

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

	FTE Positions	General Fund	Other Funds	Total
2019-21 legislative appropriation	165.50	\$12,480,922	\$46,233,574	\$58,714,496
2017-19 legislative appropriation	<u>152.50</u>	<u>10,724,151</u>	<u>39,487,520</u>	<u>50,211,671</u>
2019-21 appropriation increase (decrease) to 2017-19 appropriation	13.00	\$1,756,771	\$6,746,054	\$8,502,825

Item Description

FTE changes - The Legislative Assembly approved 165.5 FTE positions for the Department of Environmental Quality (DEQ) for the 2019-21 biennium, an increase of 13 FTE positions from the 2017-19 biennium. The Legislative Assembly transferred 4 FTE positions from the Insurance Department for the boiler inspection program, added 2 FTE positions to transfer the petroleum tank release program from the Insurance Department, added 2 FTE positions related to the state assuming primacy over the quad O and quad Oa federal air pollution programs, and removed 3 FTE positions, not identified, agencywide. The Legislative Assembly added an additional 8 FTE positions in the 2nd year of the biennium related to the state assuming primacy over the quad O and quad Oa federal air pollution programs.

One-time funding - Quad O and quad Oa federal air pollution program supremacy - The Legislative Assembly, in Section 2 of House Bill No. 1024, identified \$1.04 million of one-time funding from the strategic investment and improvements fund for capital assets of \$1 million and operating expenses of \$40,000 for air pollution program equipment related to the establishment of federal program supremacy. In addition to establishing primacy over current federal programs, DEQ plans to petition the federal Environmental Protection Agency (EPA) to establish federal program supremacy over the quad O and quad Oa federal air pollution programs during the 2019-21 biennium. The Legislative Assembly added 2 FTE positions and funding from the general fund 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. In Section 7 of House Bill No. 1024, the Legislative Assembly provided \$1,056,767 from the general fund and authority for 8 FTE positions, related to the state assuming primacy over the quad O and quad Oa federal air pollution programs, effective July 1, 2020.

Status/Result

The Department of Environmental Quality transferred 4 FTE positions from the Insurance Department for the boiler inspection program on July 1, 2019. In August 2019, DEQ hired a petroleum tank release program manager. The Department of Environmental Quality is in the process of analyzing the job duties and qualifications of the second petroleum tank release program position. When the petroleum tank release program rules have been adopted, DEQ anticipates filling the position with an environmental scientist to assist with inspections and administration of the program. The Department of Environmental Quality hired 2 FTE positions related to the state assuming primacy over the quad O and quad Oa federal air pollution programs in September 2019. If primacy is granted, DEQ will begin the process of hiring an additional 8 FTE positions related to the quad O and quad Oa air pollution programs in July 2020.

The Department of Environmental Quality identified and removed 3 FTE positions, including 1 FTE administrative assistant III position, 1 FTE administrative assistant I position, and 1 FTE office assistant II position.

The department has designated the \$40,000 for operating expenses for one-time expenditures for office and IT equipment needed for the 10 FTEs associated with the program. The department has hired two of the positions and has been using existing equipment. The department anticipates the EPA will grant primacy of the quad O and quad Oa air pollution programs by July 1, 2020. If primacy is granted, DEQ will begin the process of hiring the additional 8 FTEs in July 2020. The department anticipates using the \$40,000 of one-time funding from the strategic investment and improvements fund to purchase office and IT equipment needed by the new FTEs at that time.

The department anticipates the \$1 million provided for capital assets will be used for software greater than \$5,000 (\$500,000) and equipment greater than \$5,000 (\$500,000). The department has entered a contract to develop the software for the amount budgeted and has expended \$98,841 biennium to date. The funding for the equipment greater than \$5,000 is budgeted for the purchase of forward-looking infrared (FLIR) cameras which will be purchased when DEQ is awarded primacy for the program and has hired additional program staff.

The estimated cost to continue the quad O and quad Oa federal air pollution programs during the 2021-23 biennium is approximately \$1.1 million.

Petroleum tank release program - The Legislative Assembly added 2 FTE positions and related funding from the general fund and the petroleum tank release compensation fund for salaries and wages and operating expenses to transfer the petroleum tank release program from the Insurance Department to DEQ. In Section 5 of House Bill No. 1024, the Legislative Assembly authorized DEQ to spend \$297,217 from the petroleum release compensation fund for 50 percent of the expenses related to the petroleum tank release program. In Sections 8 through 28 of the bill the Legislative Assembly provided the statutory amendments to Chapter 23.1-12 to transfer the administration of the petroleum tank release compensation fund tank integrity testing from the Insurance Department to DEQ and provide DEQ establish registration fees by rule. Section 17 of the bill established fee amounts until DEQ establishes registration fees by rule.

Boiler inspection program - The Legislative Assembly transferred the boiler inspection program, including 4 FTE positions, from the Insurance Department to DEQ. In Section 4 of House Bill No. 1024, the Legislative Assembly identified \$882,249 of estimated income from the state fire and tornado fund for the boiler inspection program for salaries and wages of \$793,249 and operating expenses of \$89,000. In Section 29 of the bill the Legislative Assembly created Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to DEQ. Section 30 of the bill amends Section 23.1-16-13, created in Section 29, to provide, effective July 1, 2020, fees related to the boiler inspection program are deposited in the DEQ operating fund instead of the state fire and tornado fund. Section 32 of the bill provides legislative intent requiring DEQ to review the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the Legislative Management regarding the plan before June 30, 2020.

The process to transfer the petroleum tank release compensation fund program began shortly after the approval of House Bill No. 1024 and the program was officially transferred to DEQ on July 1, 2019. To accomplish the transfer, DEQ met with the Insurance Department to review the business process, systems files, and other physical files to be transferred to DEQ. Insurance Department fiscal staff assisted DEQ in preparing the registration renewals for the upcoming year, which were mailed by DEQ in the first week of July 2019. The renewals included information regarding the 2019 legislative changes. In August 2019, DEQ hired a program manager and started the process of reviewing the rules in accordance with the risk-based classification as outlined in Section 16 of the bill. The bill requires DEQ classify tanks with the respect to degree of hazard, determine the risk of each classification, and set the registration fee for each classification in Administrative Rules. On November 25, 2019, DEQ issued a notice for public comment for the program's proposed rules and a public hearing was held on February 6, 2020. Public comments were accepted through February 18, 2020. Based on public comment and feedback from the Petroleum Tank Release Compensation Fund Board, DEQ will be revising the rules. The Department of Environmental Quality anticipates proposing revised rules within the next year. The funding appropriated from the general fund will provide DEQ with adequate resources to transition the program from the Insurance Department. The Department of Environmental Quality anticipates 50 percent of the cost of the program, or approximately \$300,000, will need to be funded from the general fund each biennium.

The boiler inspection program was transferred to DEQ effective July 1, 2019. Prior to the transfer DEQ met with the Insurance Department to review the business process, systems files, and other physical files to be transferred to DEQ. The boiler inspection program included 4 FTEs that were transferred to DEQ, including the chief boiler inspector position. The boiler inspection program positions telecommute, so no additional office space was required. The Department of Environmental Quality is currently collecting fees and depositing the revenue into the state fire and tornado fund. The Department of Environmental Quality reviewed boiler inspection program fees and determined an equitable approach would be to increase each inspection fee type and the annual certificate fee by \$10. The Department of Environmental Quality projects the increase in inspection fees will generate approximately \$50,000 of additional revenue. Beginning July 1, 2020, the fees will be deposited into DEQ's operating fund. The inspection fees are set in Administrative Code Article 33.1-14 and DEQ is in the process of proposing the changes necessary to Administrative Code to increase inspection fees. The notice for public comment on the inspection fee increases was issued on November 25, 2019, and a public hearing was held on February 6, 2020. Public comments were accepted through February 18, 2020. No oral or written comments were received at the public hearing or during the comment period. The proposed rules are currently being reviewed by the Attorney General. The annual certificate fee is set in Section 23.1-16-10. The Department of

Environmental Quality plans to draft legislation to be introduced during the 2021 legislative session to increase the annual certificate fee from \$20 to \$30. If the certificate fee increase is approved by the Legislative Assembly, additional revenues are estimated to total \$265,000. The Department of Environmental Quality anticipates additional revenue of \$315,000, generated by the inspection fee increases (\$50,000) and the certificate fee increase (\$265,000), will be adequate to fund the boiler inspection program from DEQ's operating fund next biennium. The Government Finance Committee has been assigned to receive the report from DEQ regarding its plan for program fees to meet program expenses.

North Dakota's share of the Volkswagen Corporation trust settlement totals \$8,125,000. As outlined in the settlement agreement, DEQ plans to award the settlement funds through a grant application process. Prior to issuing grants, DEQ was required to submit an environmental mitigation plan to the trustee and file the necessary documents to change the name on the settlement from the State Department of Health to DEQ. The mitigation plan and name change were finalized in August 2019. The Legislative Assembly appropriated \$5,399,529 from the Volkswagen Corporation trust settlement in the DEQ's grants line item for the 2019-21 biennium. In the first round of grants, DEQ issued 23 grant rebate agreements totaling \$2,654,000. Grants were awarded for large truck replacement, bus replacement, medium truck replacement, and electric charging stations. The Department of Environmental Quality anticipates a second round of grant applications in the fall of 2020 to award the remaining \$2,745,529.

The department is in the process of proposing rules for Administrative Code Chapter 33.1-23-01 to establish DEQ's certification program for environmental laboratories. The notice for public comment of the proposed rules was issued on November 25, 2019, and a public hearing was held on February 6, 2020. Public comment was accepted through February 18, 2020. No oral or written comments were received at the public hearing or during the comment period. The proposed rules are currently under review by the Attorney General.

United States Department of Justice and Volkswagen Corporation settlement - The Legislative Assembly, during the 2017-19 biennium, provided \$2.5 million of special fund authority for grants resulting from a settlement agreement between the United States Department of Justice and the Volkswagen Corporation related to emissions. The State Department of Health was designated to receive the funds by the Governor's office. Because DEQ was still in the process of drafting the mitigation plan and preparing documents related to changing the name on the settlement from the State Department of Health to DEQ, there were no expenditures related to the settlement during the 2017-19 biennium. In 2019 the Legislative Assembly increased funding for grants in the DEQ budget to accept and disburse funding from the Volkswagen trust settlement to provide a total of \$5,399,529 for grants related to the settlement.

Environmental laboratories - The Legislative Assembly, in Senate Bill No. 2107 (2019), created Section 23.1-01-14 and required DEQ to establish and administer a certification program for environmental laboratories.