

**Department 303 - Department of Environmental Quality
House Bill No. 1024**

Executive Budget Comparison to Base Level

	General Fund	Other Funds	Total
2023-25 Executive Budget	\$14,687,602	\$77,653,826	\$92,341,428
2023-25 Base Level	12,661,075	46,969,930	59,631,005
Increase (Decrease)	\$2,026,527	\$30,683,896	\$32,710,423

Selected Budget Changes Recommended in the Executive Budget

	General Fund	Other Funds	Total
1. Adds funding from federal funds for base budget adjustments, including increases in salaries and wages (\$259,515), operating expenses (\$2,338,313), and grants (\$778,000) and a decrease in capital assets of \$113,700	\$0	\$3,262,128	\$3,262,128
2. Adds funding for state employee salary and benefit increases of which \$2,275,943 is for salary increases and \$761,244 is for health insurance increases	\$897,484	\$2,139,703	\$3,037,187
3. Adds funding from federal and special funds for 1 FTE natural resource services III position and related operating expenses of \$7,500	\$0	\$226,162	\$226,162
4. Adds funding from federal funds for 2 FTE engineering and planning services VI positions and related operating expenses of \$97,500	\$0	\$608,784	\$608,784
5. Adds funding, including funding from federal and special funds, for 1 FTE human resource director position in the Office of the Director and related operating expenses of \$15,165	\$94,718	\$175,903	\$270,621
6. Adds funding, including funding from federal and special funds, for 1 FTE assistant director in the Office of the Director and related operating expenses of \$15,167	\$127,704	\$237,169	\$364,873
7. Adds funding, including funding from federal and special funds, for 1 FTE civil rights and environmental justice position in the Office of the Director and related operating expenses of \$25,168	\$85,341	\$158,491	\$243,832
8. Adds funding, including funding from federal and special funds, for 1 FTE account budget specialist III position in the Office of the Director and related operating expenses of \$10,500	\$80,141	\$148,835	\$228,976
9. Increases federal funding for temporary salaries related to lead line inventory	\$0	\$274,560	\$274,560
10. Adds funding for operating expenses related to laboratory information management system (LIMS) maintenance and hosting	\$280,000	\$0	\$280,000
11. Adds funding for operating expenses related to ITD rate increases	\$136,379	\$86,842	\$223,221
12. Adds federal funding for grants related to the federal Infrastructure Investment and Jobs Act (IIJA) municipal facilities and lead and copper programs	\$0	\$21,000,000	\$21,000,000
13. Adds one-time funding for operating expenses related to chemistry laboratory inflation	\$116,800	\$0	\$116,800
14. Adds one-time funding from federal funds for operating expenses related to administering the IIJA municipal facilities revolving loan fund, including office and IT equipment	\$0	\$22,350	\$22,350
15. Adds one-time funding from federal funds for operating expenses to upgrade the drinking water program portal	\$0	\$325,000	\$325,000
16. Adds one-time funding for operating expenses, including funding from federal and special funds, for environmental data system development	\$71,000	\$1,294,444	\$1,365,444

17. Adds one-time funding from federal funds for equipment over \$5,000 related to administering the IJA municipal facilities revolving loan fund	\$0	\$155,000	\$155,000
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A summary of the executive budget changes to the agency's base level appropriations is attached as an appendix.

A copy of the draft appropriations bill containing the executive budget recommendations is attached as an appendix.

Selected Bill Sections Recommended in the Executive Budget

Environment and rangeland protection fund - Section 3 would authorize the Department of Environmental Quality (DEQ) to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.

Petroleum release compensation fund - Section 4 would authorize DEQ to spend \$748,169 from the petroleum release compensation fund for expenses related to the petroleum tank release program.

Environmental quality restoration fund and fund revenues - Sections 5 and 6 would remove the balance requirement in the environmental quality restoration fund to receive deposits and provide if, on the 1st day of July in any year, the amount of uncommitted or unrestricted money in the environmental quality restoration fund is more than \$5 million, the amount in excess of \$5 million must be transferred to the general fund.

Continuing Appropriations

Environmental quality restoration fund - North Dakota Century Code Sections 23-31-01 and 23-31-02 - Allows DEQ to provide immediate and timely response to catastrophic events that threaten the public and environmental health and when the responsible party is late in responding or cannot be located.

Deficiency Appropriations

There are no deficiency appropriations for this agency.

Significant Audit Findings

The State Auditor reported no areas of concern were identified with regard to errors, internal control weaknesses, or potential violations of law for significant or high-risk functions of the agency during the 2019-21 biennium. The Department of Environmental Quality was separated from the State Department of Health in 2019. This is the first biennium the department has been audited as a separate entity.

In addition to financial transactions and expenditures, the State Auditor reviewed permitting and monitoring special waste landfills and animal feeding operations. The State Auditor reported the following audit findings related to the additional reviews:

Other Findings: Special Waste Landfills

- Condition: Opportunities for improvement for inspection control and policy areas.

Cause: Lack of communication for inspection results, issues identified but not addressed, not tracking noncompliance issues, and duplication of effort by a third-party contractor and DEQ employees.

Recommendation: The State Auditor recommends DEQ evaluate policies and procedures to ensure they contribute to meeting the overall program objective. This includes modifying or implementing policies and procedures to ensure proper communication of inspection results, inspections verifying all required information, proper tracking and follow up of noncompliance, and assignment of inspection duties among staff.

Agency response: The department agrees to implement this recommendation. The department has an informal long-term policy to notify facility representatives verbally of items of noncompliance and follow up with a written inspection report. This informal policy is now memorialized in a field inspection operating procedure which requires facility notification within 48 hours of the inspection and a written report identifying all items of noncompliance sent within 30 days. Additionally, DEQ has updated the standard inspection form and removed the "unknown" option. The department will review third-party contracts to avoid duplication of effort. Database report tracking procedures will be implemented.

- Condition: Oilfield landfill operators are having to wait longer than the 120 days allowed by North Dakota Administrative Code (NDAC) for their permit to be approved before constructing new facilities or expanding already opened facilities. This may cause the solid waste needs in the state to go unmet.

Cause: Permit applications not reviewed within the required 120 days or 240 days if the review period is extended.

Recommendation: The State Auditor recommends DEQ develop procedures to review and approve all permits for special oilfield landfills within 120 days as required by NDAC 33.1-20-03.1-04.

Agency response: The department agrees to implement this finding. A complete permit application is a complex document made up of many interrelated components requiring input from several governmental, nongovernmental, and public entities. For example, permits may require county zoning approval and may also receive third-party review which may be provided after the initial application has been submitted to the state for review. The

department will implement a policy and tracking system to monitor the 120-day period to ensure timely review, follow up, and approval decision of applications.

- Condition: There are no set solid waste permit lengths established. The program determines the permit length on an individual basis based on the level or risk with the facility. The risk factors used and the risk level assigned to the facility are not documented. This could result in inequitable treatment of facilities or missed revenue opportunities for the state by not requiring permit renewals as frequently.

Cause: Missing policies and procedures to determine how long permits are granted.

Recommendation: The State Auditor recommends the DEQ solid waste program develop a policy that defines risk assessment procedures to use in determining the active length of approved permits.

Agency response: The department agrees to implement this recommendation. The department will create a decision matrix for selecting a permit length based on fixed criteria which will be added to the standard operating procedures for facility permitting. During the permit review process, the public will have an opportunity to review and comment on the permit length justification.

Other Findings: Animal Feeding Operations

No findings were identified. The North Dakota pollutant discharge elimination system program is properly permitting, and monitoring animal feeding operations as required by the NDAC and the North Dakota pollutant discharge elimination system program policies and procedures.

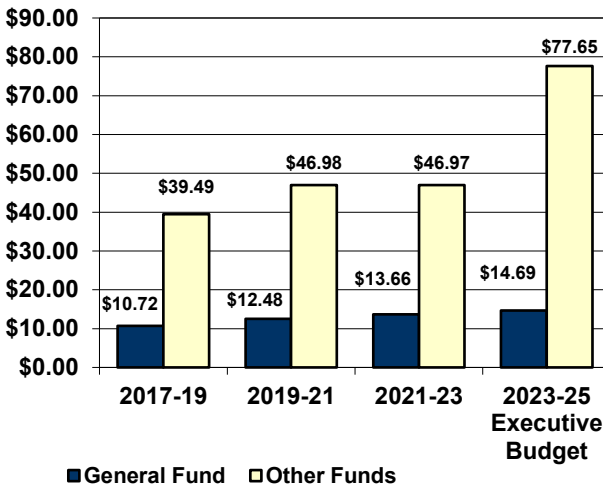
Major Related Legislation

At this time, no major related legislation has been introduced affecting this agency.

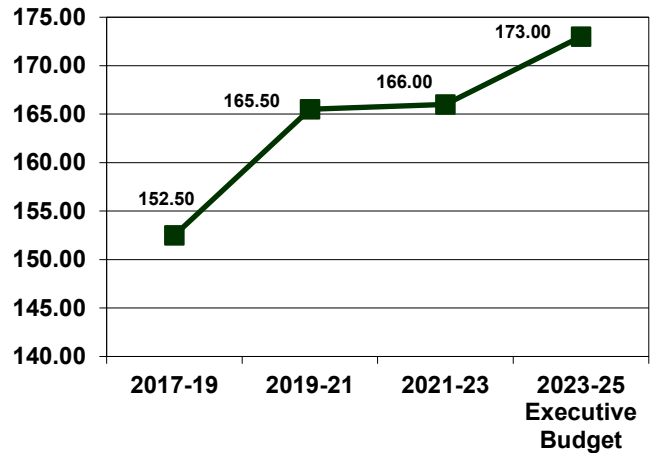
Historical Appropriations Information

Agency Appropriations and FTE Positions

Agency Funding (Millions)



FTE Positions



Ongoing General Fund Appropriations

	2015-17	2017-19	2019-21	2021-23	2023-25 Executive Budget
Ongoing general fund appropriations	N/A	\$10,724,151	\$12,480,922	\$12,661,075	\$14,499,802
Increase (decrease) from previous biennium	N/A	N/A	\$1,756,771	\$180,153	\$1,838,727
Percentage increase (decrease) from previous biennium	N/A	N/A	16.4%	1.4%	14.5%
Cumulative percentage increase (decrease) from 2015-17 biennium	N/A	N/A	N/A	N/A	N/A

Major Increases (Decreases) in Ongoing General Fund Appropriations

2017-19 Biennium

- Removed 1 FTE electronics technician II position from the Air Quality Division of the Environmental Health Section and related funding for salaries and wages (\$111,233)
- Adjusted the funding source for litigation fees related to the Environmental Protection Agency lawsuit to provide funding from the strategic investment and improvements fund instead of the general fund (\$500,000)

2019-21 Biennium

- Removed 3 FTE positions, including 1 FTE administrative assistant, 1 FTE office assistant, and 1 FTE legal assistant, and related funding for salaries and wages (\$94,123)
- Added 2 FTE positions and related funding from the general fund and the petroleum release compensation fund for salaries and wages and operating expenses to transfer the petroleum tank release program from the Insurance Department to the Department of Environmental Quality \$297,217
- Added 2 FTE positions and funding for salaries and wages in the 1st year of the biennium related to the state assuming primacy over the Quad O and Quad Oa federal air pollution programs \$384,356
- Added 8 FTE positions and funding in the 2nd year of the biennium related to the state assuming primacy over the Quad O and Quad Oa federal air pollution programs \$1,056,767
- Reduced funding for operating expenses related to training water treatment system operators to provide a total of \$125,000 from the general fund (\$55,000)
- Added funding for Microsoft Office 365 licensing expenses \$20,048

2021-23 Biennium

- Decreased funding for temporary salaries (\$138,050)

- 2. Transferred 1 FTE computer and network specialist III position to the Information Technology Department for the information technology (IT) unification initiative, including a decrease in salaries and wages and an increase in operating expenses \$2,022
- 3. Removed 2 FTE environmental scientist II positions paid from the general fund and restored other positions from special funds (\$360,800)
- 4. Decreased funding for operating expenses (\$614,873)
- 5. Increased funding for cost to continue operating expenses and grants, including funding to fully fund the Quad O and Quad Oa program, increases in IT data processing, IT equipment, and repairs \$362,474

2023-25 Biennium (Executive Budget Recommendation)

- 1. Adds funding for 1 FTE human resource director position in the Office of the Director and related operating expenses of \$15,165 \$94,718
- 2. Adds funding for 1 FTE assistant director in the Office of the Director and related operating expenses of \$15,167 \$127,704
- 3. Adds funding for 1 FTE civil rights and environmental justice position in the Office of the Director and related operating expenses of \$25,168 \$85,341
- 4. Adds funding for 1 FTE accountant budget specialist III position in the Office of the Director and related operating expenses of \$10,500 \$80,141
- 5. Adds funding for operating expenses related to LIMS maintenance and hosting \$280,000

One-Time General Fund Appropriations

	2015-17	2017-19	2019-21	2021-23	2023-25 Executive Budget
One-time other funds appropriations	N/A	\$0	\$0	\$1,000,000	\$187,800

Major One-Time Other Funds Appropriations

2017-19 Biennium

- 1. None \$0

2019-21 Biennium

- 1. None \$0

2021-23 Biennium

- 1. Added one-time funding for a laboratory information management system \$1,000,000

2023-25 Biennium (Executive Budget Recommendation)

- 1. Adds one-time funding for operating expenses related to chemistry laboratory inflation \$116,800
- 2. Adds one-time funding for operating expenses for environmental data system development \$71,000

Department of Environmental Quality - Budget No. 303
House Bill No. 1024
Base Level Funding Changes

	Executive Budget Recommendation			
	FTE Positions	General Fund	Other Funds	Total
2023-25 Biennium Base Level	166.00	\$12,661,075	\$46,969,930	\$59,631,005
2023-25 Ongoing Funding Changes				
Cost to continue salary increase		\$81,541	\$149,916	\$231,457
Adds funding from federal funds for base budget adjustments, including increases in salaries and wages (\$259,515), operating expenses (\$2,338,313), and grants (\$778,000) and a decrease in capital assets of \$113,700			3,262,128	3,262,128
Salary increase		673,222	1,602,721	2,275,943
Health insurance increase		224,262	536,982	761,244
Adds funding from federal and special funds for 1 FTE natural resource services III position and related operating expenses of \$7,500	1.00		226,162	226,162
Adds funding from federal funds for 2 FTE engineering and planning services VI positions and related operating expenses of \$97,500	2.00		608,784	608,784
Adds funding, including funding from federal and special funds, for 1 FTE human resource director position in the Office of the Director and related operating expenses of \$15,165	1.00	94,718	175,903	270,621
Adds funding, including funding from federal and special funds, for 1 FTE assistant director in the Office of the Director and related operating expenses of \$15,167	1.00	127,704	237,169	364,873
Adds funding, including funding from federal and special funds, for 1 FTE civil rights and environmental justice position in the Office of the Director and related operating expenses of \$25,168	1.00	85,341	158,491	243,832
Adds funding, including funding from federal and special funds, for 1 FTE accountant budget specialist III position in the Office of the Director and related operating expenses of \$10,500	1.00	80,141	148,835	228,976
Increases federal funding for temporary salaries related to lead line inventory			274,560	274,560
Adds funding for operating expenses related to LIMS maintenance and hosting		280,000		280,000
Adds funding for operating expenses related to ITD rate increases		136,379	86,842	223,221
Adds funding from special funds for operating expenses related to lead and copper testing			184,000	184,000

Increases federal funding for operating expenses related to printing lead and copper program materials			10,000	10,000
Adds federal funding for operating expenses related to ongoing licensing and maintenance of the drinking water system database			100,000	100,000
Adds federal funding for operating expenses for professional services related to lead line service replacement project			150,000	150,000
Adds funding, including federal funds, for operating expenses related to environmental data system maintenance	115,000		35,000	150,000
Removes funding, including funding from federal funds, for 2021-23 biennium bond payment	(59,581)		(60,391)	(119,972)
Adds federal funding for grants related to IJJA municipal facilities and lead and copper programs			21,000,000	21,000,000
Total ongoing funding changes	7.00	\$1,838,727	\$28,887,102	\$30,725,829
One-time funding items				
Adds one-time funding for operating expenses related to chemistry laboratory inflation		\$116,800		\$116,800
Adds one-time funding from federal funds for operating expenses related to administering the IJJA municipal facilities revolving loan fund, including office and IT equipment			\$22,350	22,350
Adds one-time funding from federal funds for operating expenses to upgrade the drinking water program portal			325,000	325,000
Adds one-time funding for operating expenses, including funding from federal and special funds, for environmental data system development	71,000		1,294,444	1,365,444
Adds one-time funding from federal funds for equipment over \$5,000 related to administering IJJA municipal facilities revolving loan fund			155,000	155,000
Total one-time funding changes	0.00	\$187,800	\$1,796,794	\$1,984,594
Total Changes to Base Level Funding	7.00	\$2,026,527	\$30,683,896	\$32,710,423
2023-25 Total Funding	173.00	\$14,687,602	\$77,653,826	\$92,341,428
<i>Federal funds included in other funds</i>			\$53,655,863	
<i>Total ongoing changes as a percentage of base level</i>	<i>4.2%</i>	<i>14.5%</i>	<i>61.5%</i>	<i>51.5%</i>
<i>Total changes as a percentage of base level</i>	<i>4.2%</i>	<i>16.0%</i>	<i>65.3%</i>	<i>54.9%</i>

Other Sections in Department of Environmental Quality - Budget No. 303

Executive Budget Recommendation

Environment and rangeland protection fund

Section 3 would authorize the department to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.

Other Sections in Department of Environmental Quality - Budget No. 303

Executive Budget Recommendation

Petroleum release compensation fund

Section 4 would authorize the department to spend \$748,169 from the petroleum release compensation fund for expenses related to the petroleum tank release program.

Environmental quality restoration fund and fund revenues

Sections 5 and 6 would remove the balance requirement in the environmental quality restoration fund to receive deposits and provide if, on the 1st day of July in any year, the amount of uncommitted or unrestricted money in the environmental quality restoration fund is more than \$5 million, the amount in excess of \$5 million must be transferred to the general fund.

**HOUSE BILL NO. 1024
(Governor's Recommendation)**

Introduced by

Appropriations Committee

(At the request of the Governor)

A bill for an act to provide an appropriation for defraying the expenses of the state department of environmental quality and provide a transfer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and Wages	\$32,551,817	\$5,574,967	\$38,126,784
Operating Expenses	10,771,898	5,436,128	16,208,026
Capital Assets	1,247,172	(78,672)	1,168,500
Grants	<u>15,060,118</u>	<u>21,778,000</u>	<u>36,838,118</u>
Total All Funds	\$59,631,005	\$32,710,423	\$92,341,428
Less Estimated Income	<u>46,969,930</u>	<u>30,683,896</u>	<u>77,653,826</u>
Total General Fund	\$12,661,075	\$ 2,026,527	\$14,687,602
Full-Time Equivalent Positions	166.00	7.00	173.0

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 2023-25 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2019-21</u>	<u>2021-23</u>
Laboratory Information System	\$1,000,000	\$ 0
Lead and Copper Safe Drinking Water	0	502,350
Environmental Data Systems Upgrade	0	1,365,444
Chemistry Lab Inflation	<u>0</u>	<u>116,800</u>
Total All Funds	\$1,000,000	\$1,984,594
Less Estimated Income	<u>0</u>	<u>1,796,794</u>
Total General Fund	\$1,000,000	\$ 187,800

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 state department of environmental quality from the environment and rangeland protection fund, for the biennium beginning July 1, 2023 and ending June 30, 2025. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

SECTION 4. ESTIMATED INCOME – PETROLEUM TANK RELEASE COMPENSATION FUND.

The estimated income line item in section 1 of this Act includes the sum of up to \$748,169 from the petroleum tank release compensation fund for expenses related to the petroleum tank release program.

SECTION 5. AMENDMENT. Section 23.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

23.1-10-02. Environmental quality restoration fund - Continuing appropriation.

There is established an environmental quality restoration fund into which the funds recovered in this chapter may be deposited. The fund is to be administered by the department of environmental quality and may be used by the department for costs of environmental assessment, removal, corrective action, or monitoring as determined on a case-by-case basis. All moneys placed in the fund under this section and section 23.1-10-05 are appropriated to the department on a continuing basis. If, on the first day of July in any year, the amount of uncommitted or unrestricted money in the environmental quality restoration fund is more than five million dollars, the amount in excess of five million dollars must be transferred to the general fund.

SECTION 6. AMENDMENT. Subsection 1 of section 23.1-10-05 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~If the balance of the fund is less than five million dollars, moneys~~Moneys recovered by the department in an action or administrative proceeding based on violation of the state's environmental statutes, including actions for administrative expense recoveries, civil penalties, compensatory damages; and money paid pursuant to any agreement, stipulation, or settlement. This section does not limit the department's ability to agree to a supplemental environmental project as part of a settlement.