

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1452
(Representatives Bosch, Delzer, Mitskog, Pollert, Porter)
(Senators Holmberg, Patten, Bell, Wardner)

AN ACT to create and enact a new chapter to title 54 of the North Dakota Century Code, relating to a clean sustainable energy authority and a clean sustainable energy fund; to amend and reenact sections 17-01-01 and 17-07-01 and subsection 5 of section 54-44.4-02 of the North Dakota Century Code, relating to low-emission technology, the energy policy commission, and an exemption from procurement services for energy programs; to provide a continuing appropriation; to provide an appropriation; to provide a transfer; and to provide a report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 17-01-01 of the North Dakota Century Code is amended and reenacted as follows:

17-01-01. ~~25x'25 initiative~~Low-emission technology.

The legislative assembly adopts the ~~25x'25~~low-emission technology initiative with the goal that ~~not later than January 1, 2025,~~ the agricultural, forestry, natural resources, and working land of the United States should provide energy from renewable resources not less than twenty five percent of the total energy consumed in the United Stateslow-emission technology and continue to produce safe, abundant, and affordable food, fuel, feed, and fiber. Increasing America's ~~renewable energy~~low-emission technology use will bring new technologiesadvancements to market and save consumers money, reduce the nation's dependence on oil from the Middle East, create good new jobs in rural America, and clean up the air and, reduce urban smog, and address global warming issues. As used in this initiative, ~~renewable energy~~low-emission technology includes biofuels, solar, wind, hydropower, geothermal, carbon recycling, carbon sequestration, use of waste heat, recycling, ~~low-emission technologies that create or use hydrogen,~~ coal, oil, natural gas, and energy efficiency initiatives. ~~The 25x'25 initiative will benefit agriculture and forestry, the environment, and national security and provide economic growth~~Investing and acknowledging a commitment to low-emission technology allows the state to use its abundant natural resources for the benefit of current and future generations. This initiative provides North Dakota consumers with affordable, reliable, resilient, and sustainable energy for the benefit of the state's economy and communities.

SECTION 2. AMENDMENT. Section 17-07-01 of the North Dakota Century Code is amended and reenacted as follows:

17-07-01. Energy policy commission.

1. The energy policy commission is composed of:
 - a. The commissioner of commerce, or the commissioner's designee;
 - b. A representative of the agriculture community appointed by the governor;
 - c. A representative recommended by the lignite energy council appointed by the governor;
 - d. A representative recommended by the North Dakota petroleum council appointed by the governor;
 - e. A member from the biodiesel or green diesel industry appointed by the governor;
 - f. A member from the biomass industry appointed by the governor;

- g. A member from the wind industry appointed by the governor;
 - h. A member from the ethanol industry appointed by the governor;
 - i. A representative recommended by the North Dakota petroleum marketers association appointed by the governor;
 - j. A member from the North Dakota investor-owned electric utility industry appointed by the governor;
 - k. A member from the generation and transmission electric cooperative industry appointed by the governor;
 - l. A member from the lignite coal-producing industry appointed by the governor;
 - m. A member from the refining or gas-processing industry appointed by the governor; and
 - n. Additional nonvoting members appointed by the governor.
2. Each member of the commission shall serve for a term of two years, beginning July first, may be reappointed for additional terms, and serves at the pleasure of the governor.
 3. The commissioner of commerce, or the commissioner's designee, is chairman of the commission.
 4. The commission shall meet at least four times per biennium or as often as the chairman deems necessary. The commission shall hold at least two public hearings per biennium, ~~at which time interested parties may present to receive testimony~~ regarding issues pertinent to the state's comprehensive energy policy and low-emission technology initiative. The department of commerce shall provide staffing for the commission.
 5. ~~The legislative assembly shall develop a comprehensive energy policy for the state. The commission shall monitor progress made toward the goals outlined in the energy policy and make recommendations to the energy policy as needed.~~ The commission may identify and make recommendations to the clean sustainable energy authority on technologies related to low-emission advancements. The recommendations may include consideration of advancements or developments that have led to increased economic benefits and positive environmental public health benefits for the citizens and visitors of North Dakota, including cleaner air, soil, and water; improved efficiencies; reduction of waste; lower carbon-intensive agricultural products or processes; and quantities of energy used. The recommendations also may consider other factors, including environmental, social, and governance policies and the effect on financial or capital markets. The commission shall consider and make recommendations on policies to ensure the availability of affordable, reliable, resilient, and sustainable energy in the state; to expand value-added energy; and to expand the opportunities to diversify the use of North Dakota's natural resources, which may increase state tax revenues. The commission shall study and evaluate critical energy infrastructure and shall make recommendations to ensure the state's comprehensive energy policy supports electrical grid reliability and resiliency and supports sufficient dispatchable generation capacity to avoid brownouts, blackouts, or outages. The commission shall monitor the progress of implementing and achieving environmental benefits through the state's comprehensive energy policy.
 6. The legislative assembly shall consider recommendations from the commission to develop a comprehensive energy policy for the state. The commission shall report its recommendations biennially to the legislative management.
 - ~~6.7.~~ The members of the commission who are not state employees are entitled to mileage and expenses as provided by law for state officers and employees. Unless otherwise provided in

this subsection, the expenses of appointed members are to be paid by the department of commerce. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.

SECTION 3. A new chapter to title 54 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Authority" means the clean sustainable energy authority.
2. "Clean" means a technology or concept that reduces emissions to the air, water, or land and meets or exceeds state and federal environmental regulations.
3. "Commission" means the industrial commission.
4. "Fund" means the clean sustainable energy fund.
5. "Program" means the clean sustainable energy program.
6. "Sustainable" means a technology or concept that allows the use of a natural resource to be maintained or enhanced through increased efficiency and life cycle benefits while either increasing or not adversely impacting energy security, affordability, reliability, resilience, or national security.

Clean sustainable energy authority - Purpose.

There is created the clean sustainable energy authority to support research, development, and technological advancements through partnerships and financial support for the large scale development and commercialization of projects, processes, activities, and technologies that reduce environmental impacts and increase sustainability of energy production and delivery. The purpose of the financial support is to enhance the production of clean sustainable energy, to make the state a world leader in the production of clean sustainable energy, and to diversify and grow the state's economy.

Clean sustainable energy authority - Membership - Meetings.

1. The clean sustainable energy authority consists of sixteen members, including eight voting members and eight nonvoting technical advisors.
2. The eight voting members consist of:
 - a. One member appointed by the legislative management to serve as chairman;
 - b. Two members appointed by the lignite research council;
 - c. Two members appointed by the oil and gas research council;
 - d. Two members appointed by the renewable energy council; and
 - e. One member appointed by the western Dakota energy association.
3. The eight nonvoting technical advisors consist of:
 - a. One member appointed by the North Dakota outdoor heritage fund advisory board;
 - b. The commissioner of commerce or the commissioner's designee;

- c. The director of the department of environmental quality or the director's designee;
 - d. The director of mineral resources or the director's designee;
 - e. The director of the North Dakota pipeline authority or the director's designee;
 - f. The director of the North Dakota transmission authority or the director's designee;
 - g. The director of the state energy research center or the director's designee;
 - h. The president of the Bank of North Dakota or the president's designee;
4. The term of office for the chairman is two years. The term of office for the other voting members is four years, and the other voting members may not serve more than two consecutive terms. The terms of office for the voting members commence on July first. The initial terms for the voting members of the authority must be staggered following a method determined by the authority.
 5. The authority shall meet at least semiannually. The chairman shall call a meeting upon written request from three voting members of the authority. Five voting members is a quorum at any meeting.
 6. The authority may not forward a recommendation to the commission unless the recommendation fulfills the purposes of this chapter and is approved by a majority of the voting members of the authority.

Clean sustainable energy authority - Duties - Report.

1. The authority shall make recommendations to the commission for program guidelines, including eligibility criteria for entities to receive funding under this chapter.
2. The nonvoting technical advisors shall develop a process to review and evaluate projects to determine the technical merits and feasibility of any application, including potential benefits of the development of low-emission technology, the expansion of the development of the state's natural resources or energy production, and the contribution to the economic diversity in the state.
3. The authority may develop a loan program or a loan guarantee program under the clean sustainable energy fund. The Bank of North Dakota shall administer the loan program or loan guarantee program. The interest rate of a loan under this program may not exceed two percent per year. The maximum term of a loan under this section must be approved by the commission based on a recommendation from the authority. The Bank shall review applications for loans or loan guarantees and shall consider the business plan, financial statements, and other information necessary to evaluate the application. To be eligible for a loan or loan guarantee, an entity shall agree to provide the Bank of North Dakota with information as requested. The Bank of North Dakota may develop policies for loan participation with local financial institutions.
4. The authority shall make recommendations to the commission for grant awards, loan approvals, or other financial assistance to provide funding to support research, development, and technological advancements for the large scale development and commercialization of projects, processes, activities, and technologies that reduce environmental impacts and increase sustainability of energy production and delivery in accordance with this chapter. Any projects, processes, activities, and technologies selected by the commission for funding must have been recommended by the authority, must demonstrate feasibility based on a technical review conducted by the nonvoting technical advisors of the authority, must have other sources of financial support, and must achieve the priorities and purposes of the program. At the request of the authority, the Bank of North Dakota shall provide a recommendation

regarding the economic feasibility of a project, process, activity, or technology under consideration by the authority. The Bank shall review the business plan, financial statements, and other information necessary to provide a recommendation.

5. The authority may consult with any other state agency necessary to carry out the purposes under this chapter.
6. Each biennium, the authority shall provide a written report to the legislative management regarding its activities and the program's financial impact on state revenues and the state's economy.

Clean sustainable energy program - Powers and duties of the commission.

1. The commission is granted all the powers necessary to carry out the purposes of this chapter, including the power to:
 - a. Provide grants, loans, or other forms of financial assistance to qualified entities for the research, demonstration, development, and commercialization of projects, processes, activities, and technologies that reduce environmental impacts and use energy sources derived from within the state. Other forms of financial assistance include venture capital investments and interest rate buydowns. The commission must require an entity to provide assurance of financial and other types of support that demonstrate a commitment to the project, process, activity, or technology. The commission may develop policies for the approval of loans or loan guarantees issued from the clean sustainable energy fund.
 - b. Enter into contracts or agreements to carry out the purposes of this chapter, including contracting for the administration of the program.
 - c. Keep accurate records of all financial transactions performed under this chapter.
 - d. Cooperate with any private, local, state, or national organization to make contracts and agreements for programs that advance the mission of the program.
 - e. Accept loan repayments, donations, grants, contributions, or gifts from any public or private source to carry out the purposes of this chapter, which must be deposited in the clean sustainable energy fund.
 - f. Make guidelines necessary to carry out the purposes of this chapter, including guidelines relating to the ownership of intellectual property.
2. The commission may acquire, purchase, hold, use, lease, license, sell, transfer, or dispose of any interest in an asset necessary for clean sustainable energy technology development to facilitate the production, transportation, distribution, or delivery of clean energy commodities produced in the state as a purchases of last resort.
3. The commission shall provide administrative support to the authority for the operation of the program, including the preparation of forms, review of applications, and ongoing review of any contracts. The commission may contract with a public or private entity to provide technical assistance necessary to implement the purposes of this chapter.
4. The commission is not subject to the reporting requirements under chapter 54-60.1.

Clean sustainable energy program - Access to records.

1. To the extent the commission or authority determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the commission or receiving commission services under this chapter, materials and data submitted to, made by, or received by the commission or authority, are not

public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota, and are subject to section 44-04-18.4.

2. A person or entity may file a request with the commission to have material designated as confidential under subsection 1. The request must contain any information required by the commission and must include at least the following:
 - a. A general description of the nature of the information sought to be protected.
 - b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
 - c. An explanation of why the information is not readily ascertainable by proper means of other persons.
 - d. A general description of any person that may obtain economic value from disclosure or use of the information, and how the person may obtain this value.
 - e. A description of the efforts used to maintain the secrecy of the information.
3. Any request under subsection 2 is confidential. The commission shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the commission determines the information is either not relevant or not a trade secret, the commission shall notify the requester and the requester may ask for the return of the information and the request within ten days of the notice. If no return is sought, the information and request are public record.
4. The names or identities of independent technical reviewers on a project or program are confidential, may not be disclosed by the commission, and are not public records subject to section 44-04-18 or section 6 of article XI of the Constitution of North Dakota.

Clean sustainable energy fund - Continuing appropriation - Loans - Repayments.

1. There is created in the state treasury the clean sustainable energy fund. The fund consists of all moneys transferred to the fund by the legislative assembly; interest upon moneys in the fund; principal and interest payments to the fund; and donations, grants, and other contributions received by the commission for deposit in the fund. All moneys in the fund are appropriated to the commission on a continuing basis to provide grants, loans, and other financial assistance and for administrative and operating costs of the authority and program pursuant to the provisions under this chapter.
2. Any bond proceeds deposited in the fund must be used for loans or loan guarantees. The Bank of North Dakota shall deposit in the fund all principal and interest paid on the loans made from the fund. The Bank may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administrative costs, not to exceed one-half of one percent of the amount of the interest payment. The Bank shall contract with a certified public accounting firm to audit the fund annually if the fund has any outstanding loans. The cost of the audit must be paid from the fund.

SECTION 4. AMENDMENT. Subsection 5 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Procurements by the industrial commission for energy-related programs under chapters 17-05, 54-17.5, 54-17.6, 54-17.7, section 3 of this Act, and 54-63 and under those statutes in title 38 authorizing the industrial commission to perform well and hole pluggings, reclamation work, equipment removal, leak prevention, and similar work.

SECTION 5. APPROPRIATION - TRANSFER - CLEAN SUSTAINABLE ENERGY FUND. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated,

the sum of \$25,000,000, which the office of management and budget shall transfer to the clean sustainable energy fund, during the biennium beginning July 1, 2021, and ending June 30, 2023.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1452.

House Vote: Yeas 76 Nays 12 Absent 6

Senate Vote: Yeas 41 Nays 6 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State