

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2009

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture
 2 commissioner; ~~to create and enact a new section to chapter 4.1-01 of the North Dakota Century~~
 3 ~~Code, relating to the establishment of a post-production royalty oversight program;~~ to amend
 4 and reenact sections 4.1-01-02, 4.1-01-21.1, ~~49-22-09~~, and 49-22-09.2 of the North Dakota
 5 Century Code, relating to the salary of the agriculture commissioner, the environmental impact
 6 mitigation fund, ~~factors to be considered in evaluating applications and designations of sites,~~
 7 ~~corridors, and routes~~, and mitigating ~~direct and indirect~~ environmental impacts; to provide for a
 8 transfer; ~~and~~ to provide an exemption; and to provide for a legislative management study.

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

10 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
 11 as may be necessary, are appropriated out of any moneys in the general fund in the state
 12 treasury, not otherwise appropriated, and from special funds derived from federal funds and
 13 other income, to the agriculture commissioner for the purpose of defraying the expenses of the
 14 agriculture commissioner, for the biennium beginning July 1, 2023, and ending June 30, 2025,
 15 as follows.

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$15,717,126	\$1,693,446	\$17,410,572
Operating expenses	6,848,052	588,121	7,436,173
<u>Salaries and wages</u>	<u>\$15,717,126</u>	<u>\$873,888</u>	<u>\$16,591,014</u>
<u>Operating expenses</u>	<u>6,848,052</u>	<u>578,121</u>	<u>7,426,173</u>
Capital assets	15,000	(8,000)	7,000
Grants	9,031,774	1,922,195	10,953,969
<u>Grants</u>	<u>9,031,774</u>	<u>3,922,195</u>	<u>12,953,969</u>

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1	Agricultural products utilization	1,760,417	3,350,000	5,110,417
2	commission			
3	North Dakota trade office	1,600,000	500,000	2,100,000
4	Board of animal health	865,718	0	865,718
5	Wildlife services	1,457,400	200,000	1,657,400
6	Pipeline restoration and reclamation	200,000	0	200,000
7	oversight program			
8	<u>Bioscience innovation program transfer</u>	<u>0</u>	<u>6,500,000</u>	<u>6,500,000</u>
9	Crop harmonization board	<u>75,000</u>	<u>0</u>	<u>75,000</u>
10	Total all funds	\$37,570,487	\$8,245,762	\$45,816,249
11	Less estimated income	24,110,775	6,025,073	30,135,848
12	Total general fund	\$13,459,712	\$2,220,689	\$15,680,401
13	Full-time equivalent positions	79.00	2.00	81.00
14	<u>Total all funds</u>	<u>\$37,570,487</u>	<u>\$15,916,204</u>	<u>\$53,486,691</u>
15	<u>Less estimated income</u>	<u>24,110,775</u>	<u>6,856,343</u>	<u>30,967,118</u>
16	<u>Total general fund</u>	<u>\$13,459,712</u>	<u>\$9,059,861</u>	<u>\$22,519,573</u>
17	<u>Full-time equivalent positions</u>	<u>79.00</u>	<u>1.00</u>	<u>80.00</u>

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

SIXTY-NINTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

	<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
23	Agricultural products utilization commission	\$2,700,000	\$3,000,000
24	Soil health grants	700,000	0
25	Grasslands grazing grants	5,000,000	0
26	Bioscience innovation grant program	5,500,000	0
27	<u>Grasslands grazing grants</u>	<u>5,000,000</u>	<u>1,000,000</u>
28	<u>Bioscience innovation grant program transfer</u>	<u>5,500,000</u>	<u>6,500,000</u>
29	<u>Food distribution grants</u>	<u>0</u>	<u>1,000,000</u>
30	Federal environmental law impact review	5,000,000	0
31	Intermodal facility construction grant program	2,000,000	0

1	North Dakota trade office	0	500,000
2	Total all funds	\$20,900,000	\$3,500,000
3	Less estimated income	10,400,000	3,000,000
4	Total general fund	\$10,500,000	\$500,000
5	<u>Total all funds</u>	<u>\$20,900,000</u>	<u>\$12,000,000</u>
6	<u>Less estimated income</u>	<u>10,400,000</u>	<u>4,000,000</u>
7	<u>Total general fund</u>	<u>\$10,500,000</u>	<u>\$8,000,000</u>

8 The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget
9 for the 2025-27 biennium. The agriculture commissioner shall report to the appropriations
10 committees of the sixty-ninth legislative assembly on the use of this one-time funding for the
11 biennium beginning July 1, 2023, and ending June 30, 2025.

12 **SECTION 3. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO**
13 **BIOSCIENCE INNOVATION FUND - BIOSCIENCE INNOVATION GRANT PROGRAM.** The
14 office of management and budget shall transfer \$5,500,000 from the strategic investment and
15 improvements fund to the bioscience innovation grant fund for the purpose of the bioscience
16 innovation grant program under section 4.1-01-20.1 for the biennium beginning July 1, 2023,
17 and ending June 30, 2025.

18 **SECTION 4. TRANSFER - ~~LEGACY EARNINGS~~GENERAL FUND TO BIOSCIENCE**
19 **INNOVATION FUND - BIOSCIENCE INNOVATION GRANT PROGRAM.** ~~Pursuant to the~~
20 ~~designation of funding for other legislative purposes under subdivision c of subsection 4 of~~
21 ~~section 21-10-13, the office of management and budget shall transfer~~The bioscience innovation
22 program transfer line item in section 1 of this Act includes \$6,500,000 from the ~~legacy-~~
23 ~~earnings~~general fund, which the office of management and budget shall transfer to the
24 bioscience innovation grant fund for the purpose of the bioscience innovation grant program
25 under section 4.1-01-20.1 for the biennium beginning July 1, 2023, and ending June 30, 2025.

26 **SECTION 5. TRANSFER - ENVIRONMENT AND RANGELAND PROTECTION FUND TO**
27 **ENVIRONMENTAL IMPACT MITIGATION FUND - MITIGATION OF AGRICULTURAL LAND.**
28 The ~~office of management and budget~~agriculture commissioner shall transfer \$250,000 from the
29 environment and rangeland protection fund to the environmental impact mitigation fund for the
30 purpose of mitigation of agricultural land under section 4.1-01-21.1 for the biennium beginning
31 July 1, 2023, and ending June 30, 2025.

1 **SECTION 6. ESTIMATED INCOME - TRANSFER - DEPARTMENT OF WATER**

2 **RESOURCES.** The estimated income line item in section 1 of this Act includes the sum of
3 \$125,000 which the department of water resources shall transfer to the agriculture
4 commissioner for the purpose of defraying the expenses of the wildlife services program.

5 **SECTION 7. TRANSFER - ENVIRONMENT AND RANGELAND PROTECTION FUND -**

6 **MINOR USE PESTICIDE FUND.** The agriculture commissioner shall transfer \$325,000 from the
7 environment and rangeland protection fund to the minor use pesticide fund during the biennium
8 beginning July 1, 2023, and ending June 30, 2025.

9 **SECTION 8. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION**

10 **FUND.** The estimated income line item in section 1 of this Act includes the sum of

11 ~~\$7,344,029~~\$7,351,547 from the environment and rangeland protection fund for the purpose of
12 defraying the expenses of various agriculture commissioner programs.

13 **SECTION 9. ESTIMATED INCOME - GAME AND FISH FUND.** The estimated income line

14 item in section 1 of this Act includes the sum of \$648,228 from the game and fish department
15 operating fund for the purpose of defraying the expenses of various agriculture commissioner
16 programs.

17 **SECTION 10. ESTIMATED INCOME - TRANSFER - BANK OF NORTH DAKOTA**

18 **PROFITS - AGRICULTURAL PRODUCTS UTILIZATION COMMISSION.** The estimated
19 income line item in section 1 of this Act includes the sum of \$3,000,000 which the Bank of North
20 Dakota shall transfer from the Bank's current earnings and undivided profits to the agriculture
21 commissioner for deposit in the agricultural products utilization fund for the purpose of defraying
22 the expenses of the agricultural products utilization commission for the biennium beginning
23 July 1, 2023, and ending June 30, 2025.

24 **SECTION 11. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS**

25 **FUND - GRASSLANDS GRAZING GRANTS - MATCHING FUNDS REQUIREMENT.** The
26 estimated income line item in section 1 of this Act includes the sum of \$1,000,000 from the
27 strategic investment and improvements fund for the purpose of providing grasslands grazing
28 grants to an organization representing cooperative grazing associations in the state. To be
29 eligible for a grant under this program, an organization must provide one dollar of matching
30 funds from nonstate sources for every four dollars of grant funding. An organization that
31 receives a grant under this program may distribute the funding to cooperative grazing

1 associations for eligible infrastructure projects, which must be located on national grasslands
2 within the state. Eligible infrastructure projects include water development; fencing;
3 conservation initiatives; compliance with federal permitting requirements, including fees for
4 professional services; and other projects to enhance wildlife habitat or capture carbon, or to
5 increase the health of grasslands. Program participants shall develop and implement a grazing
6 land plan in compliance with local soil conservation district guidance and the plan must be
7 approved by the local soil conservation district. The agriculture commissioner shall establish
8 additional guidelines for the program.

9 **SECTION 12. ESTIMATED INCOME - ABANDONED OIL AND GAS WELL PLUGGING**
10 **AND SITE RECLAMATION FUND.** The estimated income line item in section 1 of this Act

11 includes the sum of \$700,000 from the abandoned oil and gas well plugging and site
12 reclamation fund, of which \$200,000 is for the purpose of defraying the expenses of the pipeline
13 restoration and reclamation program and \$500,000 is for the purpose of defraying the expenses
14 of the post-production royalty oversight program.

15 **SECTION 13. TRADE OFFICE - MATCHING FUND REQUIREMENT.** The North Dakota
16 trade office line item and the general fund appropriation in section 1 of this Act include

17 \$2,100,000 of funding related to the North Dakota trade office. The agriculture commissioner
18 may spend sixty percent of this amount without requiring any matching funds from the trade
19 office. Any additional amounts may be spent only to the extent the North Dakota trade office
20 provides one dollar of matching funds from private or other public sources for each one dollar
21 provided by the agriculture commissioner. Matching funds may include money spent by
22 businesses or organizations to pay salaries to export assistants, providing training to export
23 assistants, or to purchase computer equipment as part of the North Dakota trade office's export
24 assistant program.

25 **SECTION 14. WATERBANK PROGRAM - MATCHING FUNDS.** The salaries and wages
26 line item in section 1 of this Act includes up to \$50,000 from the general fund for matching funds
27 for the North Dakota outdoor heritage fund grant provided for the waterbank program.

28 **SECTION 15. AMENDMENT.** Section 4.1-01-02 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **4.1-01-02. Salary of agriculture commissioner.**

2 The annual salary of the agriculture commissioner is one hundred ~~twenty-one~~thirty~~thirty-one~~
3 thousand ~~five hundred fifty-three~~four hundred twenty-three dollars through June 30, ~~2022~~2024,
4 and one hundred ~~twenty-three~~thirty-five~~thirty-six~~ thousand ~~nine~~two~~six~~ hundred ~~eighty-four~~eighty
5 dollars after that date.

6 ~~— SECTION 15. A new section to chapter 4.1-01 of the North Dakota Century Code is created~~
7 ~~and enacted as follows:~~

8 ~~— **Post-production royalty oversight program:**~~

9 ~~— The commissioner shall establish a post-production royalty oversight program providing~~
10 ~~technical assistance and support to mineral owners, lease owners, and mineral companies~~
11 ~~relating to royalty payment issues. The commissioner may contract for ombudsmen for~~
12 ~~assistance on royalty payment issues. The commissioner is not subject to the provisions of~~
13 ~~chapter 54-44.4 when contracting for the services of ombudsmen. The names of mineral~~
14 ~~owners, lease owners, and mineral companies that receive assistance under the program are~~
15 ~~not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.~~

16 **SECTION 16. AMENDMENT.** Section 4.1-01-21.1 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **4.1-01-21.1. Environmental impact mitigation fund - Report to legislative management**
19 **- Continuing appropriation.**

20 1. There is created in the state treasury the environmental impact mitigation fund. The
21 fund consists of all moneys deposited in the fund under section 49-22-09.2. All
22 moneys in the fund are appropriated to the commissioner on a continuing basis for
23 ~~distribution~~disbursement by the ~~agriculture~~ commissioner to ~~landowners for the~~
24 ~~mitigation of agricultural land impacted by development as set forth under subsection~~
25 ~~2~~in accordance with this section.

26 2. ~~Funding~~Moneys in the fund may be used only for:

- 27 a. ~~Contracting for consultation~~Consultation with environmental scientists or
28 engineers, industry specialists, or others for relevant services to analyze or
29 implement mitigation required from the impact of development; and
30 b. ~~Reclamation or mitigation~~Creation, restoration, or mitigation of similar habitat
31 affected by the construction or operation of an energy conversion or transmission

1 facility. Mitigation of adverse impacts from development under this section shall
2 be conducted in the following order of priority:

3 (1) The area immediately impacted by the development;

4 (2) The county impacted by the development;

5 (3) The region impacted by the development; and

6 (4) Other areas within the state.

7 3. The commissioner is not subject to chapter 54-44.4 when contracting for services
8 under this chapter.

9 4. ~~The federal environmental law impact review committee shall establish criteria for~~
10 ~~disbursement of moneys in the environmental impact funds mitigation fund~~In
11 consultation with the federal environmental law impact review committee, the
12 commissioner shall adopt rules pursuant to chapter 28-32 to implement the provisions
13 of this section.

14 5. ~~The commissioner shall make disbursements of moneys in the environmental impact~~
15 ~~mitigation fund based upon the determinations made by the federal environmental law~~
16 ~~impact review committee.~~

17 ~~6. For purposes of this section, the federal environmental law impact review committee~~
18 ~~shall hold meetings as the chairman determines necessary at a time and place set by~~
19 ~~the chairman. Upon written request of any four members, the presiding officer shall~~
20 ~~call a special meeting of the committee.~~

21 ~~7. The federal environmental law impact review committee shall make determinations for~~
22 ~~the disbursement of environmental impact mitigation fund grants in accordance with~~
23 ~~subsection 2 and provide those determinations to the commissioner~~Easements or
24 leaseholds purchased by a person to mitigate adverse environmental effects of the
25 construction or operation of an energy conversion or transmission facility under
26 chapter 49-22 must be limited to the operational life of the facility as defined under
27 chapter 49-22. Any payment made to mitigate adverse environmental effects of the
28 construction or operation of an energy conversion or transmission facility under
29 chapter 49-22 must be made to the commissioner who shall deposit the payment into
30 the environmental impact mitigation fund. Prior to the public service commission
31 issuing a permit or certificate to an applicant under chapter 49-22, the commissioner

1 shall notify the public service commission of mitigation efforts under this section to
2 create, restore, or mitigate similar habitat affected by the construction or operation of
3 an energy conversion or transmission facility.

4 ~~8.6.~~ The ~~federal environmental law impact review committee~~ commissioner shall provide a
5 biennial report of environmental impact mitigation fund disbursements to the legislative
6 management.

7 ~~9.7.~~ For purposes of this section, the environmental impact mitigation fund is not subject to
8 subsection 2 of section 4.1-01-18.

9 ~~SECTION 19. AMENDMENT. Section 49-22-09 of the North Dakota Century Code is~~
10 ~~amended and reenacted as follows:~~

11 ~~49-22-09. Factors to be considered in evaluating applications and designation of~~
12 ~~sites, corridors, and routes.~~

13 ~~1. The commission shall be guided by, but is not limited to, the following considerations,~~
14 ~~where applicable, to aid the evaluation and designation of sites, corridors, and routes:~~

15 ~~a. Available research and investigations relating to the effects of the location,~~
16 ~~construction, and operation of the proposed facility on public health and welfare,~~
17 ~~natural resources, and the environment.~~

18 ~~b. The effects of new electric energy conversion and electric transmission~~
19 ~~technologies and systems designed to minimize adverse environmental effects.~~

20 ~~c. The potential for beneficial uses of waste energy from a proposed electric energy~~
21 ~~conversion facility.~~

22 ~~d. Adverse direct and indirect environmental effects that cannot be avoided should~~
23 ~~the proposed site or route be designated.~~

24 ~~e. Alternatives to the proposed site, corridor, or route which are developed during~~
25 ~~the hearing process and which minimize adverse effects.~~

26 ~~f. Irreversible and irretrievable commitments of natural resources should the~~
27 ~~proposed site, corridor, or route be designated.~~

28 ~~g. The direct and indirect economic impacts of the proposed facility.~~

29 ~~h. Existing plans of the state, local government, and private entities for other~~
30 ~~developments at or in the vicinity of the proposed site, corridor, or route.~~

- 1 ~~i. The effect of the proposed site or route on existing scenic areas, historic sites~~
2 ~~and structures, and paleontological or archaeological sites.~~
- 3 ~~j. The effect of the proposed site or route on areas unique because of biological~~
4 ~~wealth or because the areas are habitats for rare and endangered species.~~
- 5 ~~k. Problems raised by federal agencies, other state agencies, and local entities.~~
- 6 ~~l. Written comments from the agriculture commissioner.~~
- 7 ~~2. The commission may not condition the issuance of a certificate or permit on the~~
8 ~~applicant providing a mitigation payment assessed or requested by another state~~
9 ~~agency or entity to offset a negative impact on wildlife habitat.~~

10 **SECTION 17. AMENDMENT.** Section 49-22-09.2 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **49-22-09.2. Mitigating ~~direct or indirect~~ environmental impacts.**

- 13 ~~1. An applicant may elect to shall provide payment to mitigate any assessed adverse~~
14 ~~direct or indirect environmental impacts of a proposed site, corridor, route, or facility.~~
15 ~~The applicant may elect to shall provide a minimum of fifty percent of the payment to~~
16 ~~the agriculture commissioner.~~
- 17 ~~2. The agriculture commissioner shall deposit any moneys paid to mitigate the adverse~~
18 ~~environmental impacts of a proposed site, corridor, route, or facility as follows:~~
- 19 a. ~~Fifty percent into the environmental impact mitigation fund;~~ and
- 20 b. ~~Fifty percent into the federal environmental law impact review fund~~If an applicant
21 elects to provide a payment to mitigate the environmental impact of the
22 construction or operation of an energy conversion or transmission facility, the
23 payment must be made to the agriculture commissioner who shall deposit the
24 payment into the environmental impact mitigation fund under section 4.1-01-21.1.
25 Nothing in this section shall be construed to limit an applicant from conducting
26 mitigation activities.

27 **SECTION 18. WILDLIFE SERVICES PROGRAM - INDIRECT COSTS.** The wildlife
28 services line item in section 1 of this Act includes the sum of \$1,657,400 for the purpose of
29 defraying the expenses of the wildlife services program during the biennium beginning July 1,
30 2023, and ending June 30, 2025. The agriculture commissioner may not use funding

1 appropriated for the program to pay indirect costs as part of the United States department of
2 agriculture animal and plant health inspection service wildlife services program.

3 **SECTION 19. EXEMPTION - COVID-19 SPECIALTY CROP BLOCK GRANT PROGRAM.**

4 The amount of \$5,000,000 appropriated from federal funds derived from COVID-19 funds for
5 the specialty crop block grant program during the 2019-21 biennium in section 1 of chapter 27
6 and continued into the 2021-23 biennium in section 2 of chapter 27 of the 2021 Session Laws is
7 not subject to section 54-44.1-11 and is available for the program during the biennium beginning
8 July 1, 2023, and ending June 30, 2025.

9 **SECTION 20. EXEMPTION - GRASSLANDS GRAZING GRANTS.** The amount of

10 \$5,000,000 appropriated from the strategic investment and improvements fund for grasslands
11 grazing grants in the grants line item in section 1 of chapter 9 of the 2021 Session Laws is not
12 subject to section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023,
13 and ending June 30, 2025.

14 **SECTION 21. LEGISLATIVE MANAGEMENT STUDY - ENERGY CONVERSION OR**

15 **TRANSMISSION FACILITY - ENVIRONMENTAL MITIGATION.** During the 2023-24 interim, the
16 legislative management shall consider studying plans for mitigation of adverse wildlife and
17 environmental impacts and monetary payments made to state agencies, contractors,
18 nongovernmental organizations, and others by applicants or other persons for mitigation during
19 the siting and operation of energy conversion or transmission facilities. The study must include
20 consideration of the provisions of law that affect the ability of developers to effectively mitigate
21 adverse wildlife habitat and environmental impacts, applicant payments used for the purchase
22 of perpetual or nonperpetual conservation easements, the distinction between an adverse direct
23 environmental effect or an adverse indirect environmental effect, methods to monetarily quantify
24 adverse direct or adverse indirect environmental effects, and alternative programs that may be
25 used or developed for the mitigation of adverse wildlife and environmental effects. The
26 legislative management shall report its findings and recommendations, together with any
27 legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

28 **SECTION 22. LEGISLATIVE MANAGEMENT STUDY - TRANSFER OF AGRICULTURE**

29 **EDUCATION PROGRAMS.** During the 2023-24 interim, the legislative management shall
30 consider studying the feasibility and desirability of transferring agriculture education programs in
31 the department of career and technical education to the agriculture commissioner. The study

1 must include an analysis of each program, duties and responsibilities of the programs and
2 department of career and technical education staff, the potential to gain administrative and
3 resource efficiencies if the programs are transferred to the agriculture commissioner, and future
4 staffing, operating, and equipment needs of the programs. The legislative management shall
5 report its findings and recommendations, together with any legislation required to implement the
6 recommendations, to the sixty-ninth legislative assembly.