the fund. The ~~administrator~~department may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

**SECTION 27.** Chapter 23.1-16 of the North Dakota Century Code is created and enacted as follows:

**23.1-16-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to the boiler by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term includes fired units for vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves.
2. "Department" means the department of environmental quality.

**23.1-16-02. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction.**

The department shall employ a chief boiler inspector and deputy inspectors. The chief boiler inspector has jurisdiction over all boilers in this state except as otherwise provided.

**23.1-16-03. Qualifications of chief boiler inspector - Deputy inspectors.**

1. An individual is not eligible to the office of chief boiler inspector unless that individual:

- a. Has had at the time of the appointment at least five years' experience in the construction, inspection, operation, maintenance, or repair of high-pressure boilers and pressure vessels as a mechanical engineer, boilermaker, steam operating engineer, or boiler inspector. An applicant possessing a mechanical engineering degree from an accredited school may substitute that degree for two years of the five years' experience, at the discretion of the department.
  - b. Holds a commission issued by the national board of boiler and pressure vessel inspectors or obtains the commission within one year after the date of appointment by the department.
  - c. Is not directly or indirectly interested in the manufacture or sale of boilers or steam machinery or articles used in the construction or maintenance of engines or boilers.
2. The department shall establish qualifications for a deputy inspector which are not inconsistent with the requirements of the position.

#### **23.1-16-04. Powers and duties of chief boiler inspector.**

1. The chief boiler inspector shall:
  - a. Keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last-recorded internal and external inspection of boilers to which this chapter applies.
  - b. Cooperate and assist in loss prevention programs sponsored by the department.
2. The chief boiler inspector may delegate powers and duties to any deputy inspector or special inspector.

#### **23.1-16-05. General requirement.**

Every boiler in this state must be constructed, installed, and maintained according to rules adopted to implement this chapter.

#### **23.1-16-06. Exempt boilers - Inspection of exempt boilers.**

This chapter does not apply to:

1. Any boiler subject to federal inspection or under federal control.
2. Any boiler located on a farm and used solely for agricultural purposes.
3. Any heating boiler located in a private residence or in an apartment house of less than six family units.
4. Any hot water supply boiler not exceeding the following limitations:
  - a. Input of two hundred thousand British thermal units per hour.
  - b. Pressure of one hundred sixty pounds per square inch [1103.16 kilopascals] gauge.

- c. Temperature of two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].
- 5. Any portable steam cleaner commonly used in a garage.
- 6. Any boiler of a miniature model locomotive, boat, tractor, or stationary engine design constructed as a hobby, not for commercial use, having an inside diameter not exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and one-half square feet [1393.54 square centimeters] and which is properly equipped with a safety valve, water level indicator, and pressure gauge.
- 7. Any electric boiler used as an integral part of an espresso coffee machine, provided that the boiler does not exceed one and one-half cubic feet [.0566 cubic meter] in water capacity, does not exceed fifty pounds per square inch [344.74 kilopascals] pressure, and is constructed, approved, or certified to the American society of mechanical engineers code or to other national or international standards.

### **23.1-16-07. Inspection of boilers.**

- 1. The chief boiler inspector shall inspect each boiler used or proposed to be used within this state. The inspection must be thorough as to the construction, installation, condition, and operation as provided by the rules adopted to implement this chapter. An exempt boiler may be inspected by the chief boiler inspector when the owner, the owner's agent, or the user of the boiler makes written request for inspection to the department.
- 2. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water when the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the chief boiler inspector has determined the owner or user has complied with the prescribed recordkeeping requirements, must be inspected at least once every thirty-six months internally while not under pressure, and at least once every twelve months externally while under pressure. If a hydrostatic test is necessary to determine the safety of a boiler, the test must be conducted by the owner or user of the equipment under the supervision of the chief boiler inspector. The owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity desiring to qualify for thirty-six-month internal inspection intervals shall keep available for examination by the chief boiler inspector accurate records showing the date and actual time the boiler is out of service and the reason for being out of service, and the results of the chemical and physical analysis of the boiler water, whether from laboratory analysis of samples taken at regular intervals of not more than forty-eight hours or from continuous online analysers, which will adequately show the condition of the water and any other elements or characteristics of the water capable of producing corrosion or other deterioration of the boiler or its parts. If an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

### **23.1-16-08. Special inspector.**

1. Upon written request of an employer, the department may appoint as a special inspector an inspector in the employ of:
  - a. An insurance company authorized to insure boilers in this state against loss from explosion;
  - b. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited owner/user inspection organization; or
  - c. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited authorized inspection agency.
2. An individual may not be appointed as a special inspector unless that individual has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.
3. An inspection performed by a special inspector must be performed in accordance with this chapter and a complete report of the inspection must be filed with the department in the time, manner, and form as prescribed by the department.
4. If a complete report is not filed by the special inspector's employer with the department within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless an extension of time is granted by the chief boiler inspector. The special inspector's employer must pay the inspection fees as required by section 23.1-16-09 for a special inspection.
5. The chief boiler inspector may inspect any boiler to which a special inspection applies.
6. The department may suspend or revoke the appointment of any special inspector for cause.

### **23.1-16-09. Inspection and certificate fees.**

1. Upon completion of inspection, the owner or user of a boiler shall pay to the department fees or a combination of inspection and certificate fees. The department shall determine the inspection fees. Certificate fees are determined by section 23.1-16-10. The department shall determine and annually may adjust a fee scale for the internal inspections of power boilers, internal inspections of low-pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.
2. Not more than two hundred dollars may be charged or collected for any one inspection of a boiler, except for special inspections made upon request. All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed five hundred dollars per day or three hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed

by sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned vehicle will be the actual amount incurred by the department.

3. The annual fee for the issuance of a reciprocal commission card for a special inspector is forty dollars and the annual fee for the issuance of a welder-qualified card is twenty dollars.
4. The fee for taking an examination for a hobby boiler operating license is twenty-five dollars and the fee for a hobby boiler operating license is twenty-five dollars.
5. A hobby boiler operating license issued under this section is valid for six years.

#### **23.1-16-10. Certificate of inspection - Certificate to be posted.**

The department shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The department shall charge a fee of twenty dollars per year for each year that a certificate is valid, or part of a year thereof, for each certificate of inspection issued as the result of inspections authorized under sections 23.1-16-07 and 23.1-16-08. The fees are the liability of the owner or user and must be paid in accordance with rules adopted by the department. A certificate may not be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. A certificate is not valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 23.1-16-07, and no more than twelve months for other power boilers, twelve months for steam traction engines, and thirty-six months for low-pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

#### **23.1-16-11. Certificate of inspection required - Penalty.**

A person may not operate a boiler in this state without a valid certificate of inspection. A violation of this section is a class A misdemeanor on the part of the owner, user, or operator of the boiler.

#### **23.1-16-12. Manufacturer's data report.**

The boiler manufacturer shall provide the department with a manufacturer's data report. When signed by an authorized inspector, this data sheet together with the stamp on the boiler is the record denoting the boiler has been constructed in accordance with the rules adopted to implement this chapter.

#### **23.1-16-13. Disposition of funds.**

All funds collected and received under this chapter must be paid to the state treasurer and deposited in the state fire and tornado fund to be used to defray the costs of boiler inspections.

**23.1-16-14. Rules - Penalty for violation - Hearing.**

1. The department shall adopt rules for the safe and proper installation, use, operation, and inspection of boilers and pressure vessels subject to this chapter.
2. The department shall adopt rules for the licensing of operators of hobby boilers used during parades, exhibitions, and threshing shows where the public is invited.
3. A fee must be charged for an operating license, for a license renewal, and for an examination conducted to determine minimum competence. Individuals operating hobby boilers within this state as of July 1, 2007, are considered acceptable for a license without additional training or examination. An individual who is not a resident of this state and who holds a boiler operator license or credential in another state or Canadian province is exempt from licensure as a hobby boiler operator in this state.
4. The department may not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with the rules. The department shall revoke any certificate presently in force upon evidence that the owner or user of the boiler is failing or refusing to comply with the rules.
5. Any owner or user of a boiler may request a hearing before the department within fifteen days from service of an order refusing or revoking a certificate of inspection. It is the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the required period, the order of the department becomes final and is not subject to further proceedings.

**SECTION 28. REPEAL.** Chapter 26.1-22.1 of the North Dakota Century Code is repealed.

**SECTION 29. EFFECTIVE DATE.** Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on July 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by July 1, 2019, sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on the date certification is received."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1024 - Department of Environmental Quality - House Action**

	Base Budget	House Changes	House Version
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	13,407,000	2,454,529	15,861,529

Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	38,987,520	7,428,412	46,415,932
General fund	\$10,724,151	\$1,184,008	\$11,908,159
FTE	152.50	13.00	165.50

**Department 303 - Department of Environmental Quality - Detail of House Changes**

	<b>Adjusts Funding for Base Payroll Changes<sup>1</sup></b>	<b>Adds Funding for Salary and Benefit Increases<sup>2</sup></b>	<b>Cost to Continue Adjustments<sup>3</sup></b>	<b>Removes 3 FTE Positions<sup>4</sup></b>	<b>Adds Funding to Transfer the Petroleum Tank Release Program<sup>5</sup></b>	<b>Adds Funding to Transfer the Boiler Inspection Program<sup>6</sup></b>
Salaries and wages	\$146,390	\$1,396,063		(\$365,530)	\$336,481	\$753,365
Operating expenses			\$1,239,823		238,588	89,000
Capital assets						
Grants			(445,000)			
Total all funds	\$146,390	\$1,396,063	\$794,823	(\$365,530)	\$575,069	\$842,365
Less estimated income	322,006	939,547	957,799	(271,407)	575,069	842,365
General fund	(\$175,616)	\$456,516	(\$162,976)	(\$94,123)	\$0	\$0
FTE	0.00	0.00	0.00	(3.00)	2.00	4.00

	<b>Adds Contingent Funding and FTE Positions for the Supremacy of Federal Programs<sup>7</sup></b>	<b>Decreases Funding for Water Treatment System Training<sup>8</sup></b>	<b>Adds Funding for Microsoft Office 365 Licensing<sup>9</sup></b>	<b>Adjusts Funding for Bond and Capital Payments<sup>10</sup></b>	<b>Reduces Funding for Extraordinary Repairs<sup>11</sup></b>	<b>Increases Funding for Equipment<sup>12</sup></b>
Salaries and wages	\$889,640					
Operating expenses	359,305	(\$55,000)	\$84,586			
Capital assets				\$3,405	(\$273,350)	\$275,125
Grants						
Total all funds	\$1,248,945	(\$55,000)	\$84,586	\$3,405	(\$273,350)	\$275,125
Less estimated income	0	0	64,538	1,541	(217,700)	275,125
General fund	\$1,248,945	(\$55,000)	\$20,048	\$1,864	(\$55,650)	\$0
FTE	10.00	0.00	0.00	0.00	0.00	0.00

	<b>Adds Funding for Grants from the Volkswagen Trust Settlement<sup>13</sup></b>	<b>Adds One-Time Contingent Funding to Establish Federal Program Supremacy<sup>14</sup></b>	<b>Total House Changes</b>
Salaries and wages			\$3,156,409
Operating expenses		\$40,000	1,996,302
Capital assets		1,000,000	1,005,180
Grants	\$2,899,529		2,454,529
Total all funds	\$2,899,529	\$1,040,000	\$8,612,420
Less estimated income	2,899,529	1,040,000	7,428,412
General fund	\$0	\$0	\$1,184,008
FTE	0.00	0.00	13.00

<sup>1</sup> Funding is adjusted for base payroll changes.

<sup>2</sup> The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	<u>General Fund</u>	<u>Other Funds</u>	<u>Total</u>
Salary increase	\$231,686	\$472,755	\$704,441
Health insurance increase	224,830	466,792	691,622
Total	\$456,516	\$939,547	\$1,396,063

<sup>3</sup> Funding is adjusted for cost to continue changes to the base budget.

<sup>4</sup> Three FTE positions and related funding for salaries and wages are removed.

<sup>5</sup> Two FTE positions and related funding from the petroleum tank release compensation fund for salaries and wages and operating expenses are transferred from the Insurance Department to the Department of Environmental Quality for the petroleum tank release program.

<sup>6</sup> Four FTE positions are added to transfer the boiler inspection program from the Insurance Department to the Department of Environmental Quality, including funding from the state fire and tornado fund for base salaries and wages of \$753,365 and operating expenses of \$89,000.

<sup>7</sup> Contingent funding and 10 FTE positions are added in the 2<sup>nd</sup> year of the biennium for the supremacy of federal programs, including funding for salaries and wages of \$889,640 and operating expenses of \$359,305. The appropriation and FTE positions are contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

<sup>8</sup> Funding for operating expenses related to training water treatment system operators is reduced to provide a total of \$125,000 from the general fund.

<sup>9</sup> Funding is added for Microsoft Office 365 license expenses.

<sup>10</sup> Funding for bond and capital payments is increased to provide a total of \$216,429, of which \$93,691 is from the general fund.

<sup>11</sup> Funding for extraordinary repairs is reduced to provide a total of \$27,000, of which \$6,866 is from the general fund.

<sup>12</sup> Funding for equipment and information technology equipment over \$5,000 is increased to provide a total ongoing appropriation of \$1,020,000 from other funds.

<sup>13</sup> Funding for grants is increased to accept and disburse funding from the Volkswagen trust settlement to provide a total of \$5,399,529.

<sup>14</sup> One-time funding is added from the strategic investment and improvements fund for capital assets of \$1 million and operating expenses of \$40,000 related to the establishment of federal program supremacy. The funding is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

---

This amendment also adds sections to:

- Identify funding from the state fire and tornado fund for the boiler inspection program;
- Identify contingent one-time funding of \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment related to the establishment of federal program supremacy. The funding provided is available the 2<sup>nd</sup> year of the biennium and is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs;
- Identify contingent funding of \$1,248,945 from the general fund and 10 FTE positions related to the establishment of federal program supremacy effective July 1, 2020;
- Amend various sections of Chapter 23.1-12 to transfer the petroleum tank release program from the Insurance Commissioner to the Department of Environmental Quality and to provide the Department of Environmental Quality set registration fees by rule;
- Create Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality;
- Repeal Chapter 26.1-22.1 related to the boiler inspection program; and
- Provide effective dates for the program transfers.