

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1024

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the department of
2 environmental quality; to create and enact a new section to chapter 23.1-12 and chapter
3 23.1-16 of the North Dakota Century Code, relating to boiler inspections and the petroleum tank
4 release compensation fund; to amend and reenact sections 23.1-12-02, 23.1-12-04, 23.1-12-05,
5 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,
6 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,
7 23.1-12-28, 23.1-12-29, ~~and~~ 23.1-12-30, and 23.1-16-13 of the North Dakota Century Code,
8 relating to the duties of the department of environmental quality; to repeal chapter 26.1-22.1 of
9 the North Dakota Century Code, relating to boiler inspections; to provide for a report; ~~and~~ to
10 provide ~~for a contingent~~an effective date; and to provide a contingent expiration date.

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

12 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
13 as may be necessary, are appropriated out of any moneys in the general fund in the state
14 treasury, not otherwise appropriated, and from special funds derived from federal funds and
15 other income, to the department of environmental quality for the purpose of defraying the
16 expenses of the department of environmental quality, for the biennium beginning July 1, 2019,
17 and ending June 30, 2021, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
20 Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
21 Operating expenses	8,005,878	1,996,302	10,002,180
22 Capital assets	1,258,249	1,005,180	2,263,429
23 Grants	13,407,000	2,454,529	15,861,529
24 Total all funds	\$49,711,671	\$8,612,420	\$58,324,091

1	Less estimated income	38,987,520	7,428,412	46,415,932
2	Total general fund	\$10,724,151	\$1,184,008	\$11,908,159
3	Salaries and wages	\$27,040,544	\$3,546,814	\$30,587,358
4	Operating expenses	8,005,878	1,996,302	10,002,180
5	Capital assets	1,258,249	1,005,180	2,263,429
6	Grants	13,407,000	2,454,529	15,861,529
7	Total all funds	\$49,711,671	\$9,002,825	\$58,714,496
8	Less estimated income	38,987,520	7,246,054	46,233,574
9	Total general fund	\$10,724,151	\$1,756,771	\$12,480,922
10	Full-time equivalent positions	152.50	13.00	165.50

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

SIXTY-SEVENTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

15	<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
16	Environmental protection agency lawsuit	\$500,000	\$0
17	Air pollution program equipment	0	1,040,000
18	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.

SECTION 3. ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated

income line item included in section 1 of this Act includes \$250,000, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the environment and rangeland protection fund, for the biennium beginning July 1, 2019, and ending June 30, 2021. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

SECTION 4. STATE FIRE AND TORNADO FUND. The estimated income line item

included in section 1 of this Act includes ~~\$879,312~~\$882,249, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the state fire

1 and tornado fund for the boiler inspection program, for the biennium beginning July 1, 2019, and
2 ending June 30, 2021.

3 **SECTION 5. ESTIMATED INCOME - PETROLEUM RELEASE COMPENSATION FUND.**

4 The estimated income line item included in section 1 of this Act includes \$297,217, or so much
5 of the sum as may be necessary, to be made available to the department of environmental
6 quality from the petroleum release compensation fund for expenses related to the petroleum
7 tank release program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

8 **SECTION 6. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND -~~CONTINGENT~~**
9 **ONE-TIME FUNDING - FEDERAL PROGRAM SUPREMACY.** The estimated income line item

10 included in section 1 of this Act includes \$1,040,000, or so much of the sum as may be
11 necessary, to be made available to the department of environmental quality from the strategic
12 investment and improvements fund for one-time funding of air pollution program equipment
13 related to the establishment of federal program supremacy, for the biennium beginning July 1,
14 2019, and ending June 30, 2021. ~~The funding may be spent only upon certification by the~~
15 ~~director of the department of environmental quality to the director of the office of management~~
16 ~~and budget that the federal environmental protection agency has approved the department of~~
17 ~~environmental quality assuming the duties of federal air pollution programs.~~

18 **SECTION 7. ~~CONTINGENT APPROPRIATION~~FUNDING - FEDERAL PROGRAM**

19 **SUPREMACY.** The amount of ~~\$1,248,945~~\$1,056,767 from the general fund and ~~ten~~eight
20 full-time equivalent positions, related to the state assuming primacy over the quad O and quad
21 Oa federal air pollution programs, included in section 1 of this Act are effective July 1, 2020, ~~and~~
22 ~~may be spent only upon certification by the director of the department of environmental quality~~
23 ~~to the director of the office of management of budget that the federal environmental protection~~
24 ~~agency has approved the state assuming primacy over the quad O and quad Oa federal air~~
25 ~~pollution programs.~~

26 **SECTION 8. AMENDMENT.** Section 23.1-12-02 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **23.1-12-02. Definitions. (Contingent effective date - [See note](#))**

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

- 30 1. "Actually incurred" means, in the case of corrective action expenditures, the owner,
31 operator, landowner, an insurer, or a contractor hired by the owner, operator, or the

1 landlord has expended time and materials, and only that person is receiving
2 reimbursement from the fund.

3 ~~2.~~ "Administrator" means the manager of the state fire and tornado fund.

4 ~~3.~~ "Board" means the petroleum release compensation board.

5 ~~4.~~ "Commissioner" means the insurance commissioner.

6 ~~5.3.~~ "Corrective action" means an action required by the department to minimize, contain,
7 eliminate, remediate, mitigate, or clean up a release, including any remedial
8 emergency measures. The term does not include the repair or replacement of
9 equipment or preconstructed property.

10 ~~6.4.~~ "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or
11 special fuels within the state.

12 ~~7.5.~~ "Department" means the department of environmental quality.

13 ~~8.6.~~ "Fund" means the petroleum release compensation fund.

14 ~~9.7.~~ "Location" means a physical address or site that has contiguous properties.

15 Noncontiguous properties within a municipality or other governmental jurisdiction are
16 considered separate locations.

17 ~~10.8.~~ "Operator" means a person in control of, or having responsibility for, the daily
18 operation of a tank under this chapter.

19 ~~11.9.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the
20 tank before the discontinuation of its use.

21 ~~12.10.~~ "Petroleum" means any of the following:

22 a. Gasoline and petroleum products as defined in chapter 23.1-13.

23 b. Constituents of gasoline and fuel oil under subdivision a.

24 c. Oil sludge and oil refuse.

25 ~~13.11.~~ "Portable tank" means a storage tank along with its piping and wiring that is not
26 stationary or affixed, including a tank that is on skids.

27 ~~14.12.~~ "Release" means any unintentional spilling, leaking, emitting, discharging, escaping,
28 leaching, or disposing of petroleum from a tank into the environment whether
29 occurring before or after the effective date of this chapter, but does not include
30 discharges or designed venting allowed under federal or state law or under adopted
31 rules.

- 1 ~~15-13.~~ "Tank" means any one or a combination of containers, vessels, and enclosures,
2 whether aboveground or underground, including associated piping or appurtenances
3 used to contain an accumulation of petroleum. The term does not include:
- 4 a. Tanks owned by the federal government.
 - 5 b. Tanks used for the transportation of petroleum.
 - 6 c. A pipeline facility, including gathering lines:
 - 7 (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
 - 8 (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
 - 9 (3) Regulated under state laws comparable to the provisions of law in
10 paragraph 1 or 2, if the facility is an interstate pipeline facility.
 - 11 d. An underground farm or residential tank with a capacity of one thousand one
12 hundred gallons [4163.94 liters] or less or an aboveground farm or residential
13 tank of any capacity used for storing motor fuel for noncommercial purposes.
14 However, the owner of an aboveground farm or residential tank may, upon
15 application, register the tank and be eligible for reimbursement under this
16 chapter.
 - 17 e. A tank used for storing heating oil for consumptive use on the premises where
18 stored.
 - 19 f. A surface impoundment, pit, pond, or lagoon.
 - 20 g. A flowthrough process tank.
 - 21 h. A liquid trap or associated gathering lines directly related to oil or gas production
22 or gathering operations.
 - 23 i. A storage tank situated in an underground area such as a basement, cellar, mine
24 working, drift, shaft, or tunnel, if the storage tank is situated upon or above the
25 surface of the floor.
 - 26 j. A tank used for the storage of propane.
 - 27 k. A tank used to fuel rail locomotives or surface coal mining equipment.
 - 28 l. An aboveground tank used to feed diesel fuel generators. Upon application, the
29 owner or operator of an aboveground tank used to feed diesel fuel generators
30 may register the tank and is eligible for reimbursement under this chapter.
 - 31 m. A portable tank.

1 n. A tank with a capacity under one thousand three hundred twenty gallons
2 [4996.728 liters] used to store lubricating oil.

3 ~~16.14.~~ "Tank integrity test" means a test to determine that a tank is sound and not leaking.
4 For an underground tank, the term means a certified third-party test that meets
5 environmental protection agency leak detection requirements. For an aboveground
6 tank, the term means a test conducted according to steel tank institute SP 001 or
7 American petroleum institute 653.

8 ~~17.15.~~ "Third party" means a person who is damaged by the act of a registered owner,
9 operator, or dealer requiring corrective action, or a person who suffers bodily injury or
10 property damage caused by a petroleum release.

11 **SECTION 9. AMENDMENT.** Section 23.1-12-04 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **23.1-12-04. Administration of fund - Staff. (Contingent effective date - [See note](#))**

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

27 **SECTION 10. AMENDMENT.** Section 23.1-12-05 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **23.1-12-05. Adoption of rules. (Contingent effective date - [See note](#))**

30 The ~~administrator~~department shall adopt rules regarding the practices and procedures of
31 the fund, the form and procedure for applications for compensation from the fund, procedures

1 for investigation of claims, procedures for determining the amount and type of costs that are
2 eligible for reimbursement from the fund, procedures for persons to perform services for the
3 fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the
4 ~~administrator~~department, and any other rules as may be appropriate to administer this chapter.

5 **SECTION 11. AMENDMENT.** Section 23.1-12-06 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **23.1-12-06. Release discovery. (Contingent effective date - [See note](#))**

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

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

13 **23.1-12-10. Providing of information. (Contingent effective date - [See note](#))**

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

20 **SECTION 13. AMENDMENT.** Section 23.1-12-11 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **23.1-12-11. Examination of records. (Contingent effective date - [See note](#))**

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

- 25 1. Examine and copy books, papers, records, memoranda, or data of any person that
26 has a duty to provide information to the ~~administrator~~ or the department under section
27 23.1-12-10; and
- 28 2. Enter upon public or private property to take action authorized by this section,
29 including obtaining information from a person that has a duty to provide the
30 information under section 23.1-12-10, conducting surveys and investigations, and
31 taking corrective action.

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

3 **23.1-12-14. Other remedies. (Contingent effective date - [See note](#))**

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

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

11 **23.1-12-15. Revenue to the fund. (Contingent effective date - [See note](#))**

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

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

21 **SECTION 16. AMENDMENT.** Section 23.1-12-17 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **23.1-12-17. Registration fee. (Contingent effective date - [See note](#))**

- 24 1. ~~An owner or operator of a tank shall pay an annual registration fee of fifty dollars for~~
25 ~~each aboveground or underground tank owned or operated by that person. If after the~~
26 ~~fiscal year has been closed and all expenses relating to the fiscal year have been~~
27 ~~accounted for, the fund balance is less than six million dollars, the annual registration~~
28 ~~fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been~~
29 ~~closed and all expenses relating to the fiscal year have been accounted for, the fund~~
30 ~~balance is five million five hundred thousand dollars or more and the annual~~
31 ~~registration fee has been increased to one hundred dollars, the fee must be reduced~~

1 to fifty dollars. If after the fiscal year has been closed and all expenses relating to the
2 fiscal year have been accounted for, the fund balance exceeds nine million dollars, the
3 annual registration fee is reduced to five dollars. Annual registration fees must
4 continue at five dollars until the fund balance does not exceed nine million
5 dollars. Upon the recommendation and approval of the petroleum tank release
6 compensation fund board, the department shall classify tanks with respect to degree
7 of hazard, determine the risks of each classification, and fix the registration fee for
8 each classification at a rate sufficient to provide for:

- 9 a. The payment of the expenses of administration of the fund;
- 10 b. The reimbursement for corrective action provided under this chapter; and
- 11 c. The maintenance by the fund of adequate reserves and surplus so the fund may
12 be kept solvent at all times.

13 2. The department shall establish the schedule of registration fees by rules adopted in
14 accordance with chapter 28-32.

15 ~~2.3.~~ An owner or operator of an existing tank that is discovered at a location that currently
16 and previously has had tanks registered with the fund shall pay an additional
17 twenty-five dollar penalty fee in addition to the registration fee for each aboveground
18 tank and each underground tank owned or operated by that person for each previous
19 year that the tank was required to be registered for which a fee was not paid. The
20 payment includes the fees and the penalty for the failure to register.

21 ~~3.4.~~ An owner or operator of an existing tank at a location that was not previously and
22 continuously registered with the fund, whether the registration was required by law or
23 not must provide the fund with a phase two environmental study conducted by a
24 qualified firm according to American society for testing materials standards. A tank
25 integrity test must also be performed. The environmental study and tank integrity test
26 must be reviewed by the ~~commissioner~~department along with the application for
27 registration with the fund. If the ~~commissioner~~department rejects the application, the
28 applicant is denied eligibility to the fund. However, if the site is remediated and the
29 leaking tank is replaced, the applicant may reapply for registration with the fund. A new
30 installation that is using a used tank must provide tank integrity test results for the
31 used tank. Use of a synthetic liner in an aboveground dike system negates the need

1 for a tank integrity test. The owner or operator of a new tank at a new site or a new
2 tank at an existing site that had a tank registered at the site previously need only pay
3 the required fees for registration with the fund.

4 ~~4-5.~~ If accepted for registration with the fund, the owner or operator of the tank shall pay an
5 additional twenty-five dollar penalty fee in addition to the registration fee for each
6 aboveground tank and underground tank owned or operated by that person for each
7 previous year that the tank was required to be registered for which a fee was not paid,
8 regardless of ownership in each of those years. The payment includes the fees and
9 the penalty for the failure to register.

10 ~~5-6.~~ The registration fees collected under this section must be paid to the ~~fund-~~
11 ~~administrator~~department for deposit in the state treasury for the dedicated credit to the
12 petroleum release compensation fund.

13 ~~6-7.~~ If a registration payment is not received within sixty days of July first by the
14 ~~commissioner~~department, a late fee of twenty-five dollars per tank per month must be
15 imposed on the tank owner or operator.

16 **SECTION 17.** A new section to chapter 23.1-12 of the North Dakota Century Code is
17 created and enacted as follows:

18 **Registration fees before adoption of rules.**

19 Until the department adopts rules establishing a schedule of registration fees under section
20 23.1-12-17, registration fees must comply with this section. An owner or operator of a tank shall
21 pay an annual registration fee of fifty dollars for each aboveground or underground tank owned
22 or operated by the person. If, after the fiscal year has been closed and all expenses relating to
23 the fiscal year have been accounted for, the fund balance is less than six million dollars, the
24 annual registration fee of fifty dollars is increased to one hundred dollars. If, after the fiscal year
25 has been closed and all expenses relating to the fiscal year have been accounted for, the fund
26 balance is five million five hundred thousand dollars or more and the annual registration fee has
27 been increased to one hundred dollars, the fee must be reduced to fifty dollars. If, after the
28 fiscal year has been closed and all expenses relating to the fiscal year have been accounted
29 for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five
30 dollars. Annual registration fees must continue at five dollars until the fund balance does not
31 exceed nine million dollars.

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

3 **23.1-12-18. Reimbursement for corrective action. (Contingent effective date - [See](#)**
4 **[note](#))**

- 5 1. The ~~administrator~~department shall reimburse an eligible owner or operator for ninety
6 percent of the costs of corrective action, including the investigation, which are greater
7 than five thousand dollars and less than one million dollars per occurrence and two
8 million dollars in the aggregate. An eligible tank owner or operator may not be liable for
9 more than twenty thousand dollars out-of-pocket expenses for any one release. A
10 reimbursement may not be made unless the ~~administrator~~department determines that:
- 11 a. At the time the release was discovered the owner or operator and the tank were
12 in compliance with state and federal rules and rules applicable to the tank,
13 including rules relating to financial responsibility, rules relating to infrastructure
14 compatibility, and all rules relating to health and safety which were in effect at the
15 time of the release;
- 16 b. The department was given notice of the release as required by federal and state
17 law;
- 18 c. The owner or operator has paid the first five thousand dollars of the cost of
19 corrective action; and
- 20 d. The owner or operator, to the extent possible, fully cooperated with the
21 department ~~and the administrator~~ in responding to the release.
- 22 2. The fund shall compensate third parties for corrective action taken for a petroleum
23 release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the
24 time the release was discovered. Compensation for third-party corrective action
25 includes compensation for costs incurred in returning the real estate to that level
26 deemed duly remediated by the department.
- 27 3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a
28 third party caused by a petroleum release if the provisions of subdivisions a, b, c, and
29 d of subsection 1 were met at the time the release was discovered in an amount
30 determined by:

- 1 a. Findings reduced to judgment in federal or state district court or such other court
- 2 having jurisdiction over the matter in a proceeding in which the fund has been
- 3 made a party;
- 4 b. Findings by an arbitration panel agreed upon in writing by the parties in a
- 5 proceeding in which the fund has been made a party; or
- 6 c. A written settlement entered into by the parties in which the ~~commissioner~~director
- 7 of the department or the ~~commissioner's~~department's agent has participated. The
- 8 settlement must be reviewed and approved by the ~~commissioner~~director of the
- 9 department.
- 10 4. In any civil action against the owner, operator, or dealer for damages resulting from a
- 11 petroleum release, if the pre-leak condition of real estate is an issue, and if there is no
- 12 reasonable means of determining the pre-leak condition of real estate, the condition is
- 13 that which exists at the time the department determines the real estate has been duly
- 14 remediated.
- 15 5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor
- 16 may the fund compensate for exemplary damages, criminal fines, or administrative
- 17 penalties.
- 18 6. A third party accepting monetary compensation directly from the fund for damages due
- 19 to a release caused by a tank owner, operator, or dealer covered by the fund is
- 20 deemed to have waived any cause of action against the fund or against the tank
- 21 owner, operator, or dealer.
- 22 7. The fund shall reimburse the department for all costs, attorney's fees, and other legal
- 23 expenses relating to administrative and adjudicative proceedings under this chapter
- 24 and any subsequent legal proceeding. Any moneys reimbursed must be deposited in
- 25 the department's operating fund in the state treasury and must be spent subject to
- 26 appropriation by the legislative assembly.

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

29 **23.1-12-19. Application for reimbursement. (Contingent effective date - [See note](#))**

30 An owner or operator that is a first-party claimant and that proposes to take corrective
31 action or has undertaken corrective action in response to a release, the time of the release

1 being unknown, may apply to the ~~administrator~~department for partial or full reimbursement
2 under section 23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed
3 only for costs incurred after July 1, 1989, even if the releases were discovered before July 1,
4 1989, up to the maximum of twenty-five thousand dollars per location.

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

7 **23.1-12-20. ~~Administrator~~Department to determine costs. (Contingent effective date -**
8 **[See note](#))**

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

14 **SECTION 21. AMENDMENT.** Section 23.1-12-23 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **23.1-12-23. Recovery of expenses. (Contingent effective date - [See note](#))**

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

24 **SECTION 22. AMENDMENT.** Section 23.1-12-24 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **23.1-12-24. Costs exceeding reimbursement. (Contingent effective date - [See note](#))**

27 If the cost of any extraordinary authorized action under this chapter exceeds amounts
28 awarded to the ~~administrator~~ or the department from the federal government, ~~the administrator~~
29 ~~may pay the department the cost of the~~may pay the department's corrective actions costs,
30 including the cost of investigating a release, if the board finds that the cause was a petroleum
31 substance, that an adequate amount exists in the fund to pay for the corrective action, that the

1 occurrence was extraordinary in scope and size, and that a danger to the health and safety of
2 citizens exists.

3 **SECTION 23. AMENDMENT.** Section 23.1-12-25 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **23.1-12-25. Coordination of benefits. (Contingent effective date - [See note](#))**

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

11 **SECTION 24. AMENDMENT.** Section 23.1-12-26 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **23.1-12-26. Third-party damages - Participation in actions and review of settlements.**
14 **(Contingent effective date - [See note](#))**

- 15 1. An owner or operator sued for damages resulting from a release shall notify the
16 ~~administrator~~department within fourteen days of being served with a summons and
17 complaint. The owner or operator also shall advise the ~~administrator~~department if any
18 insurer is defending the owner or operator and provide to the ~~administrator~~department
19 the name of that insurer.
- 20 2. An owner or operator that, before litigation, enters negotiations with a third party that
21 claims to have been damaged by a release, or that receives a demand for payment of
22 damages to a third party that claims to have been damaged by a release, shall notify
23 the ~~administrator~~department within fourteen days of the demand or the negotiations.
- 24 3. The ~~administrator~~department and the board shall review the conduct of any litigation
25 or negotiation. The ~~administrator~~department may not assume any legal costs incurred
26 by the defendant or plaintiff, but may participate in discovery, trial proceedings, or
27 settlement negotiations of either disputed liability or damages that bear on the
28 determination of a plaintiff's damages.
- 29 4. The ~~administrator~~department and the board shall review any settlement negotiations
30 to determine the dollar amount of bodily injury or property damage actually,

1 necessarily, and reasonably incurred by third parties which, if paid by the defendant,
2 would be considered eligible costs.

3 **SECTION 25. AMENDMENT.** Section 23.1-12-27 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **23.1-12-27. Third-party damages - Documentation. (Contingent effective date - [See](#)**
6 **[note](#))**

- 7 1. An applicant's payments for third-party damages pursuant to a judgment entered in a
8 court must include copies of the notice of entry of judgment and abstract of costs.
- 9 2. An applicant's payments for third-party damages made by agreement in settlement of
10 litigation must include copies of the settlement agreement and supporting documents
11 required by the administratordepartment.
- 12 3. An applicant's payments for third-party damages made by agreement without
13 reference to litigation must include copies of the settlement and supporting documents
14 required by the administratordepartment.
- 15 4. The administratordepartment and the board may require a third party who claims
16 bodily injury to be examined by a physician and require that the physician's report to
17 be submitted to the administratordepartment. The administratordepartment may
18 require a third party that claims property damage to permit a property appraiser or
19 claims adjuster retained by the administratordepartment to inspect the property and
20 report to the administratordepartment.
- 21 5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third
22 party as a result of a third-party claim and property damage against an owner,
23 operator, or dealer registered by the fund.
- 24 6. The fund shall pay for corrective action as awarded to a third party in any judgment
25 against an owner, operator, or dealer.
- 26 7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action
27 or personal injuries and property damage may not exceed, per person, one million
28 dollars. Maximum liability of the fund, including all claims by third parties, may not
29 exceed, for any release site, the maximum provided in section 23.1-12-18.
- 30 8. A third party may not bring an action against an owner, operator, or dealer more than
31 three years after a corrective action plan has been approved by the department if the

1 owner, operator, or dealer fully implements and complies with the corrective action
2 plan.

3 9. In investigating a release site or reviewing the implementation of a corrective action
4 plan approved by the department, the department shall determine whether the release
5 threatens public health or the environment. The department shall require, based on
6 science and technology appropriate for the site, any monitoring, remediation, or other
7 appropriate corrective action that is reasonably necessary to protect public health or
8 the environment. The department may require corrective action at a release site at any
9 time after a release occurs.

10 **SECTION 26. AMENDMENT.** Section 23.1-12-28 of the North Dakota Century Code is
11 amended and reenacted as follows:

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

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

17 **SECTION 27. AMENDMENT.** Section 23.1-12-29 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **23.1-12-29. Fund appropriations. (Contingent effective date - [See note](#))**

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

22 **SECTION 28. AMENDMENT.** Section 23.1-12-30 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **23.1-12-30. Investment of fund. (Contingent effective date - [See note](#))**

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

30 **SECTION 29.** Chapter 23.1-16 of the North Dakota Century Code is created and enacted
31 as follows:

1 **23.1-16-01. Definitions.**

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

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

9 2. "Department" means the department of environmental quality.

10 **23.1-16-02. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction.**

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

13 **23.1-16-03. Qualifications of chief boiler inspector - Deputy inspectors.**

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

15 a. Has had at the time of the appointment at least five years' experience in the
16 construction, inspection, operation, maintenance, or repair of high-pressure
17 boilers and pressure vessels as a mechanical engineer, boilermaker, steam
18 operating engineer, or boiler inspector. An applicant possessing a mechanical
19 engineering degree from an accredited school may substitute that degree for two
20 years of the five years' experience, at the discretion of the department.

21 b. Holds a commission issued by the national board of boiler and pressure vessel
22 inspectors or obtains the commission within one year after the date of
23 appointment by the department.

24 c. Is not directly or indirectly interested in the manufacture or sale of boilers or
25 steam machinery or articles used in the construction or maintenance of engines
26 or boilers.

27 2. The department shall establish qualifications for a deputy inspector which are not
28 inconsistent with the requirements of the position.

29 **23.1-16-04. Powers and duties of chief boiler inspector.**

30 1. The chief boiler inspector shall:

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

7 **23.1-16-05. General requirement.**

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

10 **23.1-16-06. Exempt boilers - Inspection of exempt boilers.**

11 This chapter does not apply to:

- 12 1. Any boiler subject to federal inspection or under federal control.
- 13 2. Any boiler located on a farm and used solely for agricultural purposes.
- 14 3. Any heating boiler located in a private residence or in an apartment house of less than
- 15 six family units.
- 16 4. Any hot water supply boiler not exceeding the following limitations:
 - 17 a. Input of two hundred thousand British thermal units per hour.
 - 18 b. Pressure of one hundred sixty pounds per square inch [1103.16 kilopascals]
 - 19 gauge.
 - 20 c. Temperature of two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].
- 21 5. Any portable steam cleaner commonly used in a garage.
- 22 6. Any boiler of a miniature model locomotive, boat, tractor, or stationary engine design
- 23 constructed as a hobby, not for commercial use, having an inside diameter not
- 24 exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and
- 25 one-half square feet [1393.54 square centimeters] and which is properly equipped with
- 26 a safety valve, water level indicator, and pressure gauge.
- 27 7. Any electric boiler used as an integral part of an espresso coffee machine, provided
- 28 that the boiler does not exceed one and one-half cubic feet [.0566 cubic meter] in
- 29 water capacity, does not exceed fifty pounds per square inch [344.74 kilopascals]
- 30 pressure, and is constructed, approved, or certified to the American society of
- 31 mechanical engineers code or to other national or international standards.

1 **23.1-16-07. Inspection of boilers.**

2 1. The chief boiler inspector shall inspect each boiler used or proposed to be used within
3 this state. The inspection must be thorough as to the construction, installation,
4 condition, and operation as provided by the rules adopted to implement this chapter.
5 An exempt boiler may be inspected by the chief boiler inspector when the owner, the
6 owner's agent, or the user of the boiler makes written request for inspection to the
7 department.

8 2. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more
9 capacity, used or proposed to be used within this state, which has internal continuous
10 water treatment under the direct supervision of a graduate engineer or chemist, or one
11 having equivalent experience in the treatment of boiler water when the water treatment
12 is for the purpose of controlling and limiting serious corrosion and other deteriorating
13 factors, and with respect to which boiler the chief boiler inspector has determined the
14 owner or user has complied with the prescribed recordkeeping requirements, must be
15 inspected at least once every thirty-six months internally while not under pressure, and
16 at least once every twelve months externally while under pressure. If a hydrostatic test
17 is necessary to determine the safety of a boiler, the test must be conducted by the
18 owner or user of the equipment under the supervision of the chief boiler inspector. The
19 owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per
20 hour or more capacity desiring to qualify for thirty-six-month internal inspection
21 intervals shall keep available for examination by the chief boiler inspector accurate
22 records showing the date and actual time the boiler is out of service and the reason
23 for being out of service, and the results of the chemical and physical analysis of the
24 boiler water, whether from laboratory analysis of samples taken at regular intervals of
25 not more than forty-eight hours or from continuous online analysers, which will
26 adequately show the condition of the water and any other elements or characteristics
27 of the water capable of producing corrosion or other deterioration of the boiler or its
28 parts. If an inspection discloses deficiencies in equipment or in operating procedures,
29 inspections may be required once every twelve months.

1 **23.1-16-08. Special inspector.**

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

24 **23.1-16-09. Inspection and certificate fees.**

- 25 1. Upon completion of inspection, the owner or user of a boiler shall pay to the
26 department fees or a combination of inspection and certificate fees. The department
27 shall determine the inspection fees. Certificate fees are determined by section
28 23.1-16-10. The department shall determine and annually may adjust a fee scale for
29 the internal inspections of power boilers, internal inspections of low-pressure heating
30 boilers, external inspections of all boilers, and inspection of boilers used exclusively for
31 exhibition purposes.

- 1 2. Not more than two hundred dollars may be charged or collected for any one inspection
2 of a boiler, except for special inspections made upon request. All other inspections
3 made by the chief boiler inspector, including shop inspections and reviews and special
4 inspections when requested by the owner or user of a boiler, must be charged at a
5 rate not to exceed five hundred dollars per day or three hundred dollars per half day of
6 four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by
7 sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned
8 vehicle will be the actual amount incurred by the department.
- 9 3. The annual fee for the issuance of a reciprocal commission card for a special
10 inspector is forty dollars and the annual fee for the issuance of a welder-qualified card
11 is twenty dollars.
- 12 4. The fee for taking an examination for a hobby boiler operating license is twenty-five
13 dollars and the fee for a hobby boiler operating license is twenty-five dollars.
- 14 5. A hobby boiler operating license issued under this section is valid for six years.

15 **23.1-16-10. Certificate of inspection - Certificate to be posted.**

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

1 **23.1-16-11. Certificate of inspection required - Penalty.**

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

5 **23.1-16-12. Manufacturer's data report.**

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

10 **23.1-16-13. Disposition of funds.**

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

13 **23.1-16-14. Rules - Penalty for violation - Hearing.**

- 14 1. The department shall adopt rules for the safe and proper installation, use, operation,
15 and inspection of boilers and pressure vessels subject to this chapter.
- 16 2. The department shall adopt rules for the licensing of operators of hobby boilers used
17 during parades, exhibitions, and threshing shows where the public is invited.
- 18 3. A fee must be charged for an operating license, for a license renewal, and for an
19 examination conducted to determine minimum competence. Individuals operating
20 hobby boilers within this state as of July 1, 2007, are considered acceptable for a
21 license without additional training or examination. An individual who is not a resident of
22 this state and who holds a boiler operator license or credential in another state or
23 Canadian province is exempt from licensure as a hobby boiler operator in this state.
- 24 4. The department may not issue a certificate of inspection to any owner or user of a
25 boiler who fails or refuses to comply with the rules. The department shall revoke any
26 certificate presently in force upon evidence that the owner or user of the boiler is
27 failing or refusing to comply with the rules.
- 28 5. Any owner or user of a boiler may request a hearing before the department within
29 fifteen days from service of an order refusing or revoking a certificate of inspection. It
30 is the burden of the owner or user to show cause why the certificate of inspection

1 should not be refused or revoked. If no hearing is requested within the required period,
2 the order of the department becomes final and is not subject to further proceedings.

3 **SECTION 30. AMENDMENT.** Section 23.1-16-13 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **23.1-16-13. Disposition of funds.**

6 All funds collected and received under this chapter must be paid to the state treasurer and
7 deposited in the ~~state fire and tornado~~department of environmental quality operating fund to be
8 used to defray the costs of boiler inspections.

9 **SECTION 31. REPEAL.** Chapter 26.1-22.1 of the North Dakota Century Code is repealed.

10 **SECTION 32. BOILER INSPECTION PROGRAM EVALUATION - PLAN - REPORT TO**
11 **LEGISLATIVE MANAGEMENT.** The department of environmental quality shall evaluate the
12 boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet
13 program expenses, and report to the legislative management regarding the plan before
14 June 30, 2020.

15 **SECTION 33. EFFECTIVE DATE.** ~~Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,~~
16 ~~20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on July 1, 2019, if the~~
17 ~~legislative council has received certification from the chief of the environmental health section of~~
18 ~~the state department of health that all authority, powers, and duties from the environmental~~
19 ~~health section of the state department of health have been transferred to the department of~~
20 ~~environmental quality. If the certification is not received by July 1, 2019, sections 7, 8, 9, 10, 11,~~
21 ~~12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective~~
22 ~~on the date certification is received.~~Section 30 of this Act becomes effective on July 1, 2020.

23 **SECTION 34. CONTINGENT EXPIRATION DATE.** Section 17 of this Act is effective until
24 the date the legislative council receives certification from the department of environmental
25 quality that rules establishing a schedule of registration fees under section 23.1-12-17 have
26 been adopted, and after that date is ineffective.