

**Agriculture Commissioner  
Budget No. 602  
Senate Bill No. 2009 and House Bill No. 1383**

	<b>FTE Positions</b>	<b>General Fund</b>	<b>Other Funds</b>	<b>Total</b>
2019-21 legislative appropriation	78.00	\$10,910,429 <sup>1</sup>	\$30,322,406	\$41,232,835
2017-19 legislative appropriation	<u>73.00</u>	<u>9,109,101</u>	<u>22,207,676</u>	<u>31,316,777</u>
2019-21 appropriation increase (decrease) to 2017-19 appropriation	5.00	\$1,801,328	\$8,114,730	\$9,916,058

<sup>1</sup>This amount includes \$210,000 of one-time funding. Excluding this amount, the agency's ongoing general fund appropriation is \$10,700,429.

**Item Description**

**FTE position changes** - The Legislative Assembly approved 78 FTE positions for the Agriculture Commissioner for the 2019-21 biennium, an increase of 5 FTE positions from the 2017-19 biennium authorized level of 73. The Legislative Assembly authorized 4 FTE positions for the grain warehouse license and inspection program, including 3 FTE grain warehouse inspector positions and 1 FTE accounting budget specialist position, related to the transfer of the program from the PSC. The Legislative Assembly also authorized 1 FTE APUC position related to the transfer of APUC from the Department of Commerce.

**One-time funding** - In Senate Bill No. 2009, the Legislative Assembly appropriated \$2.21 million of one-time funding for the Agriculture Commissioner, of which \$210,000 is from the general fund and \$2 million is from Bank of North Dakota profits.

In House Bill No. 1383, the Legislative Assembly appropriated \$5 million of one-time funding from the environmental impact mitigation fund to the Agriculture Commissioner for the mitigation of environmental impacts. Funds received by the Agriculture Commissioner from applicants for this purpose must be deposited in the environmental impact mitigation fund, which the Agriculture Commissioner may distribute to political subdivisions and landowners of agricultural land to offset impacts of energy development to agricultural land.

The following is a summary of one-time funding provided for the Agriculture Commissioner for the 2019-21 biennium:

	<b>General Fund</b>	<b>Other Funds</b>	<b>Total Funds</b>
Grain insolvency litigation	\$100,000		\$100,000
APUC		\$2,000,000	2,000,000
Master customer database	110,000		110,000
Mitigation of environmental impacts		5,000,000	5,000,000
<b>Total</b>	<b>\$210,000</b>	<b>\$7,000,000</b>	<b>\$7,210,000</b>

**Status/Result**

See the **Grain warehouse license and inspection program** and **Agricultural Products Utilization Commission** sections below for a summary of the status of these programs.

Through March 2020, the Agriculture Commissioner has not spent any funds on the master customer database but anticipates spending the entire appropriation by the end of the biennium.

Through March 2020, the Agriculture Commissioner has not received or spent any funding for the mitigation of environmental impacts. The Agriculture Commissioner has indicated the amount of funding that will be received and spent during the biennium is unknown because participation in the program is difficult to estimate.

See the **Grain warehouse license and inspection program** and **Agricultural Products Utilization Commission** sections below for a summary of the status of the one-time funding for these programs.

**Transfers** - Section 3 of Senate Bill No. 2009 requires the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund. Section 5 of the bill requires the Game and Fish Department to transfer \$614,430 to the Agriculture Commissioner for the Wildlife Services program and the State Board of Animal Health. Section 6 of the bill requires SWC to transfer \$125,000 to the Agriculture Commissioner for the Wildlife Services program.

**Grain warehouse license and inspection program** - In Senate Bill No. 2009, the Legislative Assembly approved the transfer of the grain warehouse license and inspection program from the PSC to the Agriculture Commissioner beginning in the 2019-21 biennium. The Legislative Assembly authorized total funding of \$953,499 from the general fund for the program for the 2019-21 biennium. Of this amount, \$853,499 relates to 4 FTE positions authorized for the program, including \$728,499 for salaries and wages and \$125,000 for operating expenses. Of the 4 FTE positions, 2 FTE grain warehouse inspector positions were transferred from the PSC to the Agriculture Commissioner.

The remaining \$100,000 is a one-time appropriation provided in Section 11 of the bill to allow the Agriculture Commissioner to pay the PSC to continue providing services related to grain insolvency litigation that began prior to July 1, 2019, for the 2019-21 biennium.

Sections 12 through 91 of the bill provide the statutory changes necessary for the transfer of the grain warehouse license and inspection program from the PSC to the Agriculture Commissioner.

**Agricultural Products Utilization Commission** - In Senate Bill No. 2328 (2019), the Legislative Assembly approved the transfer of the APUC program from the Department of Commerce to the Agriculture Commissioner beginning in the 2019-21 biennium.

In Senate Bill No. 2009, the Legislative Assembly approved total funding of \$4,000,000 for APUC for the 2019-21 biennium, of which \$1,760,417 is from the APUC fund derived from profits of the Mill and Elevator Association and \$2,000,000 is from the profits of the Bank of North Dakota for operating expenses and grants in the APUC line item. The remaining \$239,583 is from the general fund for 1 FTE position in the salaries and wages line item. The 2019-21 biennium appropriation of \$4,000,000 is an increase of \$847,085 from the 2017-19 biennium appropriation of \$3,152,915 to the Department of Commerce, all of which was appropriated from the APUC fund in anticipation of receiving profits of the Mill and Elevator Association. The 2019-21 biennium appropriation also includes 1 new FTE APUC position for the Agriculture Commissioner, since no FTE positions were removed from the Department of Commerce for the transfer of APUC.

The transfer from the environment and rangeland protection fund to the minor use pesticide fund was completed in July 2019. The transfer from SWC to the Agriculture Commissioner operating fund was completed in August 2019. Pursuant to agreements between the Agriculture Commissioner and Game and Fish Department, one-half of the \$614,430 transfer to the Agriculture Commissioner for the Wildlife Services program and State Board of Animal Health will occur in June 2020. The remaining amount will be transferred in June 2021.

The transfer of the grain warehouse license and inspection program has been completed, including the transfer of 2 FTE grain warehouse inspector positions. The Agriculture Commissioner has filled the remaining 2 FTE positions, including 1 FTE grain warehouse license and inspector position and 1 FTE accounting budget specialist position.

Through March 2020, the Agriculture Commissioner has reviewed 160 inspections of licensees. The Agriculture Commissioner has also reviewed 2 bankruptcy cases. Because the Attorney General does not have staff with expertise with grain insolvency and bankruptcy, the Agriculture Commissioner has contracted with private attorneys to provide legal services related to the grain insolvency and bankruptcy cases.

Through March 2020, the Agriculture Commissioner has spent \$500,455 of the \$953,499 appropriation.

Through March 2020, the Agriculture Commissioner has paid the PSC \$62,216 of the \$100,000 of one-time funding for grain insolvency litigation. The Agriculture Commissioner has indicated the PSC has drafted an insolvency plan for repayment to producers and elevators. A district court hearing has been set for June 16, 2020, through June 18, 2020.

The transfer of APUC has been completed. The Agriculture Commissioner hired 1 FTE agriculture business development coordinator position for the APUC program in October 2019.

Through March 2020, APUC has awarded \$763,230 to 16 businesses for 32 projects. The Attorney General's office has advised the Agriculture Commissioner that based on current law, APUC may not assist APUC applicants with the purchase of equipment. The Agriculture Commissioner anticipates addressing this issue with the 2021 Legislative Assembly.

The transfer of \$2 million of Bank of North Dakota profits was made in August 2019. Pursuant to Section 5-18-21, 5 percent of the net income earned by the Mill and Elevator Association must be transferred to the APUC fund within 30 days after the conclusion of each fiscal year. Profits transferred to the APUC fund during the 2017-19 biennium totaled \$1,240,525.

Through March 2020, the Agriculture Commissioner has spent \$652,274 on APUC.

Section 9 of Senate Bill No. 2009 provides for a \$2 million transfer from the Bank of North Dakota's current earnings and undivided profits to the Agriculture Commissioner for deposit in the APUC fund for the 2019-21 biennium.

**Pipeline restoration program** - In Section 8 of Senate Bill No. 2009, the Legislative Assembly provided \$200,000 from the abandoned oil and gas well plugging and site reclamation fund to the Agriculture Commissioner for the pipeline restoration and reclamation program for the 2019-21 biennium, the same amount authorized for the 2017-19 biennium.

**Bioscience innovation grant program** - In Senate Bill No. 2224 (2019), the Legislative Assembly established a bioscience innovation grant program, provided a continuing appropriation to the Agriculture Commissioner for the program, and required OMB to transfer \$700,000 from the Research North Dakota fund to the bioscience innovation grant fund during the 2019-21 biennium. Of the \$700,000 transferred, up to \$200,000 may be awarded to entities providing assistance to develop bioscience companies. The Agriculture Commissioner is required to collaborate with the Department of Commerce when awarding bioscience innovation grants and to coordinate the management of the Agriculture Commissioner's bioscience innovation grant program with the Department of Commerce's biotechnology grant program.

**Emergency hay transportation assistance program** - In August 2017, the Emergency Commission authorized the Adjutant General to borrow \$1.5 million from the Bank of North Dakota, which was then provided to the Agriculture Commissioner to administer an emergency hay transportation assistance program for livestock producers who experienced hardship due to drought conditions in the state. The Emergency Commission also authorized the Agriculture Commissioner to increase special funds spending authority by \$1.5 million to accept funding from the Adjutant General for the program.

In Senate Bill No. 2024 (2019), the Legislative Assembly provided a \$1,586,061 deficiency appropriation from the environment and rangeland protection fund to the Adjutant General to repay the Bank of North Dakota loans for the emergency hay transportation program that was administered by the Agriculture Commissioner. Of this amount, \$86,061 represents estimated interest on the loan, which was calculated based on a repayment date of June 30, 2019.

**Emergency feed transportation assistance program** - In December 2019, the Emergency Commission authorized the Adjutant General to borrow \$250,000 from the Bank of North Dakota, which was then provided to the Agriculture Commissioner to administer an emergency feed transportation assistance program to reimburse a portion of transportation costs to livestock

Through March 2020, the Agriculture Commissioner has spent \$24,133 of the \$200,000 appropriation. The Agriculture Commissioner has assigned 77 cases to ombudsmen, of which 44 cases have been closed and 33 cases are active. The amount of funding that will be spent on the program during the biennium will depend on the cost of the active cases and how many additional cases are opened during the biennium. During the 2017-19 biennium, the Agriculture Commissioner spent \$71,327 on the program.

The transfer from the Research North Dakota fund to the bioscience innovation grant fund was made in July 2019. In October 2019, the Agriculture Commissioner awarded the entire \$200,000 to the Bioscience Association of North Dakota for assistance with the development of bioscience companies. Through March 2020, the Agriculture Commissioner has awarded \$317,322 of the \$500,000 of nondesignated funding to five entities and anticipates awarding the remaining \$182,678 by the end of the biennium.

The Agriculture Commissioner indicated the Department of Agriculture and Department of Commerce have coordinated the administration of the bioscience and biotechnology programs during the 2019-21 biennium.

To be eligible for the emergency hay transportation assistance program, applicants must own livestock, have a minimum of 25 animal unit equivalents, hay must be used for the producer's own livestock, the producer must be located in a county designated as a drought severity level 2, 3, or 4 county, and hay transportation costs must have been incurred between June 1 and November 17, 2017.

The Agriculture Commissioner reviewed 492 applications for the emergency hay transportation assistance program through November 17, 2017, of which 491 applications were approved. The entire \$1.5 million of funding available for the program was distributed to eligible applicants in December 2017. The average amount awarded to each applicant was \$3,055.

The loan was repaid in April 2019 at a total cost of \$1,573,048, including \$73,048 of interest.

To be eligible for the program, applicants must own livestock, have a minimum of 25 animal unit equivalents, and verify feed losses through photos, written descriptions, and an approved third party. Applicants may be reimbursed for transportation costs related to the purchase of hay or any other forage excluding:

- Silage;

producers that lost feed supplies or lost access to feed supplies due to excessive rain, snow, and flooding which resulted in the purchase of supplemental livestock feed between September 30, 2019, and December 31, 2019.

- Grain, including distillers and other coproducts;
- Straw; and
- Other feed supplements.

The Agriculture Commissioner reviewed 119 applications and approved 116 applications. The entire \$250,000 was distributed to eligible applicants in March 2020.