

2019 SENATE APPROPRIATIONS

SB 2009

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

SB 2009
1/14/2019
Job # 30760

- Subcommittee
 Conference Committee

Committee Clerk: Rose Laning/ Marne Johnson

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner.

Minutes:

Testimony Attached # 1

Legislative Council: Levi Kinnischtzke
OMB: Larry Martin

Chairman Holmberg called to order the hearing on SB 2009. Had to leave to testify elsewhere and turned the meeting over to **Vice-Chairman Wanzek**.

Doug Goehring, Commissioner, North Dakota Department of Agriculture

Testimony Attached # 1.

(11:52) **Senator Mathern:** In light of the federal changes in hemp, do you see a dramatic change in our farming practices in light of that product or not?

Mr. Goehring: I met with secretary last week on this topic. Previously, there's been about 400,000 acres grown globally. Canada produced half of those, and the United States is a huge consumer of hemp, mostly hemp material. The market has been expanding to look at things like flour, mill, hemp hearts, but very little on the fiber side. Our biggest challenge going forward is going to be to create the demand, because it's easy to create the supply. There's some things that the Secretary has considered going forward about. Maybe continuing like we did in the pilot program of somewhat monitoring acres. He's working on some things and will be sharing with the states in the near future, because states are responsible for implementing and over seeing this under the authority of the USDA. For producers, in the pilot programs, we've been collecting data on farming practices and methods; we've had some drier, drought-like conditions the past few years. It's been challenging to find a place where it works everywhere. If it rains, it seems to work. Our prices went from \$1.00 per pound to \$0.40 per pound. It's started to weed out how much production we're going to have. In some states, my colleagues have shared that they are growers aren't contracting or aware of what the price is, but they go out and plant it in the spring, and market it at a loss. Seed is expense, and that's a challenge.

Senator Mathern: That \$1.00 to \$0.40 per pound, is that seed or fiber or hearts?

Mr. Goehring: That's per pound for the seed. Most of what's taking place now is seed production and then it can be made into food, flour, roasted hemp nuts, de-hull it for hemp hearts. The majority has been more for human consumption, some for the cosmetic industry.

Senator Robinson: Is hemp grown throughout the state? Or are there locations where it is predominantly grown?

Mr. Goehring: To date, 37 out of 53 counties in the state have tried to grow hemp. Had major challenges in central and western North Dakota to growing it due to drought years. Some of those producers haven't wanted to do it again. There's a few others that have done it fairly well. Most of our production is predominantly in the east right now.

Senator Wanzek: Is it the egg and chicken thing? A matter of production or marketing?

Mr. Goehring: That's part of what we've been trying to do the past few years. We want to encourage processing, but then create a huge marketing program too. We're relying on the industry to step up too. The last thing we want is misinformation, misdirection, and mislabeling. People get very excited or feel desperate and they start making claims that aren't necessarily true.

Senator Wanzek: Any livestock feed value?

Mr. Goehring: Not allowed at this point to actually feed hemp to livestock. Primarily because FDA needs to do the studies to make sure there would be no residual effects left in the meat or products. People can eat it, but you can't feed it to livestock.

(18:03) continuing on page 8 of attachment #1.

(20:01) **Senator G. Lee:** Under Feed, register all pet foods sold in the state. Does that mean anything sold at a retail outlet has some registration from the state or is that product manufactured here and sold in the state?

Mr. Goehring: All pet food, whether its manufactured or sold in the state, has to have a label on it and we have to ensure that label is correct in what it states for nutritional value, but also for the products in it. They can't make false claims.

Senator Dever: I'm curious, we heard about the number of dairy farms in the state. Can you comment on that and where it is from recently?
Is it true that the first two digits in the code on the milk bottle designate the state it comes from?

Mr. Goehring: Yes, 38 is one of the codes that's stamped on milk, I would encourage everybody who buys milk to look at the code.

Senator Dever: The last gallon we bought came from Ohio.

Mr. Goehring: The number of dairy farms is 68. We continue to drop, between what was previously taking place in Canada with their new class 6, class 7 milk system, it prevented any products from being moved over the border into Canada and be marketed. There's more to it than that, it's the price of milk and cost of operating. It has been devastating to our producers. Under the pasteurized milk order, we've been challenged with some individuals who have tried to prevent automated milk systems from being compliant. It's thought to help small farmers, but it's the small farmers implementing because of labor issues.

Senator Robinson: You referenced pet food. Do we have a lab to test that?

Mr. Goehring: We do ask them to verify the products that go in there, we don't actually test them unless there's a concern or a question. Then we will have it sent to be tested. We work with the North Dakota Health Department or the Department of Environmental Quality, which would have the analyzers to do it, or we would find anyone of the contractors that we work with for lab services. We generally working with them at face value. If they say they have meat in there, they better have meat in it.

Senator Wanzek: I was watching "This Week in Ag Week" They talked to some South Dakota producers, they had their pork conference. They talked about South Dakota's pork and dairy industry, and it's growing. We need to study South Dakota and find out what it takes in the long run to enhance our animal agriculture.

Mr. Goehring: I'd maybe expand a little bit. We have done some studies; we do look at it. It's a matter of economies of scale. It's like business – there's a cost to exist, and a cost at which it starts to minimize and become more efficient. They've been successful because size of operations has been larger than 800, or larger than 1600, it just depends on the economics behind it.

(25:54) Continuing on page 9.

(28:11) **Senator Wanzek:** What is a restricted feed lot?

Mr. Goehring: A restricted feed lot is where animals that would normally be allowed to be unloaded onto a farming operation, free to roam, or maybe they're breeding livestock. They are restricted to there. They may be suspect animals, or animals coming through in a truck rollover. They may not have had the proper health certificates, until we get the trucks and people there, they may end up in a restricted feedlot until we can take care of them; because we can monitor it.

Senator Wanzek: Your agency does things with other agencies, like international trade, you work with the Trade Office on a lot of those issues, or with livestock, the permitting process. Please expound a bit. It seems there are a number of area where you need collaboration with other agencies?

Mr. Goehring: We work with a lot of agencies you need a network with states and the federal government. In the example of livestock, we will fly livestock out of North Dakota to Kazakhstan. Between our department and Veterinary Services from USDA, they would be the ones to work on that they would work on that they go through the quarantine process,

when it comes to animal disease investigation those would be a coordinated effort. With the Federal Government shutdown, we're pretty much manning it all. This is always set up in conjunction with the federal government. The network that's set up in the animal traceability program, you're working with other states to track animals. When it comes to international trade, we have an issue that's been raised recently that we need to address, the destination has been left off the paperwork. Animals arriving, need to be identified with where they are going. If we don't know the destination, we are breaking international law.

(31:45) continuing on page 10.

(34:16) **Senator Oehlke:** It was obvious from presentation that you work with Game & Fish. They work with aquatic nuisance species, is there any feeling relative to the Ag. world? Any future problems, or problems from other states? Can it create problems for irrigation out of a lake, where it's clogged with zebra mussel?

Mr. Goehring: Indirectly yes. We have a relationship with almost every state agency. If it has a direct impact on agriculture, we would sit down and have some conversations about some things. With respect to aquatic invasive species, we'd support their efforts. There might be labelling issues, there may be certain products used to control certain species. If it's not available, they come to us and we could work with them on a 24C or a Section 18, so that product could be labeled for use to help control, prevent, eradicate the species. We have an FDA issue that's coming up that we're going to be asked to implement, do outreach, that is on the Food Safety Modernization Act. We will need to play a larger role in the implementation, oversight and enforcement of that. They included a provision on irrigation water usage, which has to be monitored and regulated. We will have to figure out how to address that, do we go to the source or the application. Whether flood irrigation or sprinklers. If invasive species comes into play, we'd have to have a discussion.

(38:28) continuing on page 11.

Wants the committee to consider moving the Agricultural Products Utilization Commission (APUC) and ND Trade Office to the Department of Agriculture.

(40:08) **Senator Bekkedahl:** In your 4% increase for 2019 and 2020. Does that follow the governor's recommendation for 2% new money?

Mr. Goehring: It would be new money.

Senator G. Lee: The APUC – where is it housed now?

Mr. Goehring: That's over in Commerce. Both the Trade office and APUC have line item in Commerce Department. In reviewing Commerce budget, there was a recommendation to take it from \$3.1 million down to \$682,000 on APUC and from the Trade Office from \$2 million down to \$1.4 million. We have two standing programs that benefit agriculture in this state well. When you see a Commerce budget increase of \$112 million, and they can't even fund this back to where it's a viable program, I would ask you to consider moving it over with the funding.

I had discussion with Eric Hardmeyer at Bank of North Dakota and they would be willing to put in \$2 million into APUC out of their capital assets to promote economic development in the state. To offset some of that \$3.1 million.

Senator Wanzek: I don't believe this is in the governor's budget?

Mr. Goehring: No, I don't believe it's in the governor's budget.

Senator Mathern: Your department has been very supportive of grocery stores and co-ops get going. Do you have some grant money for that? How do you do that? It's integral to APUC. Under what program do you do those things?

Mr. Goehring: Because of the different programs we can tap into; Farm to School or Local Foods Initiative. There are different grant dollars that we tap into at eh USDA level that we are given the authority to utilize. Community Orchard Grants is another one. There's different ways to use that money, sometimes research, sometimes marketing, sometimes helping a local food hub get established. Those are types of things that we've done.

Senator Mathern: So this would fit within that?

Mr. Goehring: Yes, help it to work together.

Senator Robinson: Have you discussed this move with Commerce?

Mr. Goehring: No. I have not. I decided that someone higher than that made up their mind about funding.

Senator Dever: Is the function of APUC and the function of the Trade Office accomplished through the Department of Commerce or is it a matter of passing dollars through that agency to them.

Mr. Goehring: APUC used to be in the Ag Dept. and for political reasons years ago, it got moved. It's a standing program within Commerce. Concerning the Trade Office, those would be pass through dollars to the Trade office itself, that's a public, private partnership. We're looking at grant dollars and accessing more USDA money to help with agricultural trade promotion. When government is up and operating again, we'll see what money we have extra to help work with to do more trade missions and expand our global footprint.

Chairman Holmberg: The Commerce Department has been cobbled together by this legislature. A program would come along that someone in this committee liked, we'd put it in Commerce. Various parts go to where it would be more natural. A lot of what's there is because of the Legislative Assembly.

Senator G. Lee: In terms of the Trade Office, do you know the ratio of trade that they do? Is it agricultural related?

Mr. Goehring: I couldn't tell what the balance is. I'd venture to say 40%-45% is manufactures and others. I've been to some of the meetings and help to make trade missions

happen. Then 55% are agricultural companies, food processing. We are leveraging that relationship so that we can access more resources that exist within Food Export Midwest, because 13 other states that we do trade missions with.

The contractors we have in other countries, for a small fee we can leverage that and utilize the Trade office to access more resources and have more opportunities in other countries.

Senator Krebsbach: On your manufacturing end. Is there a percentage of those that are Ag related?

Mr. Goehring: Probably 50% are Ag related. They just aren't producing an actual food item.

Senator Krebsbach: I fully support APUC going back to the Ag agency. With the Trade Office, was that driven by the Agriculture Commissioner or by trade people?

Mr. Goehring: That was started about 12 years ago, at that time Lieutenant Governor Dalrymple and majority leader Rick Berg who developed that and they wanted a place to have the pass through place and they put in Commerce. It's a matter of how one would prioritize it and not nickel and dime it. We can suggest things, but you all make the final decision. You might think of a better place for it, but it might be better served to be in Ag.

Senator Dever: If moved to Department of Agriculture, would it be something other than pass thru, that there would be active involvement on the part of your department?

Mr. Goehring: I think it should function the same way, with the same board and the Lieutenant Governor be the chair. We shouldn't be distracted and let these programs go by the wayside. I'm disheartened that you have a \$112 million recommended increase to the program and you almost gut these two programs. Especially when we so desperately need them now. There's a lot of things happening nationally and globally, and we're starting to apply more and more resources and time, and our treasure towards developing markets, and then we discount trade and the Trade Office? Very few states have this type of entity, we need to utilize it, it's been doing a great job to date.

Senator Wanzek: I'm sure the sub-committee will look into it further. I realize the magnitude of how important trade is to our agricultural industry, we hear it all the time, we saw that discussion in the last election. We depend seriously on trade for agriculture.

Mr. Goehring: A closing comment – I would not anticipate or pursue changing how these programs are framed, work function. Just move them over and get back to work.

Senator Wanzek: The Trade Office also helps facilitate commercial industry and the logistics of doing trade. We ship pinto beans from our farm into Mexico. The Trade Office offers a lot of help in that area.

(54:00) **Brady Pelton, Governmental Affairs Director, North Dakota Petroleum Council**
The Petroleum Council represents more than 500 companies involved in all aspects of oil and gas. We are in support of SB 2009, specifically the allocation of \$200,000 to pipeline restoration and reclamation oversight program. Created two sessions ago this program offers an invaluable resource to the state by providing an independent ombudsman to manage

complaints between landowners, tenants and oil companies. The Department of Ag has done a great job in administering this program. North Dakota's oil and gas production are at record levels, the pipelines used to gather and transport oil and gas to market. The maintain and strengthen relationships between landowners and the oil and gas industry is of the utmost importance. The support of the pipeline restoration and reclamation oversight program will continue to ensure protection of landowner interest while allowing the production of oil and gas to grow. We urge Do Pass on this bill and continued support of the pipeline restoration and reclamation oversight program.

(56:00) Julie Ellingson, North Dakota Stockman's Association

Our cattle ranching members interface with the Department of Agriculture and its programs on many fronts. Two particular ones deserve a special mention, the Board of Animal Health. The Commissioner did a good job of out lining the that the Board of Animal Health is responsible for. The significance of the work the division does in order to keep our domestic herd healthy and maintaining a disease free status here in North Dakota. The board has had a great year dealing with dozens of disease trace backs; many of them originating outside our borders. We urge you to make sure they are adequately funded, they have limited resources and staff. Finally, Wildlife Services, also an important program for livestock producers as they're responding to predator control. You'll see components in this budget as well as Game and Fish, and the Water Commission. Still very important to North Dakota's livestock industry.

(57:30) Scott Rising, North Dakota Soybean Growers Association, Lobbyist # 88

Testified in support.

I was not aware of APUC and the Trade Office, that is very exciting. The Soybean Growers in the state export \$1-1.5 billion worth of soybeans every year. This continual thrash to have a dependable partner in a meaningful way has been a challenge, as well as APUC for value added ag product development. It's critical to our future. The sentence for me reads like this. We have a \$10 billion pot of Ag farm gate money; \$5.1 million doesn't seem like a large investment, but it is critical.

(59:04) Kayla Pulvermacher, North Dakota Farmers Union, Lobbyist # 201

Testified in support.

In particular, two pieces. the mediation and the Ombudsman bill. In terms of mediation, this is definitely a time when we're going to be needing mediation more than usual, with Ag prices where they are at; that is a program that has saved many a farmer and rancher. We would like to see that continued to be funded where it is. The ombudsman program has helped create a middle man between the farmer and producer. The producers are getting their land taken care of the way they had been promised it would. That has been a good program for both oil and family farmers.

(1:00:50) Gary Knutson, North Dakota Agricultural Association

Testified in support.

We represent the pesticide fertilizer, seed and equipment dealers related to agriculture production, we have 450 members across the state. We appreciate being regulated. They do an excellent job; give them all the money they need.

(1:01:45-1:03:28) **Senator Robinson:** Related a story involving former governor Dalrymple, an APUC grant for angora goats, and getting kicked out of committee.

Senator Wanzek: The appropriation bills that Senator Holmberg mentioned need to be in by today. I submitted one on Friday, it's for a bio-science grant program, and we'll see if we implement it into this one or make it a stand-alone bill.

Senator Robinson: I was intrigued by the Commissioner's proposal for moving APUC and the Trade Office to the Ag. Department. We have a lot at stake, I hope the sub-committee takes a close look at that.

Senator Wanzek: Closed the hearing on SB 2009.

Sub-committee: Senators Wanzek, Erbele and Grabinger.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

SB 2009
1/22/2019
Job # 31232

- Subcommittee
 Conference Committee

Committee Clerk: Rose Laning / Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill to provide an appropriation for defraying the expenses of the agriculture commissioner; to provide for transfers; relating to the definition of agriculture commissioner, licensing and bonding for cash grain brokers, and records confidentiality for warehousemen and grain buyers; relating to the salary of the agriculture commissioner, moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner; to provide for a report to the legislative assembly; to provide a penalty; to provide a continuing appropriation; and to provide for a transfer.

Minutes:

No Attachments

Legislative Council: Alex Cronquist
OMB: Larry Martin

The Senate Appropriations Committee met to discuss the agency bills and others that have been presented thus far and wanted to get input from the whole committee on what should be the focus of each sub-committee.

Chairman Holmberg said that we're not going thru salaries at this time.

SB 2001 – Governor (sub-committee: Hogue, Lee, Mathern)

- The 10% movement of moving money between line items. Have a standard response for them.
- Discuss the governor's salary - this reduces salary just short of \$200,000 & what happens to the rest of it. They took their 5% cut. (Language needs to be revisited)
- Council said by putting it in a line item, then it couldn't get spent in other areas.
- Transfer language - limited it to 10% before going to emergency commission

SB 2002 – Secretary of State (sub-committee: Hogue, Oehlke, Grabinger)

- Voting equipment – replacing voting machines (matching requirement by state)
- Emergency clause should be there.
- 10% line item transfers

SB 2003 – Attorney General (sub-committee: Sorvaag, Bekkedahl, Mathern)

- Litigation authority
- Amount of money for Litigation
- Joining in with other states suing the federal government
- New line in OMB to tap into litigation pool
- Human trafficking grants added to AG bill

SB 2004 – State Auditor (sub-committee: Oehlke, Dever, Mathern)

- Looking at number of FTE requests
- FTEs between University system and Auditor's office
- ITD FTEs.

SB 2005 – State Treasurer (sub-committee: Bekkedahl, Dever, Robinson)

- Investments of the Veterans Post War Trust Fund (low interest)
- Treasurer's salary

SB 2006 – Tax Commissioner (sub-committee: Wanzek, Bekkedahl, Mathern)

- Discovery of compliance of businesses with no physical sales tax.
- Concern about staffing – many retirees and loss of senior staff.
- Authority for line item transfers between the Homestead Tax Credit and Disabled Veteran's Credit programs.
- Litigation funds – or funds in litigation pool.

SB 2007 – Labor & Human Rights (sub-committee: Poolman, Sorvaag, Robinson)

- Salary of Commissioner as she will be in charge of Dept of Labor and Human Rights as well as the Dept. of Commerce.

SB 2008 – Public Service Commissioner (sub-committee: Lee, Wanzek, Grabinger)

- Wanting additional staff for indemnity issues
- Additional staff
- \$100,000 increase in budget

JOB # 31232 -

SB 2009 – Agriculture Commissioner (sub-committee: Wanzek, Erbele, Grabinger)

- Want to move APUC and Trade Office to his office.
- 2 less FTEs
- Ag bio-science program – an appropriation bill. Should it be added to the budget or let it a stand-alone bill.

SB 2010 – Insurance Commissioner (sub-committee: Oehlke, Erbele, Grabinger)

- Moving the Fire & Tornado fund over to the ND Insurance Reserve Fund
- Boiler inspection program
- Fire Departments & Sheriff's tax on insurance

SB 2011 – Securities Commission (sub-committee: Krebsbach)

- Money for a FINTECH position
- Section 3 appropriation of any income from federal funds (14:17)

Larry Martin: Like the transfer language, we added a lot of the language to spend additional federal or other funds to the cabinet agencies. Again, some of them receive money from outside sources, so we wanted them to have the ability to pay out. Job Service has similar language currently because they do get additional federal money so they have to be able to spend it out. We added that language to all the cabinet bills.

SB 2012 – Human Services (sub-committee: Dever, Erbele, Mathern)

- Provider rates. Governor 1-1. They want 3-3-3.
- Medicaid – reauthorization of the expansion. Do we reimburse?
- Behavioral Health
- State Hospital – support the move from New England for the women? Justification for the state hospital – a study?
- Policy and how its structured – for whole department. \$182M
- Nursing Homes
- Study the 36 Critical Access Hospitals - Commercial rates vs. traditional rates
- Study resolution of medical care in the future for the state
- 1915(i) needs support.
- Commercial vs. traditional rates

SB 2013 – Public Instruction; Library, Blind & Deaf (sub-committee: Holmberg, Poolman, Robinson)

- Will have some meetings but need to wait for Education Committee to complete policy. Governor's school information is confusing.
- 1 FTE reinstated.
- Adult education.
- FTEs at school at Devils' Lake
- Governor moved pre-school money from Commerce to DPI (where is the money?)
- Transportation grants

SB 2014 – Protection & Advocacy (sub-committee: Sorvaag, Krebsbach, Grabinger)

- Adding of one employee
- Additional operating expenses

- Transferring guardianship programs to P & A.

SB 2015 – Office of Management & Budget (sub-committee: Holmberg, Bekkedahl, Robinson)

- Transferring money – \$1B of oil revenue to general funds.
If we put \$1B in and oil prices go down and we have less money in the general fund, we might have a risk with allotments.
Do we want to expose ourselves more in the general fund by putting \$1B in the general fund from direct oil revenue?
- Fees or dues for several organizations. Last session we reduced dues by 10%.
- WICHE (Western Interstate Commission for Higher Ed) dues were in OMB and Commission was placed under Higher Ed. Did the \$15,000 get transferred?

SB 2016 – Office of Adjutant General (sub-committee: Hogue, Holmberg, Grabinger)

- Land Acquisition - Proposed 6,000 acres of land in south Camp Grafton. Want to ask the adjutant, you have \$15M set aside to acquire 6000 continuous acres and will not exercise the power of eminent domain. How much will they pay an acre?
How did they come up with \$15M?
- \$15M set aside to gain land - long term leases. Be wary of setting precedent for cost/acre.
- Locals are not on board?

SB 2017 – Game & Fish (sub-committee: Oehlke, Wanzek, Grabinger)

- Section 5 on green sheet – additional amounts appropriated to Game & Fish Dept. There is appropriated additional income from the feds from other funds to that agency. Would the federal funds go to their agency first?
- If they're receiving monies from federal, they can spend them out.
- Section 6 - Require them to hang onto \$15M unless we have a budget section meeting and have an exception for some emergency. They have to invest it and its not making money where its being invested. They'd like it to be invested by the state investment board.
- Sportsman's clubs – raise the fishing licenses; boat tax/gas tax.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2009
2/4/2019
Job # 32115

Subcommittee
 Conference Committee

Committee Clerk Signature: Rose Laning / Florence Mayer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner; and to provide for transfers.

Minutes:

Testimony Attached # 1.

Legislative Council: Alex Cronquist
OMB: Larry Martin

Chairman Wanzek called the subcommittee to order on SB 2009. Senator Erbele and Senator Grabinger were also present.

Senator Wanzek: Asked Doug to summarize the Ag Dept budget.

Doug Goehring, Commissioner, North Dakota Department of Agriculture:

We are working from the base budget from 2017-19. We asked for some minor changes.

Wildlife services and funding for operations \$49,400.

Restoring grape & wine grants \$3,900.

Apiary grants \$2,100.

IT Master and customer database \$110,000.

Capital asset for plotter \$2,000

Total request was \$125,400, assuming we're maintaining our base from 2017-19.

Senator Wanzek: \$110,000, was that removed?

Larry Martin: The IT project was funded in the governor's request.

Senator Wanzek: But the \$15,000...?

Doug Goehring: We asked for those, but they were not granted. Optional requests were not granted, but \$110,000 was.

Senator Wanzek: Was that in our handout initially? (That was confirmed.)

Larry Martin: We also included \$2,000 for the plotter. That was included in the governor's request.

Senator Grabinger: The only things in the optional requests are Wildlife services, restoring grape & wine grants and Apiary grants? (Correct.)
The amounts in past years were quite a bit different in past years, can you do anything with that little money?

Doug Goehring: We could've asked for more, but I was just asking for previous cuts from 2017-19. The grape & Wine and apiary were cut two years ago. There were cuts to wildlife services, and I am requesting to add a little bit more to that. About \$34,000 more.

Senator Erbele: There is money in these line items, there is just the ask to restore these amount of dollars back into your already budgeted dollars? This is not the total amount of money in that program?

Doug Goehring: Yes.

Senator Erbele: What is currently in the budget for grape and apiary?

Doug Goehring: \$76,000 currently in the grape and wine research. Under Apiary grants there is \$72,900. Wild life services were cut \$9,000 in 17-19 budget. Part of my request was to get \$9,000 plus the \$34,000 to help with costs incurred over the years.

Senator Wanzek: The governor recommended \$1,417,400 and base level is \$1,408,000. You had the base level cut in 2017-19? (Correct.)
The addition \$49,400 in the optional request, is most due to increased costs of aerial services?

Doug Goehring: Since 2009, we haven't had an increase to wildlife services, for operations or our portion for doing that service. Talked to John, there has been more activity with respect to black birds and surveillance on predators like coyotes. Plane costs 10 years ago were \$120/hr. Now those cost \$250/hr. We want to request a little bit of fund to help offset that. It might be pathetic asking for this little bit of money, but we're asking.

Senator Wanzek: There's no new program, just that cost of inflation? (Correct.)
As far as wildlife services, we've gotten help on goose depredation. We've gotten flares, and hawk replicas.

Doug Goehring: There are various areas they work in, black birds, coyotes, beaver, goose, duck depredation.

Senator Wanzek: Those services come out of these dollars? (Correct.) We figured out how to keep geese out, electric fence.

Doug Goehring: We tried that at our place and it only worked for a little time.

Senator Erbele: On the grants for grape research, are those being used? That goes through NDSU then?

Doug Goehring: They are competitive grants, but because they are receiving the grants they are doing the work. Every year they have to come back and ask for money.

Senator Erbele: The program has full utilization of the dollars? (Correct.)

Senator Grabinger: They are reporting to you, and it's effective?

Doug Goehring: We're going to have a new release in late 2020. With a new grape cultivar for wine production in ND. It's the first one ever.

Senator Wanzek: There are issues with labeling things as "wine made in ND", with the percentage of ND juice that is in that wine?

Doug Goehring: Federal laws requires 75% to be called a ND wine. State law says you have to graduate up through the system increasing the percentage of ND product in that wine to be eligible for the permit free days and Pride of Dakota Events.

Senator Wanzek: It is important to provide research and cultivars in ND?

Doug Goehring: I believe so. We have a great story to tell. I got to taste the new cultivar, and it is very good.

Senator Wanzek: The two largest issues are we what going to do with APUC and the Trade Office. We weren't privy to the hearing; I don't know where those bills are at. My question is, if that happens, there are FTEs established that would indicate how many employees we'd have to move from one agency to the other.

(16:24) Doug Goehring: The Trade Office is all pass-through money. It's a public private partnership, but neither commerce or the executive budget can decide what those dollars will be. Within an agency, the ability to protect your programs, unfortunately they might do that at the expense of others. We see that because APUC has never been a commerce program, and the trade office has no tie to commerce, those were cut in the last session. I just want to give them the ability to have a hearing before the legislature. We want to maintain where they've been 2 years ago. With APUC, those are agriculture funds, from the gas tax, elevator profits. Then they swept the account again last session and we have to rely on the State Mill and Elevator profits. I talked to BND about funding them. Then I saw how drastically they were cut. It would have to be the author granted by the legislature to put four million dollars into APUC. Then legislature wouldn't have to come up with the general fund money. It's just authority.

Senator Wanzek: The trade office is all pass-through. Where does that come from? (The General fund)
And that's the cost of operating the trade office?

Doug Goehring: With funds they have from members. This is only a portion of the trade office budget.

Senator Grabinger: This is new; it has come up quick. Usually we like to do an interim study. Is it a good idea or not? Do we just do it?

Doug Goehring: I've watched the games being played. I'd like to go forward and get it done. I get frustrated watching the politics involved. We're struggling to help our manufacturers, exporters, even USDA has put another \$2M in trade this year. ND is in a unique situation, we're in the Northern end of the country and we've been hurt drastically by what is taking place.

Senator Grabinger: I whole heartedly agree. You're on the industrial commission, have you had discussions with the governor on why he hasn't stepped up on these programs? Or are you privy to tell me those discussions?

Doug Goehring: No, I didn't have a discussion. After the fact I did tell him my concerns. I don't answer to the governor, just the people of North Dakota. Whether it's the Ag Department or the Commerce Department, we aren't the third leg of the trade office. This is a matter of allowing a discussion to come before the legislature without it being insulated and hampered. At the last minute, Commerce was given more money and the Trade Office was cut. Now we're cutting them even more.

Senator Grabinger: I seen the effect both programs have had on our state.

Senator Wanzek: We're going to have to wait and see how the bills are heard. Have both been heard already?

Doug Goehring: Yes, they have. Last week, both bills were heard. With the trade office we handle a lot of pass-through money. In fact, 20% of our budget is pass-through money. We track, implement and overseeing how that is spent. This would be no different.

Senator Wanzek: Alex Cronquist can you explain the base level funding changes on the sheet?

Alex Cronquist: The only changes we've made is for the 2 and 3 salary increase and the health insurance increase.

Senator Wanzek: Watch for further notices of when we will meet. For now we will adjourn the subcommittee on SB 2009.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

SB 2009
2/13/2019
Job # 32686

- Subcommittee
 Conference Committee

Committee Clerk: Rose Laning/ Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner; and to provide for transfers.

Attachment #1

Minutes: We will bring the sub-committee on the Department of Agriculture budget or SB 2009. Let the record show that the Senate members of the sub-committee are present. Senator Grabinger, Senator Erberle, and Senator Wanzek.

Levi Kinnischtzke: Legislative Council
Larry Martin: OMB

Levi Kinnischtzke handed out the worksheet – attached # 1.

Senator Wanzek: With that I know it's a little while since we met. We discussed some of the optional requests last time. I don't know where the rest committee is back, but I know some of those optional requests are included in the Governor's budget specifically the one-time funding for the Customer data base, \$110,000; and the Capital Assets for the plotter up \$2000 are included. The other requests were not included and their amounts that are not real significant. I guess I don't know about the rest of the committee, but I am ready to consider putting those in the budget. It's the wildlife services, would that be additional \$49,400 or is that part of the \$9400 in the Executive budget.

Doug Goehring: Maybe to clarify a little bit where we are coming from. I know you refer to the Executive recommendation. When we came into this session given what we know and maybe that is where you can clarify things. We were led to believe that we're starting with our base budget of \$17 that's why you received the optional requests the way you did. Without trying to confuse things and bring in what the Governor did or didn't do, that's why we brought it forward this way. So concerning the \$9400 I am going to have to defer is that \$9400 was included in the recommendation? Someone in the audience replied yes, it was part of our optional requests.

Senator Wanzek: So the additional request is \$49 or is the \$49 would be minus the \$9400?
Doug Goehring: Correct. \$40 would be.

Senator Wanzek: It would be \$40,000. Other committee members have any.

Senator Grabinger: So we are looking at is this optional request sheet that you provided us and you're looking at the \$49,400, do you want that included rather than what we have here \$9400?

Doug Goehring: Correct.

Senator Grabinger: I don't have a problem with that okay.

Senator Wanzek: If I remember right Wildlife Services funding hasn't really increased all that much over the last couple of bienniums and you know additional costs, vehicles, equipment, all that stuff costs more, so it seems reasonable to me.

Doug Goehring: We haven't had a change since 2009.

Senator Wanzek: After seeing so many budgets, it takes a little while to get the bearings greased and working. Now the Governor's budget proposed to remove two FTE's? If I remember right other than these optional requests you felt that the budget was doable, it was workable, the Executive recommendation.

Doug Goehring: I did not think that they Executive recommendations were acceptable at all. You brought about a great deal of relief when you said we're starting with the base budget of 1719, which then gave us the ability to bring forward these requests.

Senator Erberle: I had the answer but just to be on record, in the Executive recommendation for example the Board of Animal Health there is a reduction in the Executive recommendation. But if we leave it at the base line we don't take that reduction and so it remains where it is at. That was one area of concern that was raised to me and wanting to make sure that is not reduced. So that would be an example of staying with the base line.

Senator Wanzek: One issue that I want to bring up to the other members and I am sorry Senator Grabinger I didn't have time to visit with you about it. But it has been brought to my attention you know given the scope of the Ag commissioner's job, and the fact that they have added duties with the Industrial Commission, giving some consideration when you look at the salaries in relationship to the other members of the Industrial Commission, I don't think anybody is going to promote that level being commensurate with the Attorney General nor the Governor. But given the added duties I am willing to consider an equity step in the Ag Commissioner's salary. I was thinking of recommending he is at \$108,656 and I was thinking of \$118,000. Any thoughts on that?

Senator Erberle: I think that is definitely a number we should consider. We're looking at the proposal and raised the treasurer's salary, and duties, and staff, it's within the range of other state employees.

Senator Grabinger: What was your recommendation \$118,000?

Senator Wanzek: \$108,656

Senator Grabinger: That's what it is now. What is your recommendation?

Senator Wanzek: \$118,000.

Senator Grabinger: Why did you come up with that number?

Senator Wanzek: I was thinking wasn't the Treasurer roughly close to \$10,000? I could have said, \$118,656. I was thinking \$10,000.

Senator Grabinger: You could go to the \$119,383 for 2019 which is commensurate with what the Tax Commissioner is going to get. Well if you look at your figures here, the effective the first of July, 2019 tax commissioner is \$119, 383. You can raise it to that same and be commensurate with that.

Senator Erbele: We have to look not at where he is now, but if we've gone with the 2 and 3, what do we want the 2 and 3 to look like with his new salary?

Senator Wanzek: I was looking at the others and somewhere as that area. If the committee is willing to consider that, if we're going to put him in the same category as the Tax Commissioner. It's not just about who is in their now. I mean it's about whoever the salary of that position and the fact that they do have added responsibilities and duties giving now they are members of the Industrial Commission, or the Agriculture Commissioner is a member of the Industrial Commission. Let's keep that in mind. That could be part of our final.

Senator Grabinger: I agree with that. **Senator Wanzek:** All the senators agreed to that.

Levi Kinnischtzke: If the thought is to match what the tax commissioner proposed salary increase would be, the \$119,383 is part of the budget recommendation. If the proposal is to match the tax commissioner, so would the \$119,383 be just for fiscal year 2020, and then matching the proposed salary increase for fiscal year 2021 for the tax commissioner? Because under the Executive budget that would have been \$121, 770. So just a question of if that salary is for the whole biennium or if we will be changing that for the second fiscal year?

Senator Wanzek: Should be to the governor's recommendation rather than our 2-3 recommendation. We would put the Department of Agriculture commissioner's salary in the same category as the tax commissioner in relationship to our 2-3 numbers right now.

Senator Erbele: Moved to raise the salary of the ag commissioner – equal to the tax commissioner given our 2-3 increases that we are using in the Senate.

Senator Grabinger: Second.

Senator Wanzek: Yes

Senator Erbele: Yes

Senator Grabinger: Yes

Senator Wanzek: Other members are you comfortable sticking with the base budget where it is at? Of course, other than the salary increase we just voted for. The other thing I wanted to ask about is, I know there has been a request to for the trade-off to some A-puck and I know we've unanimously have passed already the Bio-science initiative and I am not sure if we should address that for as far. I can't recall if the last meeting if we talked about what kind

of additional resources you might need. Of course there is funding in that bill as it was passed. So, I guess the thing that we might want to address is do we implement that in here or are there any additional resources or is that something that the department can facilitate without another FTE or without additional resources.

Doug Goehring: I would like to discuss more with staff as to what we may need. But at this time I'll tell you I don't believe we do, but we can get back to with that. concerning the other two issues you brought up, about APUC and the Trade Office. The only thing that would probably be addressed with the APUC situation if it passes the Senate and passes the House would be to transfer that position from Commerce with APUC including the budget request which I also understand. There is a bill in the House on the \$4M that would be transferred from BND capital to go with APUC. If its' identifying Commerce and everything passes, then that would just have to be changed. Concerning the trade-off is no matter where it goes, it's a line item, it is virtually passed through. So there would be nothing to address there. It just would be additional duties that we would have in overseeing the contract.

Senator Wanzek: My thought would be to address that which passes the Senate. I think we're close to getting to passing this budget. Those particular bills with the APUC and the trade office have come out of committee. One is favorable vote, and one is unfavorable, vote. It would be nice I am not sure it's going to be on the floor tomorrow, or if we are going to see a vote on that or not. We are going to have to address it if not this week, first part of next week. It kind of sounds like maybe there is some support for moving APUC. Between now coming out of committee is favorable and one is unfavorable. We're going to have to address it. Between now and the next meeting, I will probably go to Council and try to figure or visit with the commission and try to figure out how we would adjust this budget to reflect that. Does that sound fair to you too? I mean other than those two remaining issues, I can't think of any other issues that are pressing right now. Other than the bio-science one but the money has been appropriated and its appropriated for the program and it is in a separate bill. Maybe in the end, when we have conference committee if it should survive the House, we can address that. I don't think we really need to do maybe any more than that right at this point in time.

Doug Goehring: We can visit and determine if there is anything we think that may need to be covered, but I truthfully don't see anything right now. We'll discuss it and we can get back to you during committee.

Senator Wanzek: Does that sound okay for you two? We will adjourn this meeting and until further notice.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2009
2/15/2019
Job # 32842

Subcommittee
 Conference Committee

Committee Clerk: Rose Laning/Amy Crane
--

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner; and to provide for transfers.

Minutes:

Testimony attached # 1-2

Legislative Council: Levi Kinnischtzke
OMB: Larry Martin

Senator Wanzek: called the sub-committee to order on SB 2009. **Senator Erbele** and **Senator Grabinger** were also present.

Senator Wanzek: There are a couple policy bills that transfer APUC and Trade Office to the Department of Agriculture. We're going a little be on a leap of faith. I had Levi prepare some amendments in relationship to what we talked about last subcommittee meeting. And one of the main differences from what we talked about last meeting is I'm making an assumption that APUC is going to pass, because it came out of committee with a favorable vote, whereas the Trade Office came out with unfavorable vote. The way I've been approaching other budgets and this budget is if it's something the senate has done, I've been willing to put it in the budget. We did that with the PSC and we'll have to resolve that issue because you know with the bonding and licensing of grain buyers in public warehouses. In the end we'll figure that out, but for now when this leaves the senate I want to address those changes that I believe the senate is going to make. Levi if you wouldn't mind going through the spreadsheet that would address the amendments.

Levi Kinnischtzke handed out the Base Level funding changes – attached # 1.

(13:44)Senator Wanzek: Wouldn't some of the salary increases, health insurances also be attributed to those two FTEs? That would be reflected up above in those numbers?

Levi Kinnischtzke: That is correct, I have included the 2%, 3% increases for those two FTE in the salary and health insurance increases. So the total funding for APUC and the Ag commissioner's budget per this amendment would be \$23,876 higher than the \$3.15M. so the total for that line item as you'll see in section 1 of the bill would be \$3,176,791. That

includes the transfer from Department of Commerce of the \$3.15M and then adding in \$23,000 change of the compensation package related to those two FTE.

Senator Wanzek: I've been on a number of subcommittees working on bills and in almost all cases we've followed the recommendation of the governor. This is probably one time where I feel we're not necessary following him, I'm working more off the base budget. I'm somewhat concerned about the executive budget in the sense that I think if we were to adopt it in its entirety, there would be certain programs, for instance popular programs, that would need to be cut. I'm not really in favor of that. The water bank program for instance, a number of farmers I know, it's a program where you have some wet lands and you're willing to square them off and put some upland grass or habitat around that wet land, you can sign up for the water bank program and it helps incentivize farmers and also provides habitat for wildlife, a program that I think has merit. The Ag mediation program, years ago when Mr. Johnson was the Ag commissioner I worked in the ag mediation program so I'm very familiar with that and I think it would, at this current time with the economics tight, it would be difficult to see that go. So we'll try and cut this short, I just feel that there are so many important programs, plus a lot of what the department of Ag does is regulate, fertilizer, pesticides, bees, dairy, livestock auction barns, things that are being asked of them that are in our statute or in federal law that they are having to regulate. I'm just kind of laying the ground work here because it does look like maybe we're not following the executive budget as much as I have in other budgets.

Senator Grabinger: I'd like a little clarification; we weren't privy to the discussions with the executive budget. Was it the thought process with the water bank program that the Heritage fund was going to be enough to cover? Is that what we're getting? Or why was the decision made to eliminate this?

Doug Goehring, Commissioner, Dept. of Agriculture: We haven't necessarily been able to follow all the actions that were taken in the executive recommendation. It's been a little challenging to understand, when agriculture is going through some very tough times and we have farmers that are committing suicide and farmers that are going out of business. Why we would get rid of the mediation program or the wetland bank program. The reality is that I'm not sure without somebody carrying out the directive, setting the water bank program. I don't know how the outdoor Heritage fund could do it. Because it's a matter of having those contracts in place, monitoring those contracts and making sure that the work is being carried out and done. So I can't even answer.

Senator Grabinger: So you weren't given any indication of why, or the reasoning behind those cuts?

Doug: The only thing I can tell was that we were required to submit a budget with 10% cuts on special funds and 10% on general funds. And I did meet with the governor to express my concerns with doing that because we've always had a needs based budget to you as a legislature, and I guess we didn't pad it so when we had to start losing people and losing money, we had no place else to shore up the rest of our programs. And what we're required statutorily to do, I can't answer that question. now its overall cuts.

Larry Martin, OMB: When we were discussing the budget at the executive level we didn't talk about those programs specifically. Both those reductions were the agencies requesting their IBARs budget, so we just moved those on through.

Senator Wanzek: I know in visiting with the department and the individuals that are here, and including Dr. Grondahl, she gave me a list of different establishments and individuals who are interested in becoming state inspected and I know I heard there are two in Belfield.

Senator Wanzek: asked **Dr. Andrea Grondahl** to come and share with the committee why \$81,000 is important to the meat.

(23:03)Dr. Andrea Grondahl, Director of Meat Inspection Program, Livestock Industry Division, Department of Agriculture: ND Official State Establishments - Attached # 2.

Senator Wanzek: I know there is one, they're talking about rabbits?

Dr. Grondahl: I haven't heard of anyone that wants to start a new rabbit slaughter program but we do on the last one on that list, is a gentleman by the name of Fred Krueger, he's from Armenia and he's currently custom slaughtering goats, and he wants to do that under inspection. There's several markets in Fargo and West Fargo that want to sell goat meat.

Senator Wanzek: Unless the committee has an issue, if we're comfortable with what was presented and we'll still get the option of seeing the amendments and I talked to Senator Holmberg and we're not going to act on it until Monday. But while the amendment is being drafted and in the pipeline. Is the committee ready to accept the recommendation?

Senator Erbele: moved to accept legislative council numbers and attach to amendment.

Senator Grabinger: Seconded the motion.

Senator Grabinger: What are we going to do with the water bank program?

Senator Wanzek: It's in there. We refunded.

A Roll Call Vote was taken: Yes: 3 No: 0 Absent: 0.

Hearing adjourned.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2009
2/18/2019
Job # 32882

- Subcommittee
 Conference Committee

Committee Clerk: Rose Laning

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner; and to provide for transfers.

Minutes:

Amendment 19.0222.01001

Legislative Council: Levi Kinnischtzke
OMB: Becky Deichert

Chairman Holmberg called the committee to order on SB 2009.

Senator Wanzek: Handed out and explained amendment # 19.0222.01001 – Attached # 1.

Senator Wanzek: Moved amendment 19.0222.01001.

Senator Grabinger: Seconded.

Voice vote carried.

Senator Hogue: In moving APUC from Commerce to Ag. In section 10, you continue on with having the governor appoint five and the ag commissioner appoint one. Did the committee consider that if you continue to take it out of the governor's cabinet, why would you give the governor's office the ability to control this organization by appointing a majority of members?

Senator Wanzek: We did not discuss this. That same language is in another bill and we were more interested in making sure the financial numbers and FTE numbers were accurate. Maybe that's a discussion that will come up on the floor.

Senator Hogue: It's fundamental fairness. If you switch the overall responsibility and require a different office to discharge the responsibilities for the policy of APUC fund, you ought to give the executive officer to select the people on that board because that's the right thing to do.

Senator Wanzek: I agree with you and if this stays in the budget, and the legislature supports it, we should look into it and make sure there is that fairness.

Senator Wanzek: The repeal is taking the language out of code that references APUC being in the Department of Commerce and the new language is putting it into the Agriculture chapter.

Senator Mathern: A simple fix would be to change the word 'governor' to 'ag commissioner' and 'ag commissioner' to 'governor' on page 2, section 10.

Senator Wanzek: I appreciate that and it would be something to consider, but we've got a lot of opportunities to get that corrected and I feel that at this point in time, it's more about the dollars than it is about the policy.

Senator Wanzek: Moved Do Pass on SB 2009 as Amended.

Senator Grabinger: Seconded the motion.

A Roll Call Vote Was Taken: 14 yeas, 0 nays, 0 absent.

Senator Wanzek will carry the bill.

Chairman Holmberg: Closed the hearing on SB 2009.

SK 2/18
 125

PROPOSED AMENDMENTS TO SENATE BILL NO. 2009

Page 1, line 2, remove "and"

Page 1, line 2, after "transfers" insert "; to create and enact a new chapter to title 4.1 of the North Dakota Century Code, relating to the agricultural products utilization commission; to amend and reenact section 4.1-01-02 of the North Dakota Century Code, relating to the salary of the agriculture commissioner; to provide for a report to the legislative assembly; to repeal chapter 54-60.3 of the North Dakota Century Code, relating to the agricultural products utilization commission; and to provide for a report to the legislative assembly"

Page 1, replace lines 10 through 24 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$12,372,949	\$676,514	\$13,049,463
Operating expenses	6,444,336	133,444	6,577,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
Board of animal health	865,718	0	865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop harmonization board	75,000	0	75,000
Pipeline restoration and reclamation oversight program	200,000	0	200,000
Agricultural products utilization commission	<u>0</u>	<u>3,176,791</u>	<u>3,176,791</u>
Total all funds	\$30,196,777	\$4,044,149	\$34,240,926
Less estimated income	<u>21,087,676</u>	<u>3,415,513</u>	<u>24,503,189</u>
Total general fund	\$9,109,101	628,636	\$9,737,737
Full-time equivalent positions	73.00	2.00	75.00"

Page 2, line 1, after "FUNDING" insert "- EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY"

Page 2, line 2, after "biennium" insert "and the one-time funding items included in the appropriation in section 1 of this Act"

Page 2, replace lines 6 through 8 with:

"Master customer database	<u>0</u>	<u>110,000</u>
Total all funds	\$1,120,000	\$110,000
Less estimated income	<u>1,120,000</u>	<u>0</u>
Total general fund	\$0	\$110,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The agriculture commissioner shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, line 14, replace "\$6,446,503" with "\$6,663,678"

Page 3, after line 2, insert:

289

"SECTION 9. AMENDMENT. Section 4.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

4.1-01-02. Salary of agriculture commissioner.

The annual salary of the agriculture commissioner is one hundred ~~five~~seventeen thousand ~~four hundred ninety one~~eighty-seven dollars through June 30, ~~2016~~2020, and one hundred ~~eight~~twenty thousand six hundred ~~fifty-six dollars after that date.~~

SECTION 10. A new chapter to title 4.1 of the North Dakota Century Code is created and enacted as follows:

Agricultural products utilization commission - Composition - Appointment.

1. The agricultural products utilization commission shall administer the agricultural products utilization fund.
2. The commission consists of nine members:
 - a. Five members, appointed by the governor for terms of two years each, arranged so that two terms expire in odd-numbered years and three terms expire in even-numbered years, three of the members appointed by the governor must be actively engaged in farming in this state and two members appointed by the governor must be actively engaged in business in this state;
 - b. One member, appointed by the agriculture commissioner for a term of two years which expires in odd-numbered years, the member must be actively engaged in farming in this state; and
 - c. The commissioner of commerce, the president of North Dakota state university, and the agriculture commissioner, or their designees.
3. Commission members may be reappointed.
4. Terms of appointed commissioners commence on the first day of July.
5. The commission shall elect one member to serve as the presiding officer.

Agricultural products utilization commission - Authority.

1. The North Dakota agricultural products utilization commission may apply for and accept any appropriation, grant, gift, or service made available from public or private sources.
2. The commission may administer grant programs including:
 - a. A basic and applied research grant program;
 - b. A utilization and marketing grant program;
 - c. A cooperative marketing grant program;
 - d. A nature-based tourism grant program;
 - e. A technical assistance grant program for value-added businesses;

305

- f. A farm diversification grant program;
 - g. An agricultural prototype development grant program;
 - h. An agricultural technologies grant program; and
 - i. A North American marketing grant program.
3. As a condition of any grant administered by the commission, the commission may require the recipient repay some or all of the grant if the recipient does not fulfill the conditions of the grant. Repayment may be monetary or any other type or method determined by the commission.

Agricultural products utilization commission - Meetings - Personnel - Report.

The agricultural products utilization commission shall meet as necessary and shall report to each session of the legislative assembly. The commission may secure office space, employ required personnel for the performance of commission duties, hire consultants, spend any funds appropriated to the commission, and contract with public entities or private parties for services.

Agricultural products utilization commission - Reimbursement - Compensation.

Members of the agricultural products utilization commission are entitled to be reimbursed for expenses incurred in the performance of official duties, in the same manner as other state officials are reimbursed, according to sections 44-08-04 and 54-06-09. If not otherwise employed by the state of North Dakota, members of the commission are entitled to receive per diem compensation of one hundred thirty-five dollars for each day of attending meetings and performing other duties relating to official business of the commission. The presiding officer, if not otherwise employed by the state of North Dakota, may receive an additional one hundred dollars for each day of a regular meeting attended as payment for reviewing and evaluating grant proposals.

Agricultural products utilization commission - Administrative expenses.

Administrative expenses of the agricultural products utilization commission, including expenses of members of the commission, employment of required personnel, hiring of consultants, and contracting with public or private entities for services may not exceed ten percent of the funds appropriated to the commission by the legislative assembly each biennium, excluding federal funds.

Agricultural products utilization fund - Purposes.

The agricultural products utilization fund in the state treasury must be used to fund programs for agricultural research, development, processing, technology, and marketing. The fund must be used to defray the expenses of the North Dakota agricultural products utilization commission. Interest earned on moneys in the fund must be credited to the fund.

SECTION 11. REPEAL. Chapter 54-60.3 of the North Dakota Century Code is repealed."

Renumber accordingly

4289

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2009 - Department of Agriculture - Senate Action

	Base Budget	Senate Changes	Senate Version
Salaries and wages	\$12,372,949	\$676,514	\$13,049,463
Operating expenses	6,444,336	133,444	6,577,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
State Board of Animal Health	865,718		865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop Harmonization Board	75,000		75,000
Pipeline restoration and reclamation	200,000		200,000
Ag. Products Utilization Commission		3,176,791	3,176,791
Total all funds	\$30,196,777	\$4,044,149	\$34,240,926
Less estimated income	21,087,676	3,415,513	24,503,189
General fund	\$9,109,101	\$628,636	\$9,737,737
FTE	73.00	2.00	75.00

Department 602 - Department of Agriculture - Detail of Senate Changes

	Adds Funding for Salary and Benefit Increases ¹	Adjusts Base Level Funding ²	Adds funding for an Agriculture Commissioner Salary Equity Increase ³	Adjusts Funding for the Meat Inspection Program ⁴	Transfers the Agricultural Products Utilization Commission ⁵	Adds One-Time Funding for a Master Customer Database ⁶
Salaries and wages	\$661,801		\$14,713			
Operating expenses		\$2,226		\$21,218		\$110,000
Capital assets		2,000				
Grants		6,000				
State Board of Animal Health						
Wildlife services		49,400				
Crop Harmonization Board						
Pipeline restoration and reclamation						
Ag. Products Utilization Commission	23,876				\$3,152,915	
Total all funds	\$685,677	\$59,626	\$14,713	\$21,218	\$3,152,915	\$110,000
Less estimated income	322,005	377	0	(59,784)	3,152,915	0
General fund	\$363,672	\$59,249	\$14,713	\$81,002	\$0	\$110,000
FTE	0.00	0.00	0.00	0.00	2.00	0.00

	Total Senate Changes
Salaries and wages	\$676,514
Operating expenses	133,444
Capital assets	2,000
Grants	6,000
State Board of Animal Health	
Wildlife services	49,400
Crop Harmonization Board	
Pipeline restoration and reclamation	
Ag. Products Utilization Commission	3,176,791
Total all funds	\$4,044,149
Less estimated income	3,415,513
General fund	\$628,636
FTE	2.00

505

¹ The following funding is added for 2019-21 biennium salary adjustments of 2 percent on July 1, 2019, and 3 percent on July 1, 2020, and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	<u>General Fund</u>	<u>Other Funds</u>	<u>Total</u>
Salary increase	\$192,238	\$163,246	\$355,484
Health insurance increase	171,434	158,759	330,193
Total	\$363,672	\$322,005	\$685,677

² Base level funding is adjusted as follows:

	<u>General Fund</u>	<u>Other Funds</u>	<u>Total</u>
Adds funding for Microsoft Office 365 license expenses	\$1,849	\$377	\$2,226
Adjusts funding for capital assets	2,000	0	2,000
Adds funding for wildlife services operating fees	49,400	0	49,400
Adds funding for grape and wine grants and apiary grants	6,000	0	6,000
Total	\$59,249	\$377	\$59,626

³ Funding of \$14,713 is added to increase the Agriculture Commissioner's salary to align the Agriculture Commissioner's salary with the Tax Commissioner's salary. Of the total, \$6,135 is added for each fiscal year of the biennium for salaries and \$2,443 is added for fringe benefits. The additional \$6,135 per year increases the Agriculture Commissioner's salary from the current level of \$108,656 to \$114,791, the same amount as the Tax Commissioner. After adjusting for the 2 percent and 3 percent salary increases proposed by the Senate, the Agriculture Commissioner's salary for fiscal years 2020 and 2021 will be \$117,087 and \$120,600, respectively.

⁴ Funding of \$21,218, of which \$11,033 is from the general fund and \$10,185 is from federal funds, is added for operating expenses for the meat inspection program. The funding for 1 FTE meat inspector program director position is adjusted to increase funding from the general fund by \$69,969 and to reduce other funds by \$69,969.

⁵ The Agricultural Products Utilization Commission (APUC) and related funding of \$3,152,915 from the APUC fund, including 2 FTE positions, is transferred from the Department of Commerce to the Agriculture Commissioner. Of this amount, \$434,342 is for salaries and wages, \$67,857 is for operating expenses, and \$2,650,716 is for grants.

⁶ One-time funding of \$110,000 is added from the general fund for a master customer database project.

This amendment also adds sections to:

- Provide statutory changes necessary to increase the Agriculture Commissioner's salary.
- Provide statutory changes necessary to transfer the APUC from the Department of Commerce to the Agriculture Commissioner.
- Repeal North Dakota Century Code Chapter 54-60.3, which establishes the APUC as an office of the Department of Commerce Division of Economic Development and Finance.

Date: 2-13-2019

Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2009

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: raise the Salary of the ag Commissioner equal to tax Commissioner

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Erbele Seconded By Grabinger

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger	X	
Senator Wanzek	X		Senator Robinson		
Senator Erbele	X				
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

Total (Yes) 3 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-15-2019

Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2009**

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation:
- Adopt Amendment
 - Do Pass Do Not Pass Without Committee Recommendation
 - As Amended Rerefer to Appropriations
 - Place on Consent Calendar

Other Actions: Reconsider to accept leg. Council numbers and attach to the amendment.

Motion Made By Entele Seconded By Grabinger

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger	X	
Senator Wanzek	X		Senator Robinson		
Senator Erbele	X				
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

Total (Yes) 3 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-18-19

Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2009

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: 19.0222.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Wanzek Seconded By Grabinger

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson		
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote Carried

Date: 2-18-19
 Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2009**

Senate Appropriations Committee
 Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Wanzek Seconded By Grabinger

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator Grabinger	✓	
Senator Wanzek	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Poolman	✓				
Senator Bekkedahl	✓				
Senator G. Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Wanzek

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2009: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2009 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "and"

Page 1, line 2, after "transfers" insert "; to create and enact a new chapter to title 4.1 of the North Dakota Century Code, relating to the agricultural products utilization commission; to amend and reenact section 4.1-01-02 of the North Dakota Century Code, relating to the salary of the agriculture commissioner; to provide for a report to the legislative assembly; to repeal chapter 54-60.3 of the North Dakota Century Code, relating to the agricultural products utilization commission; and to provide for a report to the legislative assembly"

Page 1, replace lines 10 through 24 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$12,372,949	\$676,514	\$13,049,463
Operating expenses	6,444,336	133,444	6,577,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
Board of animal health	865,718	0	865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop harmonization board	75,000	0	75,000
Pipeline restoration and reclamation oversight program	200,000	0	200,000
Agricultural products utilization commission	<u>0</u>	<u>3,176,791</u>	<u>3,176,791</u>
Total all funds	\$30,196,777	\$4,044,149	\$34,240,926
Less estimated income	<u>21,087,676</u>	<u>3,415,513</u>	<u>24,503,189</u>
Total general fund	\$9,109,101	628,636	\$9,737,737
Full-time equivalent positions	73.00	2.00	75.00"

Page 2, line 1, after "**FUNDING**" insert "**- EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY**"

Page 2, line 2, after "biennium" insert "and the one-time funding items included in the appropriation in section 1 of this Act"

Page 2, replace lines 6 through 8 with:

"Master customer database	<u>0</u>	<u>110,000</u>
Total all funds	\$1,120,000	\$110,000
Less estimated income	<u>1,120,000</u>	<u>0</u>
Total general fund	\$0	\$110,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The agriculture commissioner shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, line 14, replace "\$6,446,503" with "\$6,663,678"

Page 3, after line 2, insert:

"SECTION 9. AMENDMENT. Section 4.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

4.1-01-02. Salary of agriculture commissioner.

The annual salary of the agriculture commissioner is one hundred ~~fiveseventeen~~ thousand ~~four hundred ninety-one~~~~eighty-seven~~ dollars through June 30, 2016~~2020~~, and one hundred ~~eight~~~~twenty~~ thousand six hundred ~~fifty-six~~ dollars after that date.

SECTION 10. A new chapter to title 4.1 of the North Dakota Century Code is created and enacted as follows:

Agricultural products utilization commission - Composition - Appointment.

1. The agricultural products utilization commission shall administer the agricultural products utilization fund.
2. The commission consists of nine members:
 - a. Five members, appointed by the governor for terms of two years each, arranged so that two terms expire in odd-numbered years and three terms expire in even-numbered years, three of the members appointed by the governor must be actively engaged in farming in this state and two members appointed by the governor must be actively engaged in business in this state;
 - b. One member, appointed by the agriculture commissioner for a term of two years which expires in odd-numbered years, the member must be actively engaged in farming in this state; and
 - c. The commissioner of commerce, the president of North Dakota state university, and the agriculture commissioner, or their designees.
3. Commission members may be reappointed.
4. Terms of appointed commissioners commence on the first day of July.
5. The commission shall elect one member to serve as the presiding officer.

Agricultural products utilization commission - Authority.

1. The North Dakota agricultural products utilization commission may apply for and accept any appropriation, grant, gift, or service made available from public or private sources.
2. The commission may administer grant programs including:
 - a. A basic and applied research grant program;
 - b. A utilization and marketing grant program;
 - c. A cooperative marketing grant program;
 - d. A nature-based tourism grant program;
 - e. A technical assistance grant program for value-added businesses;
 - f. A farm diversification grant program;
 - g. An agricultural prototype development grant program;
 - h. An agricultural technologies grant program; and

- i. A North American marketing grant program.
- 3. As a condition of any grant administered by the commission, the commission may require the recipient repay some or all of the grant if the recipient does not fulfill the conditions of the grant. Repayment may be monetary or any other type or method determined by the commission.

Agricultural products utilization commission - Meetings - Personnel - Report.

The agricultural products utilization commission shall meet as necessary and shall report to each session of the legislative assembly. The commission may secure office space, employ required personnel for the performance of commission duties, hire consultants, spend any funds appropriated to the commission, and contract with public entities or private parties for services.

Agricultural products utilization commission - Reimbursement - Compensation.

Members of the agricultural products utilization commission are entitled to be reimbursed for expenses incurred in the performance of official duties, in the same manner as other state officials are reimbursed, according to sections 44-08-04 and 54-06-09. If not otherwise employed by the state of North Dakota, members of the commission are entitled to receive per diem compensation of one hundred thirty-five dollars for each day of attending meetings and performing other duties relating to official business of the commission. The presiding officer, if not otherwise employed by the state of North Dakota, may receive an additional one hundred dollars for each day of a regular meeting attended as payment for reviewing and evaluating grant proposals.

Agricultural products utilization commission - Administrative expenses.

Administrative expenses of the agricultural products utilization commission, including expenses of members of the commission, employment of required personnel, hiring of consultants, and contracting with public or private entities for services may not exceed ten percent of the funds appropriated to the commission by the legislative assembly each biennium, excluding federal funds.

Agricultural products utilization fund - Purposes.

The agricultural products utilization fund in the state treasury must be used to fund programs for agricultural research, development, processing, technology, and marketing. The fund must be used to defray the expenses of the North Dakota agricultural products utilization commission. Interest earned on moneys in the fund must be credited to the fund.

SECTION 11. REPEAL. Chapter 54-60.3 of the North Dakota Century Code is repealed."

Re-number accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2009 - Department of Agriculture - Senate Action

	Base Budget	Senate Changes	Senate Version
Salaries and wages	\$12,372,949	\$676,514	\$13,049,463
Operating expenses	6,444,336	133,444	6,577,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
State Board of Animal Health	865,718		865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop Harmonization Board	75,000		75,000

Pipeline restoration and reclamation Ag. Products Utilization Commission	200,000	3,176,791	200,000 3,176,791
Total all funds	\$30,196,777	\$4,044,149	\$34,240,926
Less estimated income	21,087,676	3,415,513	24,503,189
General fund	\$9,109,101	\$628,636	\$9,737,737
FTE	73.00	2.00	75.00

Department 602 - Department of Agriculture - Detail of Senate Changes

	Adds Funding for Salary and Benefit Increases ¹	Adjusts Base Level Funding ²	Adds funding for an Agriculture Commissioner Salary Equity Increase ³	Adjusts Funding for the Meat Inspection Program ⁴	Transfers the Agricultural Products Utilization Commission ⁵	Adds One-Time Funding for a Master Customer Database ⁶
Salaries and wages	\$661,801		\$14,713			
Operating expenses		\$2,226		\$21,218		\$110,000
Capital assets		2,000				
Grants		6,000				
State Board of Animal Health						
Wildlife services		49,400				
Crop Harmonization Board						
Pipeline restoration and reclamation Ag. Products Utilization Commission	23,876				\$3,152,915	
Total all funds	\$685,677	\$59,626	\$14,713	\$21,218	\$3,152,915	\$110,000
Less estimated income	322,005	377	0	(59,784)	3,152,915	0
General fund	\$363,672	\$59,249	\$14,713	\$81,002	\$0	\$110,000
FTE	0.00	0.00	0.00	0.00	2.00	0.00

	Total Senate Changes
Salaries and wages	\$676,514
Operating expenses	133,444
Capital assets	2,000
Grants	6,000
State Board of Animal Health	
Wildlife services	49,400
Crop Harmonization Board	
Pipeline restoration and reclamation Ag. Products Utilization Commission	3,176,791
Total all funds	\$4,044,149
Less estimated income	3,415,513
General fund	\$628,636
FTE	2.00

¹ The following funding is added for 2019-21 biennium salary adjustments of 2 percent on July 1, 2019, and 3 percent on July 1, 2020, and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	General Fund	Other Funds	Total
Salary increase	\$192,238	\$163,246	\$355,484
Health insurance increase	171,434	158,759	330,193
Total	\$363,672	\$322,005	\$685,677

² Base level funding is adjusted as follows:

	General Fund	Other Funds	Total
Adds funding for Microsoft Office 365 license expenses	\$1,849	\$377	\$2,226
Adjusts funding for capital assets	2,000	0	2,000
Adds funding for wildlife services operating fees	49,400	0	49,400
Adds funding for grape and wine grants and apiary grants	6,000	0	6,000
Total	\$59,249	\$377	\$59,626

³ Funding of \$14,713 is added to increase the Agriculture Commissioner's salary to align the Agriculture Commissioner's salary with the Tax Commissioner's salary. Of the total, \$6,135 is added for each fiscal year of the biennium for salaries and \$2,443 is added for fringe

benefits. The additional \$6,135 per year increases the Agriculture Commissioner's salary from the current level of \$108,656 to \$114,791, the same amount as the Tax Commissioner. After adjusting for the 2 percent and 3 percent salary increases proposed by the Senate, the Agriculture Commissioner's salary for fiscal years 2020 and 2021 will be \$117,087 and \$120,600, respectively.

⁴ Funding of \$21,218, of which \$11,033 is from the general fund and \$10,185 is from federal funds, is added for operating expenses for the meat inspection program. The funding for 1 FTE meat inspector program director position is adjusted to increase funding from the general fund by \$69,969 and to reduce other funds by \$69,969.

⁵ The Agricultural Products Utilization Commission (APUC) and related funding of \$3,152,915 from the APUC fund, including 2 FTE positions, is transferred from the Department of Commerce to the Agriculture Commissioner. Of this amount, \$434,342 is for salaries and wages, \$67,857 is for operating expenses, and \$2,650,716 is for grants.

⁶ One-time funding of \$110,000 is added from the general fund for a master customer database project.

This amendment also adds sections to:

- Provide statutory changes necessary to increase the Agriculture Commissioner's salary.
- Provide statutory changes necessary to transfer the APUC from the Department of Commerce to the Agriculture Commissioner.
- Repeal North Dakota Century Code Chapter 54-60.3, which establishes the APUC as an office of the Department of Commerce Division of Economic Development and Finance.

2019 HOUSE APPROPRIATIONS

SB 2009

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Education and Environment Division Roughrider Room, State Capitol

SB 2009
2/28/2019
33020

- Subcommittee
 Conference Committee

Committee Clerk: Parker Oswald

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner; and to provide for transfers.

Minutes:

Attachment 1-4

Chairman Representative David Monson: Opens meeting on SB 2009 and introduces this bill as the Department of Agriculture budget. The Commissioner will not be present today, but this is a high flyover and we will accommodate him.

(1:10) Ken Junkert: Introduces self to committee and hands out **attachment 1**. Begins to present testimony on **page 3 of attachment 1**.

(4:45) Chairman Representative David Monson: The Senate added what?

Mr. Junkert: The APUC (Agriculture Products Utilization Commission) line item on **page 5 of attachment 1**. Continues on **page 5 of attachment 1**.

(5:30) Representative Mike Nathe: How does the APUC line fit in Commerce?

Chairman Representative David Monson: APUC gets profits from the mill and elevator and we were told with the Commerce Budget about what they expected to get.

Mr. Junkert: It is a profit of the mill elevator and a gas tax.

(6:30) Representative Mike Nathe: Commerce had less than \$1M and this has \$3.1M.

Mr. Kinnischtzke: The APUC was kept in the Commerce budget and Senate decided to switch it over. That will be an item that has to be reconciled. APUC was \$650,000 in the Commerce Budget and the amount in 2019 includes a reduction for existing spending authority for APUC and that spending authority has been there, but there is no revenue behind that money. The Senate decided to go forward with the original amount and spending authority.

(9:00) Chairman Representative David Monson: They did not really find any money though?

Mr. Kinnischtzke: They left it how it was and did not add any money to it yet.

Representative Mike Nathe: We will have to figure out which bill this belongs in.

(10:10) Representative Tracy Boe: We are going to have to pick who has this in their house. The amount of money in there is not a big deal, but the gas tax is very small.

(11:15) Mr. Kinnischtzke: Of that \$3.15M, the estimated revenue collected from the gas tax would be \$1,000. It is a very small amount.

Representative Bob Martinson: What is the reason you want to take over APUC?

(12:40) Mr. Junkert: Returns to testimony on **page 7 of attachment 1**.

Chairman Representative David Monson: I have been fielding a lot of questions about the industrial hemp. You are confident you will have enough money and authority to get that running.

(15:35) Mr. Junkert: Continues presenting **attachment 1 on page 8**.

(18:45) Chairman Representative David Monson: How does the Herb fund fill?

Mr. Junkert: The herb fund has a few sources. The revenue expected for this biennium and pesticide registration fees are \$4.6M, \$78,000 from weed seed, fertilizer registration fees are \$1.5M in revenue, commercial feed registration and tonnage fees are \$727,500. Our estimated revenue is \$6,984,000 in the herb fund and the carryover is \$4.4M for a total of about \$11.4M. Our balance at the end of the biennium with expenditures is about \$4.2M remaining in the herb fund.

Mr. Kinnischtzke: The trust fund analysis that we do is worked on by a few of us.

(21:40) Mr. Junkert: Continues presenting on **page 11 of attachment 1**.

Chairman Representative David Monson: What are some of the other sources for special funds?

(22:30) Mr. Junkert: Agriculture Commissions Operating fund or fund 308. We have expenditures that flow into that. Industrial hemp fees flow into there.

(24:10) Chairman Representative David Monson: Do you get revenue from mediation disputes?

Mr. Junkert: We do. We have a lot of different things like Pride of Dakota (POD) and this used to be a line item. Offers to hand out an amendment for SB 2009 (**attachment 2**).

Vice Chairman Representative Jim Schmidt: Is Bank of North Dakota able to pay that amount?

Mr. Junkert: I drafted the amendment based on SB 2009 and the addition of APUC.

Chairman Representative David Monson: How will you spend this money?

(28:40) Mr. Junkert: They will use this for grants.

Representative Mike Nathe: I have a hard time seeing why Agriculture should be in charge of this.

(29:50) Representative Tracy Boe: While looking at the board members, would the APUC be traveling with them or would they need a new board?

Mr. Junkert: I believe they would just be reassigned. The Governor would appoint the 5 members to the same positions.

(31:20) Mr. Kinnischtzke: This bill takes code from the Department of Commerce to the Agriculture Department. We would be repealing that language from Commerce and add it over to the Agriculture Department.

Representative Mike Nathe: When the Senate had this, what was their reason for doing it?

Mr. Junkert: They were concerned about the attention and focus not being on this and that this will help move forward.

Chairman Representative David Monson: What about the trade office?

(34:25) Mr. Junkert: The bill to transfer that failed on the Senate side.

Chairman Representative David Monson: What about grain inspection?

Mr. Junkert: That is an interesting topic right now. The move would breathe some new life into the program.

Chairman Representative David Monson: The house bill passed and it will affect this first.

(37:20) Mr. Kinnischtzke: The bills are all still alive and there may be bills somewhat affecting this, but that will not be serious.

Chairman Representative David Monson: It looks like there was no significant audit findings.

(38:45) Vice Chairman Representative Jim Schmidt: The Governor took out 2 FTE (full time employee), but where did he take them away?

Mr. Junkert: We went from 73 FTE to 70 FTE and another 1 FTE was added back.

Vice Chairman Representative Jim Schmidt: It shows a net change of +4, but it would be 2 more from the 2017-2019 biennium.

(40:30) Chairman Representative David Monson: How many current FTE are there?

Mr. Junkert: I am not sure.

Vice Chairman Representative Jim Schmidt: How many programs and agencies do you have now? You have had up to 110 before.

Mr. Junkert: I will break that down a little. I believe it would be considered 100 or more programs because there are smaller programs that count.

(42:15) Chairman Representative David Monson: Anyone else that would like to speak?

(42:50) Scott Rising: Introduces self to committee, passes out **attachment 3** and begins to present testimony.

Chairman Representative David Monson: We will not be adding anything to any bill that was voted down. Any questions for Scott?

Mr. Kinnischtzke: Passes out **attachment 4** to the committee.

(45:10) Julie Ellingson: I wanted to voice our support for SB 2009.

Chairman Representative David Monson: Wildlife Services has always been a part of this budget and has always been important. I do not think anything is changing with that.

(46:20) Mr. Junkert: The Senate did add a bit of funding to it to accommodate an increase of operating costs and it was only around \$49,400 over the base.

Chairman Representative David Monson: It was basically added for things like aerial hunting?

Mr. Junkert: It was that and a few other programs that have increased in price. We can get you an overview of that.

(48:20) Chairman Representative David Monson: Game and Fish was apprehensive to give you guys money for this.

Mr. Junkert: It is \$500,000 of Game and Fish special funds.

Vice Chairman Representative Jim Schmidt: We reduced the number for the State Water Commission, correct?

(49:00) Mr. Junkert: The Water Commission funds were added at \$250,000 in 2011-2013 and that stayed level until the 2017-2019 biennium and was reduced to \$125,000. Now it is \$500,000 from Game and Fish, Water Commission of \$125,000, general funds of \$448,000 and \$384,400 for environmental protection for a total of about \$1.5M.

(51:05) Tom Wheeler: Introduces self to the committee. Oil has provided the state money, but agriculture will always be the biggest industry. I do not believe this is a time to make cuts do to the downturn in agriculture lately. Voices support in favor of SB 2009.

(52:00) Gary Knudson: Introduces self to committee and voices support for SB 2009. A lot has been thrown on the Agriculture Department to make sure things like fertilizer and product that farmers use is up to standard and we hope you add money to this budget.

Chairman Representative David Monson: Anyone opposed? Do you want to comment on the \$4M from Bank of North Dakota?

(53:50) Kelvin Hullet: We anticipated that the Department of Commerce would propose the same thing and we wanted to find out first. There is over \$200M of earnings from Bank of North Dakota and we have to manage how to use that. There is money going towards higher education consolidation.

Chairman Representative David Monson: How much would that be?

Kelvin Hullet: That would be around \$8M to \$10M. It would fall into what would be available.

Chairman Representative David Monson: Being \$17M over, does that include this?

Kelvin Hullet: There would be room to fund APUC if you so choose.

(56:00) Vice Chairman Representative Jim Schmidt: Has this money every been given before?

Kelvin Hullet: It has not and that would be a policy decision.

Chairman Representative David Monson: You anticipate that the \$4M would be taken out?

Kelvin Hullet: If they want to use \$4M of profits to fund APUC, it should fit in our model.

(57:10) Chairman Representative David Monson: Thank you.

Vice Chairman Representative Jim Schmidt: I know there was nothing in the budget to pay back the hay transport.

Mr. Junkert: The emergency hay transportation program, we went to the emergency group to take \$1.5M to assist this program. We got cash and expended it and there is nothing in this budget to address repayment.

(59:15) Vice Chairman Representative Jim Schmidt: We asked to have you guys outline the benefits for that.

Mr. Junkert: The Commissioner has a fact sheet put together for you guys on that and the data is ready.

Chairman Representative David Monson: Any other questions?

(1:00:15) James Leiman: Introduces self to committee and proposes a neutral stance. APUC has an agricultural baseline, but it is much broader than just that. We fund nature based tourism and manufacturing has 450,000 projects that have been requested. This is a very diverse spectrum. Senate's concern was that if we limited it to Agriculture, it would hurt the state's economy. We also do it with no dedicated FTE and have passed audits with flying colors. It has shrunk in recent years, but that is due to the funding cycle of the program. We knew there would be a different funding source. We wanted to continue the program in Commerce because we have done it efficiently and would like to keep it. Agriculture is a regulatory agency and we do not agree that it needs to be transferred.

Chairman Representative David Monson: The Governor could reappoint 5 new people to the board and that would stay the same anyways?

Mr. Leiman: We see 2 FTE being created for something we do very well.

Vice Chairman Representative Jim Schmidt: Would you need the \$4M too?

(1:04:50) Mr. Leiman: Yes, we would request that \$4M.

Chairman Representative David Monson: If the funding sense stays with the mill elevator, it would make sense to put it in the Agriculture budget. If you take money from Bank of North Dakota, then you can make an argument to keep it in Commerce.

(1:05:50) Representative Tracy Boe: APUC was created with the funding source of agricultural entities. I am happy to see that we are going to identify some source of funding that is more diversified.

Chairman Representative David Monson: It probably should have been diversified. Was APUC existing before Commerce was created?

Mr. Leiman: APUC was formed in 1979 and there was a dispute between the Agriculture Commissioner and it was moved to Commerce. We have been able to diversify with APUC. I would like to go to farms and explain the maximized benefit of new programs that we can offer them.

(1:08:40) Chairman Representative David Monson: Anymore questions?

(1:09:20) Chairman Representative David Monson: Closes meeting on SB 2009.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Education and Environment Division Roughrider Room, State Capitol

SB 2009
3/1/2019
33062

- Subcommittee
 Conference Committee

Committee Clerk: Parker Oswald

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner; and to provide for transfers.

Minutes:

Attachments 1-2

Chairman Representative David Monson: Opens meeting on SB 2009.

(00:20) Doug Goehring: Introduces self to committee as the Agriculture Commissioner.

Chairman Representative David Monson: We had a few questions for you.

(1:10) Mr. Goehring: I am not sure where you want to start, but I am happy to take any questions.

Chairman Representative David Monson: Vice Chairman Representative Jim Schmidt had a question about the hay transport, so we will save that for him. The Senate made a few changes including the trade office bill which died, so we will not be touching that. APUC (Agriculture Product Utilization Commission) raised a few questions. The Senate made the transfer from Commerce to Agriculture and added \$4M for that from Bank of North Dakota. One of the questions from Commerce was that Agriculture needs 2 FTE (full time employee) to run APUC and Commerce does not need any to run that program.

(3:40) Mr. Goehring: If the legislative record and intent over the decade has shown 2 FTE for APUC. How do you move 2 FTE out of a line item and allow an agency to use them and still pay for APUC? You do not have the right in the executive branch to move around FTE. Commerce had to clean house and cut a lot of FTE. I asked for the transfer of APUC, not the increase of 2 FTE. Commerce asked for a \$112M increase and cut APUC down to \$600,000 and the trade office to \$1.6M. That is why we requested the transfer of APUC and the Senate Appropriations created 2 bills involving this transfer. I did this because you see decimal dust in the budget for APUC.

(6:10) Chairman Representative David Monson: We had the Commerce budget and we were okay with the APUC cut because they historically get paid through the state mill elevator's profit. We can give them authority to spend whatever they want, but we originally only put the requested amount in. A source of funding was the gas tax, which is now all the way down to \$1,000, which is truly decimal dust. It was not necessarily the fault of Commerce for the decrease in that funding.

Mr. Goehring: You are exactly right about the gas tax refund. At times you have made general fund appropriations for APUC and the elevator to hold even. It is a revenue source to at least prop APUC up and maybe even get it to \$6M in total budget. The projects have been funded and we are just using this money to fund just a few projects when you intended to fund all of the projects you have. Bank of North Dakota has proved that APUC has been a valuable and positive program. There is not an opportunity for the director to ask for extra money here and there.

(11:30) Chairman Representative David Monson: One of the things that you serve on the APUC board now, so you do have some control of the projects whether it is in your budget or in Commerce. In that regard, does it really make a huge amount of difference which budget it is in?

Mr. Goehring: APUC existed in the Agriculture Department originally and was moved due to political reasons.

Chairman Representative David Monson: I was in the legislature when we started the Commerce Department in 2001. We moved it to Commerce to give them a role or purpose.

(13:35) Representative Mike Nathe: So APUC gets moved to your department; how do you see that running? Would it be any different?

Mr. Goehring: No, the program would still function and operate the same way it does now. It would still have the 9 serving members of the commission.

Representative Mike Nathe: If it will not function differently, then why move it?

Mr. Goehring: To protect it. The mismanagement of employees is a prime example. It is unlawful to move employees and continue to pay them from the line item.

(15:10) Representative Mike Nathe: The Agriculture Department cannot cover some of the broader areas of health and science that Commerce has a background in.

Mr. Goehring: All of the projects have an Agriculture component even if it involves vaccines and disease study. Agriculture supports about 25% of the workforce in this state and that covers everything from biotechnology to basically every industry. It is not a problem with the program functioning because it is up to the commission to decide.

Representative Mike Nathe: So nothing will change as far as the nuts and bolts?

Mr. Goehring: The only thing that will change is the focus and the program will be protected in the sense that factual information and numbers will come forward and Bank of North Dakota wants to bring some of their money forward to keep it alive.

(18:35) Representative Bob Martinson: I would like to compliment you on Pride of Dakota for operating so well. We will have to take the 2 FTE from Commerce, but why 2 people?

Mr. Goehring: Part of the work involved is meeting with people to see if the projects are manageable and gather information to present to the commission. There is also an audit process and you have to review all of the projects and audits from previous years. Not all payments are made in full when they are approved. There is another internal person who follows the numbers and they do the clerical work as well.

Chairman Representative David Monson: So you think it takes 2 FTE and that Commerce actually has 2 FTE?

(21:00) Mr. Kinnischtzke: The reason why 2 FTE were included because the program was asked to be transferred as it is appropriated now. At the beginning of the 2017 biennium, Commerce was using 2 FTE for that. Commerce has since undergone changes and staff restructuring and their salary use comes to less than half of an FTE. The Senate asked to transfer the program from the beginning of the last biennium and that included the 2 FTE. If there would be a transfer, there would have to be a discussion on how many FTE and at what funding level. Would it be a transfer of 2 FTE or would it be 2 new FTE and changing the amount in Commerce?

Chairman Representative David Monson: Statutorily, there has to be 2 FTE.

(23:30) Mr. Kinnischtzke: There is no authorization by line item, so they can move FTE between line items.

Mr. Goehring: If you are taking money out of APUC for 2 FTE, but are only using 0.5 FTE, there is a problem that is developed. It is a misrepresentation of staff and firing flexibility.

(24:55) Chairman Representative David Monson: If the money does not come in so they can add or subtract FTE, but I do not think that is the case. We thought there were 2 FTE working on APUC, but the reorganized and maybe they should not have done what they did and I do not know how much flexibility we gave them.

Mr. Goehring: We account for every position and FTE in our budget and are very transparent. We adhere to those funding sources.

Chairman Representative David Monson: It is our prerogative to say that we will give you APUC, but you have to find the employees. If this was simply a pass through where we give you Bank of North Dakota money and profits from the elevator for a pool of money. The commission decides what the assigned funding would do and it would mean a lot more work for those people already.

(27:50) Mr. Goehring: We have not had an increase in FTE in a decade. We have continued to take on more responsibilities and if you do not want to transfer FTE, it would be harder to run the program.

Representative Tracy Boe: Would the size of staff be dependent on the size of program? Would \$600,000 worth of program be lighter than \$4M?

Mr. Goehring: There is a direct correlation. APUC's funds were zeroed out last time and they had to scramble to fill the books and get the work done.

(30:00) Chairman Representative David Monson: Vice Chairman Representative Jim Schmidt is back now.

Vice Chairman Representative Jim Schmidt: I want to thank you for your comments on the fake beef bill. The commission approved \$1.5M for the emergency hay transport; how do we pay that back?

(30:45) Mr. Goehring: Department of Emergency Services took the loan and we were asked to administer the program. This was much like 2009 when the state appropriated \$1M to run that program then.

Vice Chairman Representative Jim Schmidt: Could you enlighten us on some of the benefits of that?

Mr. Goehring: **Attachment 1** is being passed out that has a brief summary of what the program does by number. Begins to outline **attachment 1**. Even though the payments came late, they were very responsive and said this helped them very much.

(34:40) Vice Chairman Representative Jim Schmidt: The pasture taps helped my region during the drought. The concern was the price per mile was going to raise. It did and it helped the trucking business more than the rancher and the prices have not dropped yet.

Mr. Goehring: We were collecting information from those that had hay to put up or purchase and we had 23 truckers in the system. The average price we paid was \$4.25 a mile and right now I am paying \$6 a mile, which is expensive. They were paid a percentage of the \$4.25 per mile, but some paid \$4.50 and some paid \$4.00. It was a huge concern of ours to keep people from taking advantage of that.

(37:30) Vice Chairman Representative Jim Schmidt: The rural water systems may not be able to accommodate the pasture taps. Now we have to pay back the \$1.5M, which we have not really discussed and I am not sure how the state can pay that back.

Mr. Goehring: They saw the economic opportunities that were grown from this and the livestock that was saved from it. There was no water source on these lands and the water had to be hauled in.

(39:30) Chairman Representative David Monson: Any other questions on that? We had a few questions on wildlife services as well. The funding of it is tricky because we fund it in this budget, so we have to take some money out of other budgets to fund this.

Mr. Goehring: Attachment 2 is being passed out. Wildlife services is a positive program that receives support from the outside groups that funding is taken from.

Chairman Representative David Monson: There are a lot of black birds out there right now and I do not know how much work that takes on your part.

(43:05) Mr. Goehring: Game and Fish is not allowed to use their funds for black bird control, which is where we come in. They have the ability to go in and work to harvest these animals and study them with our scientists and veterinarians to research the diseases and problems.

Chairman Representative David Monson: I know deer has been historically bad in damaging hay stacks, but our deer population has dwindled. Have you had a lot of complaints about deer in the hay stacks?

Mr. Goehring: We do not deal with deer often other than studying and harvesting them if they are a nuisance. The requests have declined and Game and Fish has been very responsive to any complaints.

(46:05) Chairman Representative David Monson: So you are more concerned with the diseases that deer can carry. Counties that have beaver dams that backup and cause damage, how do we get rid of the beaver dam?

Mr. Goehring: There are different ways to deal with a beaver; you can trap and move them or you can use explosives to remove the dams. If there are situations where you have prairie dogs or gophers that cause damage to a structure, wildlife services can intervene and relieve the situation.

(48:35) Chairman Representative David Monson: Muskrats used to be a huge issue.

Representative Tracy Boe: When we talk about wildlife services and beaver trapping, we have talked about trapping on Game and Fish property and we were assured that we would not be doing that. Are we?

Mr. Goehring: The owner the of the property would have to raise the concern and present a solution. Game and Fish would try to get them to resolve the problem themselves, but if we could not, I would expect to hear about it and I would go to the Department of Interior myself.

(50:55) Chairman Representative David Monson: I am looking at the footnotes on attachment 2. Are you saying that of the \$500,000, \$300,000 went back to them?

Mr. Goehring: Back in 2011-2013, to offset some of the money it was not a part of that.

Chairman Representative David Monson: The Senate added another \$49,400 to the total, but that is understood already. There is a bill involving grain inspection as well. The bill that does this transfer is sitting in the Senate currently, but do we wait for that bill to pass or do we act now? This bill may sit here for a while if we decide to wait on that.

(54:15) Mr. Goehring: How you guys choose to deal with it is up to you. I get the complexities of it and we will do whatever you guys come up with us. Our bails will probably sit for a while until that is decided.

Chairman Representative David Monson: It is sort of out of our hands right now and I wanted to give you a heads up on why it may take us a while to pass this bill out. I do not have anything else on my list. Any other questions? APUC is an issue, but that sits in the Senate and we do not really like moving FTE and money from other budgets.

(56:45) Mr. Goehring: There is a bill to decide where APUC will be held.

Chairman Representative David Monson: That will just delay us on this. We have a lot of things tied up in this bill currently.

Mr. Goehring: Thanks the committee for their time and I wanted to thank Representative Bob Martinson for his comments about Pride of Dakota and we have almost doubled the amount of members from 300 to over 550 from when I started.

Chairman Representative David Monson: You have some great people working for you and they have always been very helpful. I have not heard any complaints for over 2 years now.

Representative Bob Martinson: Can I get a front row parking spot?

Chairman Representative David Monson: I have a few batches of win being made and bottled and there is currently a Senate bill that would make the process of making wine in ND easier. Would that affect your budget in any way?

(1:01:40) Mr. Goehring: No, it would not. They can buy out of state fruits easier and that would require permits and other items. It would require me to do research and work and convey that to the tax commissioner. I play one side and the tax commissioner plays the other side and he would act on my recommendation.

(1:03:15) Chairman Representative David Monson: Closes meeting on SB 2009.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Education and Environment Division Roughrider Room, State Capitol

SB 2009
3/6/2019
33335

- Subcommittee
 Conference Committee

Committee Clerk: Parker Oswald

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner; and to provide for transfers.

Minutes:

Attachments 1-2

Chairman Representative David Monson: Opens meeting on SB 2009.

(00:40) Representative Bob Martinson: I have a question. I got a call from a friend in the restaurant business and they have said the major food service companies cannot deliver milk to their companies, but they can deliver everything else. It apparently has to deal with one small word change in the language and code.

(1:50) Doug Goehring: That falls under the milk stabilization board. We have had conversations with them about that. I am not sure what the word is, but I have been told that if the company wishes to deliver, they would have to make it available to everyone. How do you keep a product in good condition when you are hauling numerous other products like fruits and veggies?

Representative Bob Martinson: Are they dumb enough to not know that takes refrigerated trucks?

Mr. Goehring: There is nothing delivered that needs to be kept as cold as milk and the board does not want to allow that. I got into their structured issue and expressed that it should be changed and they said they would discuss that potentially.

Representative Bob Martinson: Could you find what would need to be changed?

(4:10) Mr. Goehring: We have no authority over that board, but I have encouraged them and I plan to work with them and I hope we can change it.

Representative Bob Martinson: There may be a little amendment in your appropriations bill to fix this.

Mr. Goehring: They are a check off group and we do not have authority over them. It would need to be something separate.

Chairman Representative David Monson: So we could not use this as a vehicle to change it? We could put this in as a study resolution.

(5:45) Representative Bob Martinson: We will take on all of the pressure and work of it.

Mr. Goehring: I do not think there is a technical one-word change to this.

Representative Bob Martinson: If we can change this, we would love to do that.

(6:35) Representative Tracy Boe: Are you telling Representative Bob Martinson this is hard?

Mr. Goehring: No it is not hard.

Representative Bob Martinson: What I am trying to get out of him is where to do it.

(7:30) Mr. Goehring: We will go find the code for this and bring some information to you that would help you address this.

Representative Bob Martinson: We are not going to do a study.

Chairman Representative David Monson: Let the record show Mr. Goehring was forced into this.

Vice Chairman Representative Jim Schmidt: We went through this in the interim of 2013. We had a number of colleagues who wanted to do exactly what you are talking about. We got absolutely nowhere, but that milk board is autonomous and eventually no representatives wanted to stand behind this resolution. They can go back to an advertised milk price that is below the standard and can require them to change the price of milk

(9:50) Representative Bob Martinson: I appreciate that.

Representative Mike Nathe: We have to remember who was here at the time and on the board.

Chairman Representative David Monson: We will let you and Alex Cronquist figure that out.

Representative Bob Martinson: How does it benefit a small town grocery store?

Chairman Representative David Monson: I am saying that what your idea is would help the small towns.

(12:20) Chairman Representative David Monson: We should go over **attachment 1** that pertains to the budget.

(12:40) Mr. Cronquist: Begins to present **attachment 1 on page 1**.

Chairman Representative David Monson: Did the Senate make any changes to base payroll?

Mr. Cronquist: The recommendation was to remove funding and they did not go forward with that. The next line on **attachment 1** is the percentage increase and that is why it is less than the Governor's recommendation.

(14:20) Chairman Representative David Monson: You can make the next sheet reflect the 2% and 2%.

Mr. Cronquist: Was leadership still negotiating?

Chairman Representative David Monson: We were just going to go forward with it and negotiating in conference committees.

(15:20) Mr. Cronquist: Returns to **attachment 1 page 1** starting with retirement package items.

Chairman Representative David Monson: What were the 2 FTE (full time employee) that the Governor wanted to remove?

Mr. Cronquist: One was a division director and the other was a data coordinating position.

Chairman Representative David Monson: Is the data coordinating position affected by the IT (Information Technology) unification?

(17:05) Mr. Goehring: That would have nothing to do with IT unification and is internal and serves in other areas like food safety modernization.

Chairman Representative David Monson: The Senate did not take these positions out. Do you have any vacant FTE?

Mr. Goehring: Yes, we have 3 vacant FTE because we were told we would be losing FTE when we were instructed to create our budget. We are looking at filling those positions after this. They are a meat inspector, which we did not ask for the federal funding and we would like that. The Senate put that under special funds too. The division director would be filled, which is related to Pride of Dakota.

Chairman Representative David Monson: Who does that now? Was that general funded?

Mr. Goehring: It was split between a few people in the department. They were all general funds. The data processor is all fiscal and works in multiple areas.

(19:50) Chairman Representative David Monson: And the Senate left that in there?

Mr. Goehring: That is correct.

(20:15) Mr. Cronquist: Returns to **page 1 of attachment 1** on the Office 365 item.

Chairman Representative David Monson: What is the \$144,000 fund in your budget? Was that something you were forced to show the Governor?

Mr. Goehring: That was part of the 10% cut of general and special funds. We had to lay out several different programs because of this. There was a complete elimination of the mediate program.

(22:10) Chairman Representative David Monson: This was something you offered up?

Mr. Goehring: We had nothing left and were forced to. Water bank is optional and serves a purpose, but we had to put something up.

Chairman Representative David Monson: The reduced operating expenses went along with the programs you offered up. Is this a water program Vice Chairman Representative Jim Schmidt is an authority on?

Mr. Goehring: This was to create an opportunity to add a wetland into the program, but you also needed upland in this.

(23:25) Vice Chairman Representative Jim Schmidt: This is patterned on the federal water bank program.

Chairman Representative David Monson: A lot of this is federal funds?

Mr. Goehring: No, it is from Outdoor Heritage Fund and many of the farmers, ranchers and land owners come to us instead of the Feds.

(24:40) Mr. Cronquist: Returns to **attachment 1 on page 1**.

Chairman Representative David Monson: That is all other funds, so it would be the Outdoor Heritage funds and anything else. What does \$2,000 do in capital assets?

Mr. Goehring: We had some of the money, we just needed \$2,000 to finish and buy the last piece.

(26:05) Mr. Cronquist: Continues on **page 1 of attachment 1**.

(27:10) Chairman Representative David Monson: Apiary research was \$42,900, what are you doing there?

Mr. Goehring: There is a \$75,000 appropriation and this was just to restore that back. We had to put cuts on the table and I did ask for them back.

Chairman Representative David Monson: Does the noxious weeds have to deal with palmer amaranth? Is this research or grants to eliminate?

Mr. Goehring: Yes, it is for that and other noxious weeds and to control or eradicate these problem weeds.

Chairman Representative David Monson: Have you discovered amaranth?

(28:40) Mr. Goehring: Yes, we have in 5 counties. They are in: Richland, Dickey, Eddy and the few I am missing are in Southeast and Central ND.

(29:25) Mr. Cronquist: Returns to **page 1 of attachment 1** on the animal health item.

Chairman Representative David Monson: Is any of the \$10,000 matching?

Mr. Goehring: The \$10,000 was to meet the request before us and the \$100,000 was to align with the cash needed to meet federal fund authority.

Chairman Representative David Monson: So this is to meet federal funds?

Mr. Goehring: Yes, and it is a leverage move too.

(31:35) Mr. Cronquist: Continues on **page 1 of attachment 1** with the wildlife services item.

Chairman Representative David Monson: That is through Pride of Dakota?

Mr. Goehring: No, that is an appropriation of \$75,000 used for research on cold-tolerant cultivars and some is used for marketing and promotion.

Chairman Representative David Monson: Is that 15% on top or 15% of the \$75,000?

Mr. Goehring: That is correct, we were talking of moving more into the research areas.

Chairman Representative David Monson: Do you research any grapes?

Mr. Goehring: Research and Extension does that. They have different fields and test plots for that.

(34:15) Chairman Representative David Monson: I was dismayed a few years ago because they had a great vineyard with amazing varieties with vines taller than me and they had to find a place for a new seed cleaning plant and they tore it all out. What do you do with the \$75,000 besides marketing?

Mr. Goehring: We administer the provided funds for operating and the people for that. We get no money out of that unless they ask for us to do the marketing. That money would be sent there and we also audit and monitor.

Chairman Representative David Monson: So you are in charge of these wineries?

Mr. Goehring: We audit and make sure it is following legislative standards.

Chairman Representative David Monson: The reason why you wanted a raise and the Governor did not give it is because of why?

(37:00) Mr. Goehring: They asked if they did an increase in \$14,000 over the biennium, but I am still down about \$25,000 less than my colleagues.

Chairman Representative David Monson: What do Montana and South Dakota pay?

Mr. Goehring: I am \$108,000 and the others were near \$130,000.

Chairman Representative David Monson: Can you check and see what Ag Commissioners are paid? We will see what the Senate thinks.

(39:15) Representative Mike Nathe: Was there any discussion on how that would play into the 2% and 2% for everyone else?

Mr. Goehring: There was discussion that maybe about 4 years ago when we were talking about raising it in tough times and that was the same thought. They felt they could defend that raise given the responsibilities of the Ag Commissioner. There was a proposal to do more and they compromised.

Representative Mike Schatz: Can Alex get us a list of salaries of all the state-wide elected officials?

(41:00) Representative Mike Nathe: There was the hay report that did that compared to other states.

Representative Mike Schatz: I just wanted to see how that matches up, but just our in-state officials. It used to be that everyone got the same.

Mr. Goehring: That document does actually exist.

(42:10) Chairman Representative David Monson: Adds funding for meat inspection operating expenses. The Senate added a little and took away some special funds.

Representative Mike Schatz: What was the \$49,000 for the wildlife funds?

Mr. Goehring: The \$40,000 that was requested was to help with operating costs and there has not been an increase in any funding to wildlife services since 2009. Plane prices have increased greatly.

Chairman Representative David Monson: How often do you send up a plane?

Mr. Goehring: Any time they ask for one.

Chairman Representative David Monson: Is it a flat fee whether they fly or not or based on flying hours?

(44:15) Mr. Goehring: It is quarterly that they submit back to us their earnings and they have to submit the type of work they have been doing. It could be any numerous things like mountain lions, water fowl, coyotes, etc.

Vice Chairman Representative Jim Schmidt: The 2019-2021 wildlife services funding is \$500,000 from Game and Fish, Water Commission of \$125,000, general funds of \$448,000 and \$384,400 for environmental protection for a total of \$1.457M. Is this \$49,000 that is in this, not in this one because it just came from Senate?

Mr. Goehring: The \$1.408M was from 2017 and is footnoted on **attachment 1**.

Representative Mike Schatz: There is a Government hunter that gets rid of predators. Do you do that too?

(47:10) Mr. Goehring: The money is passed-through and they do that and we hold them accountable and audit them.

Chairman Representative David Monson: **Attachment 2** covers the elected official's salaries. The tax commissioner is what you want to be compared to.

Representative Bob Martinson: Those are low salaries compared to judges and other folks around town.

Chairman Representative David Monson: I cannot disagree with you there.

Representative Mike Schatz: The average superintendent is making \$125,000.

(49:15) Representative Tracy Boe: There are a lot of Democrats that would happily work for that.

Representative Bob Martinson: Another good column would be seeing how much the deputies make. Some make more than their leaders.

(50:20) Chairman Representative David Monson: The Senate added money for meat inspection and took some away; can you tell us why?

Larry Martin: My understanding is this was mainly federally funded and they wanted to switch it back to state funds.

Chairman Representative David Monson: We never had a state meat inspection program until about 10 years ago. How has that been working and how many inspectors are there?

(52:00) Mr. Goehring: You are right on the funding aspect. In 2000 it was decided to have a state meat inspection program. There are 79 facilities in ND, 14 are state meat inspected and the others are custom exempt. You can take them into it and process it, but only for you. The rest can purchase or sell meats. We can now do interstate meat shipments. We inspect them and that meat can cross state lines.

Chairman Representative David Monson: Do you have a reciprocity agreement?

Mr. Goehring: As long as you meet the requirements, you can sell them across state lines. We provide carcass grading for USDA (United States Department of Agriculture) because our people are trained to do that. We have some competent and great staff in our programs.

Chairman Representative David Monson: Why did they take away \$59,784? What was the source of that?

Mr. Goehring: That is federal and they only pay up to 50% of meat inspection and that would be identified as special funds.

Chairman Representative David Monson: The \$81,000 makes up for the \$59,000 you would not get with a little more. If I wanted to buy an animal and he took it in to a state facility that was high end, could he sell that to me after it was processed or would I have to buy that first?

(56:10) Mr. Goehring: You have to buy it on the hoof and he could not even deliver it to you. You would have to deliver the animal to the facility. It is hard to implement common sense when the Feds are involved.

Chairman Representative David Monson: Maybe we should talk about chickens.

Representative Mike Nathe: Mandan City council will allow you to raise 2 chickens now.

(58:00) Chairman Representative David Monson: I raised chickens in my backyard until they started making noise.

Chairman Representative David Monson: Transfers APUC (Agricultural Products Utilization Commission), but that is in a separate bill. That is a good chunk of change and that also comes with \$4M from Bank of North Dakota or is that what is in there now?

Mr. Cronquist: That does not reflect the Bank of North Dakota amount.

Representative Tracy Boe: That is what we had during the Commerce budget and we whittled it down.

(1:00:15) Chairman Representative David Monson: The totals do not mean a lot now because there is a standing bill for the transfer of APUC.

Mr. Cronquist: Returns to **page 1 of attachment 1** starting on the one-time funding items.

Mr. Goehring: We have different programs for software. We can pesticides and fertilizers, but none of our software talks and we need a master database to have one system to extract all of that.

Chairman Representative David Monson: This is all IT related stuff and it is one-time why?

Mr. Goehring: Once it is fixed, then it is done.

(1:02:10) Chairman Representative David Monson: I do not see anything about the program that collects old pesticides?

Mr. Goehring: We did not ask for an increase in project safe send, which collects the old and banned pesticides. There is going to be special fund operations that are \$3.1M, but I believe everything is special funds. It is \$687,110 per biennium. That is in the operating line, but it is special funds.

Chairman Representative David Monson: You are keeping up with that and do not need anything extra?

Mr. Goehring: If everybody used the money that is spoken for in this fund, we would be out in 2 years. We make sure the unspent funds go back into there and are saved for the future. We are not here to ask for an increase in registration or license fees. We may have to visit with you on that down the road if anything changes.

(1:05:25) Chairman Representative David Monson: The Herb Fund is filled up by what?

Mr. Goehring: They are filled up by the 13,000 pesticides and disinfectant registration fees.

Chairman Representative David Monson: Even the drain-type ones?

Mr. Goehring: Correct. There are fees for weed killer, which is \$79,000 and the fertilizer is about \$1.5M in a biennium and inspection tonnage fees as well.

(1:07:00) Chairman Representative David Monson: The Litigation fund money will be put in Government Ops for the Attorney General.

Mr. Cronquist: That is in OMB's (Office of Management and Budget) bill, SB 2015.

Chairman Representative David Monson: We need to make sure there is \$250,000 available for litigation. Anything else we missed?

Mr. Goehring: I have nothing else.

Chairman Representative David Monson: I think the Hemp part will be in its own separate bill. You have the money in here to administer that and collect fees?

(1:09:05) Mr. Goehring: They will not be able to implement the new language on Hemp, but we are keeping with the intent. We have to make a few modifications to our pilot program model, but I am going to collect applications and not the fees yet.

Chairman Representative David Monson: We are premature in repealing everything?

Mr. Goehring: No, it is fine and we will be operating similar, but not fully implemented. We will only charge what is in the newly amended version. It will not be as extensive right away. We will look for language and we will get language for Representative Bob Martinson.

(1:11:10) Chairman Representative David Monson: Closes meeting on SB 2009.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Education and Environment Division Roughrider Room, State Capitol

SB 2009
3/14/2019
33725

- Subcommittee
 Conference Committee

Committee Clerk: Parker Oswald

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner; and to provide for transfers.

Minutes:

Attachment 1

Chairman Representative David Monson: Opens meeting on SB 2009.

Chairman Representative David Monson: Would there be any information on how many dairy inspectors there used to be?

Levi Kinnischtzke, LC: I cannot find anything on that.

(1:00) Chairman Representative David Monson: Do you have a long sheet for the Agriculture Department?

Representative Bob Martinson: Did the Agriculture Department ever meet with LC about the milk delivery?

Mr. Kinnischtzke: We were emailed and they have discussed this and they are putting together a statutory request to change that. Passes out **attachment 1**.

(3:40) Chairman Representative David Monson: Representative Tracy Boe you will be carrying this one. One of the big issues on this was the hay transport.

(4:40) Mr. Kinnischtzke: That is being addressed in the deficiency bill.

Chairman Representative David Monson: Tell us what we might need to change. I had something about 3 vacant FTE (full time employee). We may have to add some and tell us the status of the other bills and what we can do along the line of moving grain licensing from PSC (Public Service Commission) to this one without that bill?

Mr. Kinnischtzke: That is HB 1467 and it looks like the Senate had a meeting on it, but it has not passed on the floor yet.

Chairman Representative David Monson: There is not a whole lot we can do.

(6:25) Mr. Kinnischtzke: Begins to outline **attachment 1 on page 1**.

Chairman Representative David Monson: Were those vacant FTE identified in the Governor' proposal or were they general FTE?

Mr. Kinnischtzke: Two of them were program coordinators and one was a division director and I believe it is a marketing director. They are restructuring that marketing division.

Chairman Representative David Monson: I remember them saying they would need those. We were told that they would need 2 FTE if they took over some of the duties from Commerce for APUC (Agricultural Products Utilization Commission) and Commerce had no FTE for that.

Mr. Kinnischtzke: The Senate asked me to transfer the funding for APUC and however many FTE were being used for APUC at the start of the biennium. They were using 2 FTE at that time and they are not using portions of FTE for that. If APUC does transfer to Agriculture, would those 2 FTE be transfers from Commerce, or 2 new FTE?

(10:05) Chairman Representative David Monson: Commerce said they were using no FTE.

Representative Tracy Boe: The argument to move APUC was because Commerce was not focusing on it.

Representative Mike Nathe: Have we heard that from anyone else or any complaints about APUC?

Representative Tracy Boe: I am referring to what Commerce said about having no FTE designated for it.

(11:10) Chairman Representative David Monson: The Agriculture Commissioner said he needs 2 FTE to make it thrive.

Representative Tracy Boe: More so than the 2 FTE, he needs the \$3M that would be put in. That number on attachment 1 is what is normally appropriated.

Chairman Representative David Monson: That \$3M is in other funds and I know they were talking about adding \$4M.

Representative Tracy Boe: That was a proposed amendment.

Mr. Kinnischtzke: That is a historic number and that \$1.5M was the appropriated amount. It is usually around \$670,000 per biennium. The \$3.15M is largely spending authority and that is why the reduced it.

Chairman Representative David Monson: The number I have seen for profits in the mill elevator was around \$15M.

(13:30) Mr. Kinnischtzke: The 5% of that would be a little over \$700,000.

Chairman Representative David Monson: The 5% of the profits would be \$3M, are they projecting that big of a profit from the elevator?

Mr. Kinnischtzke: In order to have the \$3M going into APUC, they would need \$60M in mill elevator profits.

Representative Tracy Boe: The \$750,000 would be based on history and we can assume the elevator will bring the same profit. The amount of FTE time spent to appropriate money out of there, I was thinking they were asking for money.

Representative Bob Martinson: The \$4M was coming from Bank of North Dakota.

(15:35) Mr. Kinnischtzke: Bank of North Dakota giving \$4M came up in the Senate and the thought is they would ask for the \$3.15M and still ask for the \$4M. Bank of North Dakota is willing to provide the \$4M to Commerce for APUC, so they will offer it regardless of who holds APUC.

Chairman Representative David Monson: The \$4M from Bank of North Dakota is not in attachment 1?

Mr. Kinnischtzke: Correct.

Chairman Representative David Monson: That would be going to Commerce as of right now?

Mr. Kinnischtzke: APUC is technically in 2 places right now and will need to be reconciled, but the \$4M has not been passed.

(17:40) Chairman Representative David Monson: I would say if it stays in Commerce and they can cover it with no FTE, we can leave it. The most I would give is \$1M and 1 FTE.

Representative Bob Martinson: I think APUC is a good program and I am for putting it wherever it will be best managed. I do think Commerce has moved away from the direction they have moved. Commerce gave us a big run around when they laid off 13 positions and are now filled again.

Representative Mike Nathe: I do find it interesting that no one from Commerce was arguing to keep APUC.

Chairman Representative David Monson: Mr. Leiman did not want to offend the Agriculture guys. You could tell Commissioner Goehring was upset that Mr. Leiman testified in favor of keeping APUC in Commerce.

(21:15) Representative Mike Schatz: The dairy inspectors, there was 4 in 1999 and today we have 2.

Chairman Representative David Monson: That is probably about right. The dairies are smaller today, but much larger in size.

Representative Tracy Boe: That was the answer we were looking for. I was asked to find out.

(22:20) Chairman Representative David Monson: Representative Bob Martinson, you were thinking this should move. I am assuming that will pass, but if it does and the change gets made, I am not sure I am willing to give them 2 FTE.

Representative Bob Martinson: I was agreeing that I thought 1 FTE would work.

Chairman Representative David Monson: We can take it out in conference too.

Representative Mark Sanford: That is contingent on the \$4M?

Chairman Representative David Monson: Well, I am okay with leaving them the \$3.15M and I don't know if they need the \$4M from Bank of North Dakota.

Representative Mark Sanford: If they are managing the \$600,000, they do not need any.

(24:00) Chairman Representative David Monson: I am fine with the \$3.15M.

Representative Bob Martinson: We could probably find a better use for that \$4M in this committee.

Chairman Representative David Monson: I am not sure that APUC is going to generate \$3M. If they do not get more than the \$700,000, do they even need 1 FTE? I would give solid money, but not what they are asking for.

Representative Tracy Boe: I was curious if we could see historical appropriations for APUC. Who is applying for this money? If we put that money into APUC and it produces results, then we can stand behind it. We know what the results are and we could find other things to put the money into.

(26:25) Chairman Representative David Monson: We could use that money for something else. Can you get a request from Commerce or Agriculture on what we have gotten from the money we spent? Commissioner Goehring should be able to tell us what they have funded and seen. I would say we should ask Commerce first. All we need is a written report on that. If you do not get much back, we can ask Doug Goehring what he thinks. I would be willing to put money in from Bank of North Dakota, but I am not ready to give them \$4M, maybe \$1M. Do you know if APUC has ever gotten \$3M+ from the Bank of North Dakota profits?

Mr. Kinnischtzke: I do not have that, but I can give you appropriations history. In 2011-2013 it was \$2.7M and was \$1.7M from general and it was \$738,000 from the elevator and around \$300,000 from federal. 2013-2015 it went up to \$3.2M and funding in the APUC fund of \$1.7M, but they had carry over in that. The 2015-2017 was \$3.1M with \$1M from general funds and now we are at the \$3.15M.

Chairman Representative David Monson: If the profits from the elevator would be funneled in, that would be general funds, not?

Mr. Kinnischtzke: No, it would be special funds.

(31:00) Chairman Representative David Monson: Bank of North Dakota earnings would be transferred to APUC, which would then go into the other funds column along with the funds from the elevator. The \$3.152 includes money from Bank of North Dakota?

Mr. Kinnischtzke: It would be an additional appropriation. The profit would still be around \$700,000 and the revenue available would be about \$4.7M.

Becky Keller: We are anticipating \$13.4M to be in the general fund. APUC is anticipating \$1.4M for profits for the biennium.

(33:30) Chairman Representative David Monson: If they are anticipating that much, I supposed we can give them the authority to spend \$2M. I do not care when it comes to other funds, but if we include the Bank of North Dakota funds, it would be included in there. Do we need to specify the special funds and if the rest need to be from gas and elevator?

Mr. Kinnischtzke: We will state that in the Statement Purpose of Amendment (SPA).

Chairman Representative David Monson: We should do the same in Commerce for this if we are willing to give them Bank of North Dakota money. I do not expect that Commerce will have as good of results.

Representative Tracy Boe: What we should look at is the fund and not who is administering it no matter where we put the fund.

Chairman Representative David Monson: I would like other funds changed to \$3M with \$1M from Bank of North Dakota, \$2M from gas tax and elevator.

(36:15) Representative Tracy Boe: In order for the money to transfer, that has to be an attached amendment. It would be wise to figure out where we are going to put APUC before we address the money. Are we fixing this up with the intention of moving it?

Chairman Representative David Monson: I think we should fund it the same whether it is in Commerce or in here. If it passes or does not pass, whatever amount of money that is in here, they get the same amount.

Representative Bob Martinson: I am okay with that and basically we are going to guarantee \$1M and the other \$2M is a catch.

Chairman Representative David Monson: We are not playing favorites.

Representative Bob Martinson: I follow this program because I like them. They give a lot to people trying to process agriculture. That is the purpose of what Commerce is supposed to do and I think they are moving away from that. This is just the type of things that Commerce is supposed to do.

(39:00) Chairman Representative David Monson: I agree. I think Commerce has dropped the ball with leadership in the past and they shoot for big ideas instead of utilizing the smaller things. I think we have both budgets and if it stays in Commerce, we have to make it clear that they have to focus on this. Part of the problem is there is not much extra money. We will go 1 FTE, \$1M from Bank of North Dakota, \$2M in other funds.

Representative Tracy Boe: I agree with that. I think Commerce is following their leadership with the message of diversification, which is wise, but I think they are not focusing on this.

Chairman Representative David Monson: We should give Commerce some direction. The focus should be on smaller agriculture ideas.

Representative Mike Nathe: I agree with what you are saying. Commerce seems a little rudderless and we have not seen them since we had their budget.

(42:00) Chairman Representative David Monson: I do not know how I will vote on that bill.

Representative Mike Schatz: Have they lost a lot of people at Commerce?

Chairman Representative David Monson: They have lost a lot of experienced people.

Mr. Kinnischtzke: The other bill is SB 2328 that affects APUC. The language for that bill was copied into this bill and is in here now. The only changes are moving APUC from Commerce and the only wordage changes is to move it to the Agriculture Commissioner.

(44:00) Chairman Representative David Monson: SB 2328 does not have to pass if we leave this bill with those sections in them. SB 2328 can fail and it will be moved no matter what.

Mr. Kinnischtzke: Correct, it is duplicated language. If they both pass, it is the same thing.

Chairman Representative David Monson: We would like to see if moved into here I think. I am okay with that. We are transferring APCU, 1 FTE, \$1M from Bank of North Dakota and \$2M in special funds.

(45:35) Representative Tracy Boe: We would need an amendment for the \$1M.

Chairman Representative David Monson: Yes, correct. Anything else?

(46:15) Mr. Kinnischtzke: Returns to presenting **attachment 1 on page 1.**

Chairman Representative David Monson: I am not opposed to taking 1 FTE out of the vacant ones.

Representative Bob Martinson: We would not need to add an APUC FTE then.

Chairman Representative David Monson: We could specify that the 1 FTE we add is for APUC and take 1. How about a minus 1 where the minus 2 is on **attachment 1**? Okay, leave it.

(48:35) Chairman Representative David Monson: Closes meeting on SB 2009.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Education and Environment Division Roughrider Room, State Capitol

SB 2009
3/18/2019
33856

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang and Parker Oswald

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner; and to provide for transfers.

Minutes:

Attachments 1-3

(1:10) Doug Goehring: Agriculture Commissioner. Begins to present **attachment 1**.

(4:10) Representative Tracy Boe: Does the milk marketing board cover all of the state?

Doug Goehring: Only 2/3 of the state. Returns to **attachment 1**.

Chairman Representative David Monson: If you were a farmer in New Salem you would fall under the state board, but in Cass County you would be under federal?

Doug Goehring: You would be under a milk shed or the federal milk order. There is still some applicability here and all milk is priced with a minimum price.

Chairman Representative David Monson: When I go to the grocery store, I don't know where it comes from. When I see Cass Clay, Betsy's Best or different milk, it's different prices.

Doug Goehring: They have a minimum price to sell it for. What they choose to sell it for above that price is up to them. There is also a volume discount.

Chairman Representative David Monson: A big store will sell at a cheaper price because they can sell at a cheaper price. Walmart has the cheapest milk.

Doug Goehring: They can undersell another retailer, but cannot sell below the minimum. Depending on the volume coming from Fargo or a Bismarck plant, there will be a difference.

Representative Mike Nathe: Who sets the minimum price?

(8:10) Doug Goehring: It's established by the milk marketing board.

Representative Bob Martinson: If the objective is to set a minimum price and sell milk. As long as the producer gets the price that is set, it should not matter to us if they take a loss. It seems much more complicated than it should be.

Doug Goehring: I don't know why the milk board will not let them sell at a loss below the minimum.

(11:00) Chairman Representative David Monson: They don't want to charge for hauling, it's already factored in. The distributor will haul to anyone.

Doug Goehring: They cannot charge for hauling because it is already factored in, no matter where you are in the state at any amount.

Chairman Representative David Monson: Is the price of milk the same in the same area?

Doug Goehring: Not necessarily. They can't charge for the delivery.

Chairman Representative David Monson: The gas station sells a small amount of milk, there is no way that would be profitable.

(13:15) Doug Goehring: Your assumption is correct. The minimum price is the minimum price. We might be playing a bit more in some places.

Representative Mike Nathe: How long has this been going on? It doesn't seem free market at all?

Doug Goehring: Since 1964 or 1965. This has pretty much stood since then.

Representative Mark Sanford: Same milk goes into a different container and is more expensive. If my grocery store wants to go lower, they probably could.

Doug Goehring: Correct. It can go all the way down to the published retail price.

Chairman Representative David Monson: Are you saying that the milk board can change every month?

Doug Goehring: Yes. They charge the minimum price because they don't want to undercut somebody. They have to comply with the law and the prices might equate to Walmart through a third party hauler.

Chairman Representative David Monson: If they have the same brand this and they got it a little cheaper this week, so they can switch the price?

Doug Goehring: They have to stay at the minimum price.

Vice Chairman Representative Jim Schmidt: Now we have very few dairy farmers, what is the history of the small dairy farmer?

Doug Goehring: We have 79 down from 545 dairy farms 20 years ago. In 1965 we had 2,000, but we have the same amount of cows. We now also only have 2 inspectors.

(19:15) Representative Mike Nathe: This has been in place since 1965, should we still be doing this?

Doug Goehring: That is why I had them come in and we sat for 3 hours to talk about this. We asked a lot of questions and asked how we can make it more efficient.

Representative Mike Nathe: Is this good for the industry?

Doug Goehring: I think so. The federal Government has tried to alleviate feed costs. That can cause price problems across the country.

Representative Mike Nathe: You do like the current set up?

Doug Goehring: It's complicated, but it accomplishes what they are doing. That's why they control the price.

Representative Mike Nathe: Do the producers like this set up?

(21:45) Doug Goehring: They like it very much because it provides a level floor.

Representative Tracy Boe: I can't imagine that this still happening. I don't think we've changed with the change of times. I knew the state was not covered by the board completely, but I believe the federal board is voted on to bring them in.

Doug Goehring: I haven't heard that. A dairy farmer in the federal markets gets \$0.83 less than everybody else. It is a big deal if you produce a few million gallons.

Representative Tracy Boe: The problem we are having is with the state and federal lines.

Doug Goehring: This is all about marketing the product. The component is to oversee the dairy industry.

Chairman Representative David Monson: Isn't there something where the price is based from Wisconsin?

Doug Goehring: Most of that is changed from the marketing board from Chicago.

Representative Bob Martinson: What I don't understand, if this is a marketing program, why would the milk board care about the retail, it should only be the wholesale.

Chairman Representative David Monson: I'm thinking the same way. As long as the farmer gets a minimum so you can sell more. It would fly off the shelf.

(27:30) Doug Goehring: I asked the very same question. They are protecting the market so that no one is losing money.

Chairman Representative David Monson: If there is a minimum price and someone isn't making money, like a distributor who could be losing money perhaps. Every link in this chain needs to be profitable.

Representative Bob Martinson: I'm only talking retail and allowing more milk to get out there and why would they care what Dan's sells it for if they have made their money?

Chairman Representative David Monson: A person could always sell less and the little retailers won't sell milk because they cannot compete with the prices.

Representative Bob Martinson: How many farmers go broke when Dan's is selling bread?

Chairman Representative David Monson: If this is good for milk, why isn't it good for every other food product industry?

(31:00) Representative Tracy Boe: There is only \$0.05 worth of wheat in the bread anyway.

Vice Chairman Representative Jim Schmidt: They are protecting the small grocery store that cannot sell milk for \$1 a gallon.

Chairman Representative David Monson: Milk only lasts so long, but wheat can be stored for a while. The 4% butter fat is standard, but if you came in with 6% butter fat, you get more money?

Doug Goehring: More than likely, you will get paid more for higher butter fats. Most cases, in Fargo, they are going to look at butter fat content.

Chairman Representative David Monson: We are not going to try and fool with the milk board. We need to put this into a study.

(34:20) Vice Chairman Representative Jim Schmidt: We studied that in 2015 and only one non-board member showed up in the study. I was the chairman of the interim Agriculture committee that was in charge of this study.

Representative Tracy Boe: Possibly, the one entity that didn't show up and should is WIC (Women, Infants and Children).

Doug Goehring: Option 1 and 2 talks about hauling.

Chairman Representative David Monson: The most we will do would be to put a study on it, but I do not see that happening.

Representative Bob Martinson: I see a challenge coming on.

Chairman Representative David Monson: I believe we decided that we would not take the Governor's recommendation, but take 1 FTE out. The transfer of APUC would bring 1 FTE.

Levi Kinnischtzke, LC: The last we talked about grants is the operating expense reduction and the committee was not going to remove the operating expenses.

Vice Chairman Representative Jim Schmidt: It pretty much mirrors what the old USDA (US Department of Agriculture) used. It was a good program for water based animals and it has good merit for land owners with plenty of wetland. It is unique and good for the prairie pothole region.

(42:30) Levi Kinnischtzke: The state water bank program is in the bill and the executive proposal removed funding for it, but the senate didn't remove it.

Chairman Representative David Monson: How much is in there?

Levi Kinnischtzke: There is \$389,817.

Chairman Representative David Monson: Is there anything else? If the bill passes the only thing that is left is to move APUC (Agricultural Products Utilization Commission). I expect that to pass the House.

Levi Kinnischtzke: Our last meeting was the state water bank program and there may have been discussion on issues with that.

Chairman Representative David Monson: We talked about adding money to the Wildlife Services operating fees. The Senate increased it by \$40,000. Are we okay with that? Where would that come from?

Levi Kinnischtzke: General funds.

Chairman Representative David Monson: Why do you need \$40,000 more?

(46:00) Doug Goehring: The increase is attributed to the increases in cost. It hasn't been increased since 2009 and that has to adjust some of the salaries and the costs for pilot critter control. It used to be \$125 an hour and now it is \$250 an hour.

Chairman Representative David Monson: We have a lot of different resources for funding here for wildlife services; general fund, SWC (State Water Commission), Game and Fish and any others?

Levi Kinnischtzke: The general fund, Game & Fish, department's operating fund and the environment and rangeland protection (ERP) fund.

Chairman Representative David Monson: Okay I forgot about a few. How much money is in ERP?

Vice Chairman Representative Jim Schmidt: That is \$4.6M.

Chairman Representative David Monson: How much are we taking out?

Vice Chairman Representative Jim Schmidt: We are taking \$1.5M. It regenerates at \$7M per biennium.

Chairman Representative David Monson: If we wanted to take that \$40,000 out of another source, we could?

(48:30) Vice Chairman Representative Jim Schmidt: We can take it out of ERP and it would still be fine. There is probably carryover of about \$4M per biennium.

Doug Goehring: We've been trying to collect everything possible from ERP. If everything was spent that is collected in ERP, it would be gone in 3 years. We are doing a better job handling the money and auditing. We are capturing those and bringing them back.

Chairman Representative David Monson: The first place is the weed board before wildlife services because I do not know if we can sneak anymore out of Game and Fish.

Doug Goehring: Right now we have \$4.6M.

Chairman Representative David Monson: Move it out of general fund and move it to ERP.

Chairman Representative David Monson: Begins to present **attachment 2**.

(54:35) Representative Tracy Boe: Is the benefit package similar too?

Chairman Representative David Monson: I don't know, we never asked for that. There is a difference between elected and appointed. We have piled more duties on the commissioner.

Representative Nathe: The salary is quite lower than the other states. If we give them a salary bump, the other commissioners will want a bump.

Chairman Representative David Monson: I don't know the different between elected and appointed by the governor is.

Representative Mike Nathe: If you did the same comparison, ND is always on the lower end than anyone else.

Chairman Representative David Monson: What is the governor's salary?

Representative Mike Nathe: It is \$132,000 and raising up to \$138,000.

(59:05) Representative Mike Schatz: A normal school superintendent makes, on average, \$130,000.

Chairman Representative David Monson: So, you think it should be higher then?

Representative Mike Schatz: Based on the size of some schools, yes.

Chairman Representative David Monson: I shake my head at what I made compared to what is being made now.

Representative Tracy Boe: If we were doing a state to state comparison, should we do employee to employee?

(1:00:20) Chairman Representative David Monson: I was thinking the exact same thing. I'm not ready to do anything yet. What did they do with the meat inspection?

Levi Kinnischtzke: That was a request made by the commissioner to the Senate based on some program changes made. There are 2 meat plants that will be opening near Belfield soon and there will be some funding differences. In total, it was an increase of \$21,000 in operating and the meat inspector was changed from 90% federal and 10% special funds to 52% general funds and 48% federal funds.

Chairman Representative David Monson: Committee, what do you want to do? It makes sense if a couple more plants open. The ones we still need to work on are the agriculture commissioner's salary, APUC transfer from Commerce, one-time of \$110,000 for a customer database from the general fund. What is the history of that?

(1:03:45) Levi Kinnischtzke: This was a new, one-time request and it was included in the executive recommendation. Passes out **attachment 3**.

Doug Goehring: Because of the different reports and existing programs, we need that database so they can communicate with each other.

Chairman Representative David Monson: You need \$110,000?

Doug Goehring: We have animal health, pesticides, fertilizers, livestock end of it and a few other divisions. It will cost \$110,000 total to do the work with everything involved.

Chairman Representative David Monson: You are not changing each one and they do not have individual costs to them?

Doug Goehring: Yes.

Chairman Representative David Monson: The committee thinks we should leave it in. I think I looked through the sections here and I do not think we need to do anything else. I wrote \$687,000 for project safe send and that comes from ERP and is currently in operating. We are still doing that and it is intact.

(1:06:45) Chairman Representative David Monson: Closes meeting on SB 2009.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Education and Environment Division Roughrider Room, State Capitol

SB 2009
4/5/2019
34577

- Subcommittee
 Conference Committee

Committee Clerk: Parker Oswald

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner; and to provide for transfers.

Minutes:

No Attachments

Chairman Representative David Monson: Opens meeting on SB 2009. We are going to treat this like SB 2013. We do not have any amendments truly drafted and we will finish this fully on Monday morning when the amendments are fully drafted.

Representative Mike Nathe: Can I make a motion on the proposed increase to the Ag Commissioner's salary? I would like to remove the increase and add the 2% and 2.5% pay increase. Seconded by Representative Bob Martinson. Voice vote, motion carries.

(1:40) Chairman Representative David Monson: He will be treated like all of the other agencies. Anything else? What did we change?

(2:45) Levi Kinnischtzke, LC: There was a removal of 1 FTE (full time employee) for \$157,000.

Chairman Representative David Monson: The deputy ag commissioner approached me and mentioned that if APUC (Agriculture Products Utilization Commission) comes to them, the grain inspectors would come too from PSC and they would need some people too. The money and 3 FTE were removed from grain licensing. What do we want to do there? They have a lot of employees that are very low funded. The House amendment on the salary package will be very beneficial. Do we want to stick with taking out 1 FTE and do we want to consider putting 3 FTE that came from PSC (Public Service Commission) into agriculture? I would say we add them in here.

(5:45) Representative Mark Sanford: Moves to add the money and positions from PSC to the ag commissioner's budget, seconded by Representative Tracy Boe.

Representative Tracy Boe: We are going to add these in or are we going to add an amendment that adds all of them in?

Chairman Representative David Monson: We are going to move the grain inspectors into here because they are in limbo and removed from the PSC budget.

(7:10) Chairman Representative David Monson: Voice vote is taken, motion carries.

Mr. Kinnischtzke: You just want them moved to the agriculture commissioner, any statutory changes?

Chairman Representative David Monson: I mean, I guess so. There is a bill for this.

Mr. Kinnischtzke: Is that HB 1467? That was amended to a study.

Chairman Representative David Monson: Is that the one that moved the inspectors?

Representative Tracy Boe: I believe the bill that had it was anticipated to not survive the Senate.

Chairman Representative David Monson: Is there money in ag right now?

Mr. Kinnischtzke: HB 1467 was moving from PSC to the ag and the other bill was different and I have to check the current status.

(10:20) Representative Tracy Boe: That changes the fund bill to take care of something different. That was not moving it out of PSC I do not believe.

Chairman Representative David Monson: If they did it in Government Ops, we need to do something.

Representative Tracy Boe: I think we need to visit with the agriculture committee.

Mr. Kinnischtzke: I have not seen the amendment for that.

Chairman Representative David Monson: The language for grain inspector's language is in PSC, but there is no money?

Mr. Kinnischtzke: It is in limbo. If there has been an amendment drafted to move it from PSC to Ag, then it would be appropriate.

Chairman Representative David Monson: We need some language to come with it and we should keep the language, FTE and money all together. It may have been an oversight. I suggest we go ahead and add it in this way so it is at least whole and we can address it later. Now, the 1 FTE that was taken out by the Governor, the Senate had nothing removed.

(14:35) Mr. Kinnischtzke: The Senate did not remove anything and the House was going to remove 1 FTE.

Chairman Representative David Monson: We can address that in conference committee. We can also leave that in.

Mr. Kinnischtzke: There was a funding source change for the \$49,000 for wildlife funds. There was an increase for wildlife service's operating fee. The last major item was the transfer of APUC and reducing the spending authority for APUC to \$2M and adding \$1M of Bank of North Dakota profits. That would include 1 FTE.

Chairman Representative David Monson: Commerce did not reduce any FTE for this program? We did not reduce anything in HB 1018.

Mr. Kinnischtzke: SB 2328 passed and the statutory language in SB 2009 would not be necessary.

Chairman Representative David Monson: We do need the 1 FTE and money there though. The Senate will want an extra FTE there.

Representative Tracy Boe: They asked for \$4M.

(17:55) Chairman Representative David Monson: They have \$3.1M.

Representative Tracy Boe: I think the actual number was around \$600,000.

Mr. Kinnischtzke: The House reduced APUC down to \$670,000 to match the mill revenue amount. The \$3.15M is the total spending authority. The Bank of North Dakota profits is technically in addition to.

Chairman Representative David Monson: Do we want to add any money? APUC struggled in Commerce because they were under funded. If you are going to move it and have one person dedicated to doing it, we better give them some money.

(20:25) Representative Tracy Boe: If we put \$1M in, that is around \$1.7M and would not really make it worthwhile to add an extra FTE.

Chairman Representative David Monson: The Senate has \$3.15M too.

Mr. Kinnischtzke: It is paid from the APUC fund.

Representative Tracy Boe: That is just spending authority.

Chairman Representative David Monson: The Ag commissioner wanted \$4M and 2 FTE. We are giving 1 FTE and what do we think about \$2M? Put it on like that for now.

Mr. Kinnischtzke: That was all of the changes to this budget.

(22:45) Chairman Representative David Monson: There is nothing we need to do in the sections because we did not change any.

Mr. Kinnischtzke: The only section changes will be an amended section 4 that talks about environment protection and there will be one that reflects the increase in salary and then APUC.

Chairman Representative David Monson: There is \$687,000 for project Safe Send and we do not have to do anything to that. We added some FTE, moved grain inspectors, added some to APUC and an FTE.

Representative Tracy Boe: Are we going to be able to get by transferring just the line item or is there a cost of program absorption?

(24:50) Mr. Kinnischtzke: There is \$54,000 of operating expenses tied to those FTE.

Chairman Representative David Monson: Move the FTE, program, money and \$54,000 to operate it. If the Senate did not like this enough to pass it, it may come unraveled.

Representative Tracy Boe: Do we want to move the amendment now?

Chairman Representative David Monson: We are going to amend this bill and it will be the final amendment. This is pending seeing the actual final amendment.

(26:50) Representative Tracy Boe: Makes a motion to adopt the final amendment, seconded by Representative Mark Sanford. Voice vote is taken, motion carries.

Chairman Representative David Monson: We have basically taken final action, but have not quite kicked it out. We have State Water Commission and Agriculture Commissioner are the only ones we have left to finish.

(28:05) Chairman Representative David Monson: Closes meeting on SB 2009.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Education and Environment Division Roughrider Room, State Capitol

SB 2009
4/8/2019
34583

- Subcommittee
 Conference Committee

Committee Clerk: Parker Oswald

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner; and to provide for transfers.

Minutes:

No Attachments

Chairman Representative David Monson: Opens meeting on SB 2009 and amendment 19.0222.02002 is handed out to the committee.

(2:15) Levi Kinnischtzke: We have agreed to change the salary and wage adjustments that were agreed to. There was a reduction to 1 FTE (full time employee).

Chairman Representative David Monson: The Senate did not take any FTE. We were higher by \$600,000 because we added FTE?

Mr. Kinnischtzke: Correct. We discussed removing the equity increase for the Agriculture Commissioner and the salary increase was applied. The Senate added \$49,000 for wildlife service operating fees, the House switched the funding to environment and rangeland funding. The net effect was an increase of \$800,000 for APUC (Agricultural Products Utilization Commission) and an increase of \$2M from Bank of North Dakota profits. The House is at \$4M even where \$2M is APUC fund and \$2M from Bank of North Dakota profits. The Senate approved 2 APUC FTE and the House approved 1 FTE. The grain inspector transfer has 4 FTE coming from PSC (Public Service Commission). House Government Ops reduced the operating costs and FTE.

(6:15) Chairman Representative David Monson: I talked about what Government Ops did after they have made their final consideration and we may be off by 1 FTE. The number of dollars are accurate and we may be 1 FTE strong, so we will check with them and we will take care of any changes in full committee. Representative Johnson felt that all of the transfer language in SB 2346 was sufficient.

Representative Tracy Boe: We did not move any of the statutory language in this amendment?

Chairman Representative David Monson: We did not. Levi says that will do it.

Representative Tracy Boe: When we separate these two, we make an assumption that it will be a passing bill, then what?

Chairman Representative David Monson: That is possible and we wanted it in here if it is not somewhere else. We can adjust that in full committee. Our problem is that bill has not been kicked out of the Agriculture committee and it could be sitting here a whole week before it hits the floor.

Representative Tracy Boe: Is there harm in putting it in both?

Chairman Representative David Monson: There is not an issue, but it is a very extensive and long amendment. Did we put the language in here or just hold off and wait on the other bill?

(10:20) Representative Tracy Boe: The bill the language is in is a controversial bill that I would not personally vote for, so putting it in there is not wise. I think putting it in here is wise for conference committees.

Mr. Kinnischtzke: The motion made did include the funding and statutory language. We talked afterwards and there was an idea to further amend if needed. We can certainly add it to this bill.

Chairman Representative David Monson: Let's just hold that and we can further amend that before we kick this out. If you think that is the proper way, we can do that. It is always a good thing to have language and money together.

(12:40) Mr. Kinnischtzke: That concludes the changes. Section 10 is an addition that authorizes the transfer of \$2M Bank of North Dakota profits to APUC. Everything else has been covered.

Chairman Representative David Monson: Any issues that anyone has found? The only issue then would be the language. We have approved this amendment, so officially we could make a motion to attach this by number.

Vice Chairman Representative Jim Schmidt: Makes a motion to adopt amendment 19.0222.02002. Seconded by Representative Tracy Boe. Voice vote is taken, motion carries.

Chairman Representative David Monson: Would you like to move to further amend to have the other language added?

Representative Tracy Boe: I am happy to carry the bill however we send it out. The reason we did this was because this was the carrier for that and the other bills were expected to be expendable.

Chairman Representative David Monson: If we are moving all of the money and FTE, we better put it in here.

(15:45) Representative Tracy Boe: I move to further amend to add the statutory language. **Seconded by Vice Chairman Representative Jim Schmidt.** I think we should have it all moved together smoothly or not at all. **Voice vote to further amend carries.**

Chairman Representative David Monson: I would agree. We can take final action.

(17:10) Representative Tracy Boe: Moves a do pass as amended, **Vice Chairman Representative Jim Schmidt seconds. Motion carries with 7 yeas, 0 nays and 0 absent. Representative Tracy Boe will carry.**

(18:10) Chairman Representative David Monson: Closes meeting on SB 2009.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

SB 2009
4/8/2019
34617

- Subcommittee
 Conference Committee

Committee Clerk: Risa Bergquist by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to the agricultural products utilization commission; and to provide for a report to the legislative assembly.

Minutes:

Chairman Delzer: Opened SB 2009.

Representative Boe: We do not have the final. It will be a novel. It is 50 more pages.

Levi: The amendments were approved this morning. It involves putting the statutory language that is currently being amended into SB 2346 for the transfer of grain inspection from the public service commission to the agriculture commissioner to SB 2009 to the agriculture commissioner's budget bill. I am currently in the process of adding those amendments into SB 2009. It will add 82 sections to the bill and about 50 pages.

Chairman Delzer: Rep. Boe, this is the whole thing with the exception of that. It will be up to you and Rep. Monson to go through and make sure that this is right. I think that we can probably deal with the amendment that we have, it would be .02003 and that has the only additional will be the statutory changes to move it from PSC to us.

Representative Monson: Representative Dennis Johnson was here and asked if we had done anything with the indemnity fund in this bill. I told him that we did not. The only thing that would be left in SB 2346 will be the indemnity fund.

Chairman Delzer: Is that going to have to come to us too?

Representative Boe: Move the amendment .02003.

Chairman Delzer: We will walk through .02003 but it will be the essence of the combination of .02002 and plus the changes in the language to move that which will end up being .02003.

Representative Martinson: second

Representative Boe: The first thing that would be removing Ag Products Utilization Commission (APUC). Repealing APUC out of century code where it was seen in the department of commerce and moving it to the ag department. The salaries and wages and the operating expenses are a little bit different than most of the money. There is a 6-thousand-dollar line item that was added to from the senate. Twenty-one hundred dollars of that is research and 39 hundred is for wine research.

Wild life services, there was 94 hundred dollars in that from the governor's budget and the senate augmented that with an extra 40 thousand dollars for 49 thousand.

There's 4 million dollars in the Ag Products Utilization Commission. (APUC) line. That is 2 million dollars transferred in from the Bank of North Dakota and the rest is of that is spending authority which some of that is made up with profits of the state mill and elevator that equal about just about 7 hundred thousand dollars. The rest is just spending authority that the money really doesn't exist at this time. Just under 2.7 million dollars.

On the statement of purpose, the 125,000 dollars that you see in operating expenses, You can find that over in the footnote 6. The cost in wages is \$728,499. Three of the FTE's is for warehouse inspectors and FTE for accounting budget specialist. The three is what was removed out of PSC's budget. The other 50 some pages that will be added to this amendment will be the statutory changes so that follows the money in the FTE's and package moves.

Representative Monson: We had a question about the FTEs that would be transferred out. My intention was to make it the same as what you took out.

Representative Vigesaa: Yes, that is correct.

Representative J. Nelson: there is an offset in the PSC budget of 4 FTEs?

Chairman Delzer: Three, and I think that they added one here.

Representative J. Nelson: So to move this program over to the ag commissioner's budget, we had to add that accounting budget specialist position for the ag commissioner that the PSC didn't have? Is that the way I am reading this?

Representative Vigesaa: There was a request for this either way.

Representative Boe: The offset is 3 but salary for 4.

Representative J. Nelson: Do they have the hiring authority to pick up that fourth grain inspector then during this biennium?

Chairman Delzer: It won't take place until July 1. The transfer will take place on July 1.

Representative J. Nelson: During the next biennium, they will have the authority to hire? The three grain inspectors that were being transferred, were their duties including warehouse grain inspection or did they have other responsibilities in their current job descriptions, like

railroad inspections?

Representative Vigesaa: I believe the rail inspectors were completely separate.

Chairman Delzer: I think some of the warehouse inspectors were given up on the rail inspectors originally came in. I think that was part of the issue.

Representative Brandenburg: The rail inspectors were put in there but they were funded under the diesel tax coming off the railroad. It is not that it funded that way, but the FTE's between the rail inspectors and pipeline inspectors those 3 FTE's ended up running that program with 1.75 people up in the PSC. This has got to go a different direction.

Representative Boe: There was one more thing with the APUC, we removed one FTE.

Representative J. Nelson: Is there a standalone bill that deal with the indemnity fund, where will we see that?

Chairman Delzer: SB 2346.

Representative Boe: I believe that is in the ag committee. The indemnity fund is not part of this amendment. The part of this amendment is the statutory change giving them the authority to be grain inspectors.

Chairman Delzer: SB 2328 transfers APUC. I think there is still a bill out there that they are sitting on 2346.

Representative J. Nelson: That has no bearing to this bill?

Chairman Delzer: That would have no bearing on what happened in the north central part of the state.

Representative Boe: That bill expands the coverage of what the fund will cover and who will pay into the indemnity fund.

Chairman Delzer: Have they put a do not pass on that SB 2346?

Levi LC: That bill has been hog housed and the amendment is going into SB 2009.

Chairman Delzer: We will have it in both bills. Voice vote carried.

Representative Boe: Motion do pass as amended.

Representative Brandenburg: Second.

Chairman Delzer: Further discussion?

House Appropriations Committee
SB 2009
April 8, 2019
Page 4

A Roll Call vote was taken. Yea: 19 Nay: 0 Absent: 2

Representative Boe will carry the bill.

Chairman Delzer: Will close this meeting.

19.0222.02002
Title.

Prepared by the Legislative Council staff for
the House Appropriations - Education and
Environment Division Committee
April 5, 2019

Fiscal No. 1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2009

Page 1, line 2, remove "to create and enact a new chapter to title 4.1 of the"

Page 1, line 3, remove "North Dakota Century Code, relating to the agricultural products utilization commission;"

Page 1, line 5, remove "to repeal chapter 54-60.3 of the North Dakota Century Code,"

Page 1, line 6, remove "relating to the agricultural products utilization commission;"

Page 1, remove lines 17 through 24

Page 2, replace lines 1 through 6 with:

"Salaries and wages	\$12,372,949	\$1,278,273	\$13,651,222
Operating expenses	6,444,336	258,444	6,702,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
Board of animal health	865,718	0	865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop harmonization board	75,000	0	75,000
Pipeline restoration and reclamation oversight program	200,000	0	200,000
Agricultural products utilization commission	<u>0</u>	<u>4,000,000</u>	<u>4,000,000</u>
Total all funds	\$30,196,777	\$5,594,117	\$35,790,894
Less estimated income	<u>21,087,676</u>	<u>4,279,056</u>	<u>25,366,732</u>
Total general fund	\$9,109,101	\$1,315,061	\$10,424,162
Full-time equivalent positions	73.00	4.00	77.00"

Page 2, line 27, replace "\$6,663,678" with "\$6,725,799"

Page 3, line 20, overstrike "five"

Page 3, line 20, replace "seventeen" with "ten"

Page 3, line 21, replace "eighty-seven" with "eight hundred twenty-nine"

Page 3, line 22, overstrike "eight"

Page 3, line 22, replace "twenty" with "thirteen"

Page 3, remove lines 23 through 31

Page 4, remove lines 1 through 31

Page 5, replace lines 1 through 24 with:

"SECTION 10. TRANSFER - BANK OF NORTH DAKOTA PROFITS - AGRICULTURAL PRODUCTS UTILIZATION COMMISSION. The Bank of North Dakota shall transfer the sum of \$2,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the agriculture

commissioner for deposit in the agricultural products utilization commission fund during the biennium beginning July 1, 2019, and ending June 30, 2021."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2009 - Department of Agriculture - House Action

	Base Budget	Senate Version	House Changes	House Version
Salaries and wages	\$12,372,949	\$13,049,463	\$601,759	\$13,651,222
Operating expenses	6,444,336	6,577,780	125,000	6,702,780
Capital assets	13,000	15,000		15,000
Grants	8,817,774	8,823,774		8,823,774
State Board of Animal Health	865,718	865,718		865,718
Wildlife services	1,408,000	1,457,400		1,457,400
Crop Harmonization Board	75,000	75,000		75,000
Pipeline restoration and reclamation	200,000	200,000		200,000
Ag. Products Utilization Commission		3,176,791	823,209	4,000,000
Total all funds	\$30,196,777	\$34,240,926	\$1,549,968	\$35,790,894
Less estimated income	21,087,676	24,503,189	863,543	25,366,732
General fund	\$9,109,101	\$9,737,737	\$686,425	\$10,424,162
FTE	73.00	75.00	2.00	77.00

Department 602 - Department of Agriculture - Detail of House Changes

	Adjusts Funding for Salary and Benefit Increases ¹	Removes 1 FTE Position ²	Removes Funding for Agriculture Commissioner Salary Equity Increase ³	Adjusts Funding for Wildlife Services Operating Fees ⁴	Adjusts Funding for APUC ⁵	Transfers Grain Warehouse Inspection Program from the PSC ⁶
Salaries and wages	\$45,913	(\$157,940)	(\$14,713)			\$728,499
Operating expenses						125,000
Capital assets						
Grants						
State Board of Animal Health						
Wildlife services						
Crop Harmonization Board						
Pipeline restoration and reclamation						
Ag. Products Utilization Commission					\$823,209	
Total all funds	\$45,913	(\$157,940)	(\$14,713)	\$0	\$823,209	\$853,499
Less estimated income	25,357	(34,423)	0	49,400	823,209	0
General fund	\$20,556	(\$123,517)	(\$14,713)	(\$49,400)	\$0	\$853,499
FTE	0.00	(1.00)	0.00	0.00	(1.00)	4.00

	Total House Changes
Salaries and wages	\$601,759
Operating expenses	125,000
Capital assets	
Grants	
State Board of Animal Health	
Wildlife services	
Crop Harmonization Board	
Pipeline restoration and reclamation	
Ag. Products Utilization Commission	823,209
Total all funds	\$1,549,968
Less estimated income	863,543
General fund	\$686,425
FTE	2.00

¹ Funding of \$45,913, of which \$20,556 is from the general fund and \$25,357 is from other funds, is added for 2019-21 biennium salary increases of 2 percent with a minimum monthly maximum increase of \$120 and a maximum monthly increase of \$200 on July 1, 2019, and 2.5 percent on July 1, 2020. The Senate provided funding for a salary increase of 2 percent on July 1, 2019, and a 3 percent increase on July 1, 2020.

² One FTE undesignated position and funding of \$157,940 is removed, of which \$123,517 is from the general fund, \$6,673 is from the Department of Agriculture operating fund, and \$27,750 is from federal funds. The Senate did not remove any FTE positions.

³ Funding of \$14,713 provided by the Senate to increase the Agriculture Commissioner's salary to align with the Tax Commissioner's salary is removed.

⁴ The funding source for \$49,400 for wildlife services operating fees is changed to the environment and rangeland protection fund rather than the general fund to provide total funding of \$1,457,400 for wildlife services, the same amount as the Senate.

⁵ Funding for the Agricultural Products Utilization Commission (APUC) is adjusted as follows:

	<u>FTE</u>	<u>Other Funds</u>
Reduces funding from the APUC special funds	(1.00)	(\$1,176,791)
Adds funding from Bank of North Dakota profits	<u>0.00</u>	<u>2,000,000</u>
Total	(1.00)	\$823,209

Total funding approved by the House for APUC is \$4 million, of which \$2 million is from the APUC fund and \$2 million is from the profits of the Bank of North Dakota. The House approved 1 FTE APUC position for the program. The Senate approved total funding of \$3,176,791 from the APUC fund and 2 FTE positions.

⁶ Transfers the grain warehouse license and inspection program from the Public Service Commission to the Agriculture Commissioner as follows:

	<u>Salaries and Wages</u>	<u>Operating Expenses</u>	<u>Total General Fund</u>
Adds 3 FTE grain warehouse inspectors	\$563,006	\$120,000	\$683,006
Adds 1 FTE accounting budget specialist	<u>165,493</u>	<u>5,000</u>	<u>170,493</u>
Total	\$728,499	\$125,000	\$853,499

This amendment also:

- Amends a section identifying the amount of funding from the environment and rangeland protection fund.
- Amends a section relating to the salary of the Agriculture Commissioner.
- Adds a section related to the transfer of \$2 million of the current earnings and undivided profits of the Bank of North Dakota to the Agriculture Commissioner for deposit in the APUC fund during the 2019-21 biennium.
- Removes statutory sections related to APUC. The statutory changes needed to move APUC to the Agriculture Commissioner are included in Senate Bill No. 2328.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2009

Page 1, line 2, remove "to create and enact a new chapter to title 4.1 of the"

Page 1, line 3, replace "North Dakota Century Code, relating to the agricultural products utilization commission" with "to create and enact a new section to chapter 60-01, a new section to chapter 60-02, and three new sections to chapter 60-02.1 of the North Dakota Century Code, relating to the definition of agriculture commissioner, licensing and bonding for cash grain brokers, and records confidentiality for warehousemen and grain buyers"

Page 1, line 4, after "4.1-01-02" insert ", 49-02-01, subsection 1 of section 60-02-01, sections 60-02-02, 60-02-03, 60-02-04, 60-02-05.1, 60-02-07, 60-02-07.2, 60-02-09, 60-02-09.1, 60-02-10.1, 60-02-11, 60-02-14, 60-02-17, 60-02-24, 60-02-27, 60-02-35.1, 60-02-38, 60-02-40, 60-02-41, 60-02-42, 60-02.1-01, 60-02.1-02, 60-02.1-03, 60-02.1-04, 60-02.1-06, 60-02.1-07, 60-02.1-07.1, 60-02.1-08, 60-02.1-09, 60-02.1-11, 60-02.1-16, 60-02.1-17, 60-02.1-19, 60-02.1-22, 60-02.1-26, 60-02.1-27, 60-02.1-29, 60-02.1-30, 60-02.1-32, 60-02.1-33, 60-02.1-34, 60-02.1-35, 60-02.1-36, 60-02.1-37, 60-02.1-38, and 60-02.1-39, subsection 1 of section 60-04-01, and sections 60-04-03, 60-04-03.1, 60-04-03.2, 60-04-03.3, 60-04-04, 60-04-05, 60-04-06, 60-04-07, 60-04-08, 60-04-09, 60-04-10, 60-05-01, 60-05-02, 60-05-03, 60-05-04, 60-06-05, 60-06-06.1, 60-10-01, 60-10-02, 60-10-03, 60-10-05, 60-10-07, 60-10-08, 60-10-09, 60-10-10, 60-10-11, 60-10-12, 60-10-14, and 60-10-15"

Page 1, line 5, after "commissioner" insert ", moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner"

Page 1, line 5, remove "to repeal chapter 54-60.3 of the North Dakota Century Code,"

Page 1, line 6, remove "relating to the agricultural products utilization commission;"

Page 1, line 7, after "assembly" insert "to provide a penalty; to provide a continuing appropriation; and to provide for a transfer"

Page 1, remove lines 17 through 24

Page 2, replace lines 1 through 6 with:

"Salaries and wages	\$12,372,949	\$1,278,273	\$13,651,222
Operating expenses	6,444,336	258,444	6,702,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
Board of animal health	865,718	0	865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop harmonization board	75,000	0	75,000
Pipeline restoration and reclamation oversight program	200,000	0	200,000
Agricultural products utilization commission	<u>0</u>	<u>4,000,000</u>	<u>4,000,000</u>
Total all funds	\$30,196,777	\$5,594,117	\$35,790,894

Less estimated income	21,087,676	4,279,056	25,366,732
Total general fund	\$9,109,101	\$1,315,061	\$10,424,162
Full-time equivalent positions	73.00	4.00	77.00"

Do 4/10/1
2 of 38

Page 2, line 27, replace "\$6,663,678" with "\$6,725,799"

Page 3, after line 16, insert:

"SECTION 9. TRANSFER - BANK OF NORTH DAKOTA PROFITS - AGRICULTURAL PRODUCTS UTILIZATION COMMISSION. The Bank of North Dakota shall transfer the sum of \$2,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the agriculture commissioner for deposit in the agricultural products utilization commission fund during the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 3, line 20, overstrike "five"

Page 3, line 20, replace "seventeen" with "ten"

Page 3, line 21, replace "eighty-seven" with "eight hundred twenty-nine"

Page 3, line 22, overstrike "eight"

Page 3, line 22, replace "twenty" with "thirteen"

Page 3, remove lines 23 through 31

Page 4, remove lines 1 through 31

Page 5, replace lines 1 through 24 with:

"SECTION 11. AMENDMENT. Section 49-02-01 of the North Dakota Century Code is amended and reenacted as follows:

49-02-01. General jurisdiction of the public service commission over public utilities.

The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.
2. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.
3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
4. Electric utilities engaged in the generation and distribution of light, heat, or power.
5. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
6. All heating utilities engaged in the distribution of heat.
7. ~~Warehouse companies engaged in the marketing, storage, or handling of agricultural products.~~

- 8. All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

SECTION 12. A new section to chapter 60-01 of the North Dakota Century Code is created and enacted as follows:

Definition.

For purposes of this title, "commissioner" means the agriculture commissioner.

SECTION 13. AMENDMENT. Subsection 1 of section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

- 1. ~~"Commissioner"~~ means the ~~public service~~ agriculture commissioner.

SECTION 14. AMENDMENT. Section 60-02-02 of the North Dakota Century Code is amended and reenacted as follows:

60-02-02. Commissioner - Powers and duties.

~~The commissioner has the powers and duties imposed by the provisions enumerated under this chapter and the powers conferred herein devolve upon the commission.~~

SECTION 15. AMENDMENT. Section 60-02-03 of the North Dakota Century Code is amended and reenacted as follows:

60-02-03. Duties and powers of the commissioner.

~~The commission shall have the duty and power to~~ commissioner has the following powers and duties:

- 1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.
- 2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
- 3. Examine and inspect, during ordinary business hours, any licensed warehouse, including all books, documents, and records.
- 4. Require the filing of reports pertaining to the operation of the warehouse.
- 5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

SECTION 16. AMENDMENT. Section 60-02-04 of the North Dakota Century Code is amended and reenacted as follows:

60-02-04. Federal licensed inspector ~~Appointed by commission.~~

The ~~commission~~ commissioner may employ a federal licensed inspector whose duties are hereinafter prescribed and such enumerated under this chapter and may

employ other employees as ~~may be~~ necessary to carry out the provisions of this chapter.

SECTION 17. AMENDMENT. Section 60-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-05.1. Notice of procedures for resolving disputes over grain.

A public warehouse shall post a notice containing the procedures specified in section 60-02-05 for resolving disputes. The ~~commission~~commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each public warehouse. The public warehouseman shall post the notice in the grain inspection room of the warehouse. The notice must specifically mention ~~that~~ the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

SECTION 18. AMENDMENT. Section 60-02-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07. Public warehouse license - Fee - Financial statement.

A license must be obtained from the ~~commission~~commissioner for each public warehouse in operation in this state.

1. a. ~~The commission shall stagger by lot the expiration date of all licenses issued for the period beginning August 1, 2015, so that one half of all the licenses issued expire on July 31, 2016, and one half of all the licenses issued expire on July 31, 2017. Thereafter, all~~All licenses issued under this section must be for a period of two years and terminate on the thirty-first day of July in the year of expiration.
- b. (1) Notwithstanding the provisions of subdivision a, the ~~commission~~commissioner shall license a warehouse annually, for the first six years of the warehouse's operation.
- (2) An initial annual license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year.
2. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described.
3. a. The annual license fee for a public warehouse is:
 - (1) ~~Three~~Four hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) ~~Four~~Five hundred fifty dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and

- (3) ~~Five~~Six hundred fifty dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- b. The biennial license fee for a public warehouse is:
 - (1) ~~Six~~Seven hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) ~~Nine hundred~~One thousand dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
 - (3) One thousand ~~one~~two hundred dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- c. An application for an annual license renewal that is received after July fifteenth must include an additional one hundred dollar fee per warehouse. An application for a biennial license renewal that is received after July fifteenth must include an additional two hundred dollar fee per warehouse.
- 4. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. When two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses.
- 5. If required to obtain United States department of agriculture approval of the ~~commission's~~commissioner's warehouse inspection program, the ~~commission~~commissioner may require ~~that~~ the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this subsection is a confidential trade secret and is not a public record.

SECTION 19. AMENDMENT. Section 60-02-07.2 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07.2. Receiving stations.

A licensed public warehouseman may establish a receiving station without a separate warehouse license for that facility if all of the following conditions are met:

- 1. The station is colocated with another licensed public warehouse, the operator of which will take delivery of the grain on behalf of the warehouseman who established the receiving station.
- 2. The storage space used by the receiving station is used solely by the receiving station and is not licensed as part of the warehouse that is located at that site.

DE 4/10/19
leaf 38

3. The grain taken in by the receiving station is not commingled with other grain at that site.
4. The warehouseman establishing the station requests and receives ~~commission~~ permission from the commissioner to increase licensed capacity to include the space to be used at the receiving station.
5. Grain received at the receiving station is recorded on scale tickets issued by the warehouseman who established the station and is covered by that warehouseman's bond.
6. Warehouse-receipted grain received at the receiving station is available for redelivery to the receipt holder at that location even if the station has been closed. A charge for redelivery must be stated in the warehouseman's redelivery policy.

The storage space used by a receiving station need not be physically disconnected from the facilities of the other licensed warehouse located at that site.

SECTION 20. AMENDMENT. Section 60-02-09 of the North Dakota Century Code is amended and reenacted as follows:

60-02-09. Bond filed by public warehouseman.

Before any license is effective for any public warehouseman under this chapter, the applicant for the license shall file a bond with the ~~commission~~commissioner which must:

1. Be in a sum not less than five thousand dollars for any one warehouse.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in that warehouse.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a public warehouseman.
 - b. For compliance with the provisions of law and the rules of the ~~commission~~commissioner relating to the storage and purchase of grain by such warehouseman.
5. Specify the location of each public warehouse intended to be covered by such bond.
6. Be for the specific purpose of:
 - a. Protecting the holders of outstanding receipts.
 - b. Covering the costs incurred by the ~~commission~~commissioner in the administration of chapter 60-04 in the event of the licensee's insolvency.

- 7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.
- 8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The ~~commission~~commissioner shall set the amount of the bond and may require an increase in the amount of any bond, from time to time, as the ~~commission~~commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commission~~commissioner, and authorized to do business within the state. The ~~commission~~commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond ~~whenif~~, in ~~its~~the commissioner's judgment, the cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. One bond only may be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and the bond must be construed to cover ~~such~~the elevators, mills, or warehouses, as a whole and not a specific amount for each.

SECTION 21. AMENDMENT. Section 60-02-09.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-09.1. Bond cancellation - Release of surety.

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commission~~commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the warehouseman files a new bond at least thirty days before liability ceases, the ~~commission~~commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commission~~commissioner. ~~Whenif~~ a license is so suspended, the warehouseman shall give notice of such suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse that the grain must be removed from the warehouse or ~~it~~the grain will be priced and redeemed in cash in accordance with section 60-02-41.

SECTION 22. AMENDMENT. Section 60-02-10.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-10.1. Revocation and suspension.

The ~~commission~~commissioner may suspend or revoke the license of any warehouseman for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license the warehouseman may, upon the ~~commission's~~commissioner's approval, operate the

warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping, or processing. Grain may be sold only with the prior approval of the ~~commission~~ commissioner.

SECTION 23. AMENDMENT. Section 60-02-11 of the North Dakota Century Code is amended and reenacted as follows:

60-02-11. Scale ticket - Contents - Conversion.

- 1. a. Every public warehouseman, upon receiving grain into the warehouse, shall issue a uniform scale ticket for each load of grain received. The scale tickets must be numbered consecutively, and one copy of each ticket must be retained and remain as a permanent record. The original ticket must be delivered to the person from whom the grain is received, upon receipt of each load of grain.
 - b. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within forty-five days after the grain is delivered to the warehouse, unless:
 - (1) The person to whom the scale ticket is issued signs a form waiving all rights to trust benefits under section 60-04-03.1;
 - (2) The form identifies by number each scale ticket to which the waiver applies; and
 - (3) The form is signed by the warehouseman.
 - c. The ~~commission~~ commissioner shall prepare the waiver form required by subdivision b and make the form available to each warehouse.
 - d. The warehouseman shall keep one copy of the signed waiver form with the records of the warehouse, provide one copy to the person who was issued the scale ticket and signed the form, and file one copy with the ~~commission~~ commissioner.
2. Nothing in this chapter requires a warehouseman to receive grain for storage. A warehouseman shall publish and post, in a conspicuous place in the warehouse, a publication identifying whether storage will be available to patrons or whether grain will be accepted via cash or a credit-sale contract arrangement.

SECTION 24. AMENDMENT. Section 60-02-14 of the North Dakota Century Code is amended and reenacted as follows:

60-02-14. Warehouse receipts - Copy.

Provision ~~shall~~ **must** be made for a stub record or copy of each warehouse receipt issued by a warehouseman, showing:

- 1. The serial number and date of receipt.
- 2. The kind and grade of grain.
- 3. The dockage and net weight of the grain.

The record or copy ~~shall~~must remain in the possession of the warehouseman for inspection by the ~~commissioner~~commissioner and persons properly interested.

SECTION 25. AMENDMENT. Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.

1. A warehouse receipt must contain, either on its face or reverse side, the following warehouse and storage contract:

This grain is received, insured, and stored subject to the laws and rules of the state of North Dakota, the terms of this contract, and the charges and conditions stated herein and as filed with the North Dakota ~~public service~~agriculture commissioner. Upon surrender of this receipt and payment or tender of all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. This receipt does not require the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

2. A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts. This publication must be filed with the ~~commissioner~~commissioner as a part of the warehouse license process or annual renewal. The fees and termination date must be stated on the warehouse receipt issued for the grain. The fees or termination date may be changed upon filing a revised publication with the ~~commissioner~~commissioner.

SECTION 26. AMENDMENT. Section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

60-02-24. Reports to be made by public warehouseman - Penalty for failure.

Each licensed and bonded public warehouseman shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commissioner~~commissioner. The report must contain or be verified by a written declaration ~~that it~~ the report is made under the penalties of perjury. The report may be called for more frequently if the ~~commissioner~~commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a

public record. The ~~commissioner~~ commissioner may make the information available for use by other governmental entities, but the ~~commissioner~~ commissioner may not release the information in a manner that jeopardizes the confidentiality of individual licensees.

2. File the report with the ~~commissioner~~ commissioner not later than the last day of the following month, and failure to file this report promptly will be considered cause for revoking the warehouse license after due notice and hearing.
3. Keep a separate account of the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances ~~shall~~ may the grain account and other accounts be mixed.

The ~~commissioner~~ commissioner may refuse to renew a license to any public warehouseman who fails to make a required report.

SECTION 27. AMENDMENT. Section 60-02-27 of the North Dakota Century Code is amended and reenacted as follows:

60-02-27. Federal grades to control - Grades to be posted.

All public warehousemen shall purchase and store grain except dry edible beans in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law. ~~They~~ Public warehousemen shall post in a conspicuous place in ~~their~~ the public warehousemen's warehouse the official grades so established and also any change that may be made from time to time. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with ~~their~~ the policy of the warehousemen which must be filed with the ~~commissioner~~ commissioner and posted in a conspicuous place in ~~their~~ the warehouse of the public warehousemen. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards. The ~~commissioner~~ commissioner, after hearing, may prohibit the use of nonfederal grades.

SECTION 28. AMENDMENT. Section 60-02-35.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-35.1. Insurance - Cancellation - Suspension of license.

An insurance company shall give at least sixty days' notice to the ~~commissioner~~ commissioner and the insured by certified mail return receipt requested before cancellation of an insurance policy required in section 60-02-35. Unless the warehouseman files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commissioner~~ commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commissioner~~ commissioner. ~~When~~ If a license is so suspended, the warehouseman shall give notice of ~~such~~ the suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse ~~that~~ the grain must be removed from the warehouse or ~~it~~ the grain will be priced and redeemed in cash in accordance with section 60-02-41.

SECTION 29. AMENDMENT. Section 60-02-38 of the North Dakota Century Code is amended and reenacted as follows:

60-02-38. Refund of license fee by ~~commissioner~~ commissioner.

~~When~~ If requested in writing, the ~~commissioner~~ commissioner shall refund the license fee of a public warehouse, or so much as in ~~its~~ the commissioner's judgment is just and reasonable, ~~when~~ if satisfactory proof is furnished that the warehouse has been transferred to some other person, and the new owner has obtained a license for the same warehouse for the unexpired period for which the original license was issued. ~~When~~ If a warehouse is destroyed by fire or other cause, the license fee may be prorated as the ~~commissioner~~ commissioner may determine.

SECTION 30. AMENDMENT. Section 60-02-40 of the North Dakota Century Code is amended and reenacted as follows:

60-02-40. Transfer of warehouse - Redemption of receipts.

~~Whenever~~ If a public warehouseman desires to transfer a warehouse, either by sale or lease to any other individual, firm, or corporation, the warehouseman shall:

1. Notify the ~~commissioner~~ commissioner first of ~~its~~ the warehouseman's intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
2. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain, together with a statement of:
 - a. The number of bushels [cubic meters] of grain of each kind and grade in store in the warehouse;
 - b. The number and amount of receipts outstanding; and
 - c. The names and addresses of the receipt holders.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receipt holders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery. The ~~commissioner~~ commissioner may waive the thirty-day notice period upon receipt of written consent of all receipt holders.
4. Transfer all stored grain undelivered at the expiration of such thirty-day period to ~~its~~ the warehouseman's successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred.
5. Surrender to the ~~commissioner~~ ~~its~~ commissioner the warehouseman's license for cancellation ~~and at such, at which~~ time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commission, whereupon, it~~ commissioner, at which time, the commissioner, first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof all outstanding

DE 4/10/19
17 of 31

receipts has been provided for, the ~~commission~~commissioner may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any warehouse will be recognized by the ~~commission~~commissioner except when made in accordance with the provisions of this section.

SECTION 31. AMENDMENT. Section 60-02-41 of the North Dakota Century Code is amended and reenacted as follows:

60-02-41. Going out of business - Redemption of receipts.

~~When~~If a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, ~~such~~the warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of such receipts, upon due notice, ~~must~~shall accept this price and surrender the receipts. Any public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license or whose warehouse license is revoked shall notify the ~~commission~~commissioner and all outstanding receiptholders of such closing and redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein ~~shall~~must be settled in cash and priced on the market on the day of closing.

SECTION 32. AMENDMENT. Section 60-02-42 of the North Dakota Century Code is amended and reenacted as follows:

60-02-42. Cease and desist.

~~Whenever~~If an entity engages in an activity or practice ~~that is~~ contrary to the provisions of this chapter or related rules, the ~~commission~~commissioner, upon ~~its~~the commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the ~~commission~~commissioner. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 33. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a public warehouse license; or
 - b. An investigation after issuance or renewal of a public warehouse license.

2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a public warehouse license; or
 - b. An investigation after issuance or renewal of a public warehouse license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 34. AMENDMENT. Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "~~Commissioner~~Cash grain broker" means a person who:
 - a. Is involved in the negotiation of cash grain transactions in the state;
 - b. Receives compensation from at least one party to the transaction; and
 - c. Does not take title to the grain and is not under any financial or contractual obligation related to the transaction.
2. "Commissioner" means the ~~public service commissioner~~agriculture commissioner.
- 2-3. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
- 3-4. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
- 4-5. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
- 5-6. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans,

corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.

- ~~6-7.~~ "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:
- a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
 - b. A person who is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.
 - c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.
- ~~7-8.~~ "Grain processor" means an entity that purchases grain to process into end products that are of a substantially different makeup or nature than the original grain.
- ~~9.~~ "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
- ~~8-10.~~ "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.
- ~~9-11.~~ "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

SECTION 35. AMENDMENT. Section 60-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-02. ~~Commission~~Commissioner - Powers and duties.

The ~~powers and duties imposed and the powers conferred by this chapter devolve upon the commission~~of the commissioner are enumerated in this chapter.

SECTION 36. AMENDMENT. Section 60-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-03. Duties and powers of the ~~commission~~commissioner.

The ~~commission~~commissioner has the duty and power to:

1. Exercise general supervision of grain buyers of this state.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.

- 3. Examine and inspect, during ordinary business hours, any books, documents, and records.
- 4. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

SECTION 37. AMENDMENT. Section 60-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-04. Federal licensed inspector –Appointed by commission.

The ~~commission~~commissioner may employ a federal licensed inspector whose duties are ~~hereinafter prescribed, and such~~ enumerated in this chapter and may employ other employees as ~~may be~~ necessary to carry out the provisions of this chapter.

SECTION 38. AMENDMENT. Section 60-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-06. Notice of procedures for resolving disputes over grain.

A facility-based grain buyer shall post a notice containing the procedures specified in section 60-02.1-05 for resolving disputes. The ~~commission~~commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each facility-based grain buyer. The facility-based grain buyer shall post the notice in the grain inspection room of the facility. The notice must specifically mention ~~that~~ the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

SECTION 39. AMENDMENT. Section 60-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.

Grain buyers ~~must~~shall obtain an annual license from the ~~commission~~commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. A facility-based grain buyer ~~must~~shall obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such facilities, and scale tickets and checks of but one series are issued for the grain, purchased, only one license is required for the operation of all such facilities. The annual license fee for a facility-based grain buyer is ~~three~~four hundred dollars and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location.

If required to obtain United States department of agriculture approval of the ~~commission's~~commissioner's grain buyer inspection program, the ~~commission~~commissioner may require ~~that~~ grain buyers submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

SECTION 40. AMENDMENT. Section 60-02.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07.1. Roving grain buyer license - How obtained - Fee.

Roving grain buyers that purchase, solicit, merchandise, or take possession of grain in this state ~~must~~ shall obtain an annual license from the ~~commissioner~~ commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~ If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee for a roving grain buyer is ~~two~~ three hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

SECTION 41. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Cash grain broker license - Application - Bond - How obtained - Fee - Report - Disclosure.

1. Before conducting business in the state, a cash grain broker must submit an application to obtain an annual license from the commissioner. To conduct business in the state, a cash grain broker must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee of a cash grain broker is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
2. An application for licensure must include:
 - a. The name under which the applicant intends to conduct business in the state as a cash grain broker;
 - b. The name of each partner if the cash grain broker is in a partnership;
 - c. The name of each corporate officer and the state of incorporation if the cash grain broker is a corporation;
 - d. The name of each manager and the state of organization if the cash grain broker is a limited liability company;
 - e. The mailing address of the applicant; and
 - f. The location of the principal place of business of the applicant.
3. The commissioner may refuse to issue, renew, or may revoke a license if:
 - a. The licensee or applicant has been convicted of a criminal offense;
 - b. The licensee or applicant has failed to comply with the requirements of this section;
 - c. The commissioner has evidence the licensee negotiated in bad faith;
or

- d. Any other reason determined by the commissioner.
4. A licensed cash grain broker must submit a monthly report to the commissioner by the tenth day of each month. The report must include:
 - a. The total volume of each commodity brokered in the preceding month; and
 - b. The name and contact information of any buyer who had more than two hundred fifty thousand dollars in total purchases in transactions brokered by the cash grain broker during the preceding month.
5. A licensed cash grain broker must notify each potential commodity seller of the identity of the potential commodity buyer before the final confirmation of the transaction.
6. Before a license is effective for a cash grain broker under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

SECTION 42. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Grain processor license - Application - Bond - How obtained - Fee - Report - Disclosure.

1. Before conducting business in the state, a grain processor must submit an application to obtain an annual license from the commissioner. To conduct business in the state, a grain processor must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee of a grain processor is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
2. An application for licensure must include:
 - a. The name under which the applicant intends to conduct business in the state as a grain processor;
 - b. The name of each partner if the grain processor is in a partnership;
 - c. The name of each corporate officer and the state of incorporation if the grain processor is a corporation;
 - d. The name of each manager and the state of organization if the grain processor is a limited liability company;
 - e. The mailing address of the applicant; and
 - f. The location of the principal place of business of the applicant.
3. The commissioner may refuse to issue, renew, or may revoke a license if:
 - a. The licensee or applicant has been convicted of a criminal offense;

- b. The licensee or applicant has failed to comply with the requirements of this section;
 - c. The commissioner has evidence the licensee negotiated in bad faith;
or
 - d. Any other reason determined by the commissioner.
4. A licensed grain processor must submit a monthly report to the commissioner by the tenth day of each month. The report must include the total volume of each commodity processed in the preceding month.
 5. Before a license is effective for a grain processor under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

SECTION 43. AMENDMENT. Section 60-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-08. Bond filed by grain buyer.

Before any license is effective for any grain buyer under this chapter, the applicant for the license shall file a bond with the ~~commission~~ commissioner which must:

1. Be in a sum not less than ~~five~~ ten thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~ commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a grain buyer.
 - b. For compliance with the provisions of law and the rules of the ~~commission~~ commissioner relating to the purchase of grain by such grain buyer.
5. For facility-based grain buyers, specify the location of each facility intended to be covered by the bond.
6. Be for the specific purpose of:
 - a. Protecting the sellers of grain.
 - b. Covering the costs incurred by the ~~commission~~ commissioner in the administration of the licensee's insolvency.
7. Not accrue to the benefit of any person entering ~~into~~ a credit-sale contract with a grain buyer.
8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in

force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The ~~commission~~commissioner may require an increase in the amount of any bond, from time to time, as ~~the~~ commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commission~~commissioner, and authorized to do business within the state. The ~~commission~~commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in ~~its~~the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts. Only one bond may be required for any series of facilities operated by a facility-based grain buyer, and the bond must be construed to cover those facilities as a whole and not a specific amount for each.

SECTION 44. AMENDMENT. Section 60-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-09. Bond cancellation - Release of surety.

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commission~~commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the grain buyer files a new bond at least thirty days before liability ceases, the ~~commission~~commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commission~~commissioner.

SECTION 45. AMENDMENT. Section 60-02.1-11 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-11. Revocation and suspension.

The ~~commission~~commissioner may suspend or revoke the license of any grain buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a grain buyer must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license a facility-based grain buyer, upon the ~~commission's~~commissioner's approval, may operate its facility and purchase or redeliver grain previously received, but may not receive additional grain for purchase, shipping, or processing. Grain may be sold only with the prior approval of the ~~commission~~commissioner.

SECTION 46. AMENDMENT. Section 60-02.1-16 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-16. Records required to be kept by grain buyers.

Each grain buyer shall keep such accounts, records, and memoranda concerning the buyer's dealing as such grain buyer as from time to time may be required by the ~~commission~~commissioner and shall make such reports of purchases of grain as may be required by the rules ~~made~~adopted by the ~~commission~~commissioner.

DA 4/10/19
20 of 38

The ~~commission~~commissioner at all times ~~shall~~must have access to such accounts, records, and memoranda.

SECTION 47. AMENDMENT. Section 60-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-17. Reports to be made by grain buyers - Penalty for failure.

Each licensed and bonded grain buyer shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commission~~commissioner. The report must contain or be verified by a written declaration ~~that the report~~ is made under the penalties of perjury. The report may be called for more frequently if the ~~commission~~commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commission~~commissioner may make this information available for use by other governmental entities, but the information may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the ~~commission~~commissioner not later than the last day of the following month. Failure to file this report promptly will be considered cause for revoking the grain buyer license after due notice and hearing.
3. Keep a separate account of the grain business, if the grain buyer is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.

The ~~commission~~commissioner may refuse to renew a license to any grain buyer who fails to make a required report.

SECTION 48. AMENDMENT. Section 60-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-19. Federal grades to control - Grades to be posted.

All grain buyers shall purchase grain, except dry edible beans, in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in applicable rules and regulations ~~applicable thereto~~ adopted by federal officials pursuant to law. A facility-based grain buyer shall post in a conspicuous place in the buyer's facility the official grades so established and also any change that may be made from time to time. A grain buyer of dry edible beans shall purchase and deliver beans in accordance with the buyer's policy, which must be filed with the ~~commission~~commissioner and, if applicable, posted in a conspicuous place in the buyer's facility. Other grading standards may be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However, the owner may demand the use of federal grading standards. After hearing, the ~~commission~~commissioner may prohibit the use of nonfederal grades.

SECTION 49. AMENDMENT. Section 60-02.1-22 of the North Dakota Century Code is amended and reenacted as follows:

DE 4/10/19
21 of 38

60-02.1-22. Insurance - Cancellation - Suspension of license.

An insurance company shall give at least sixty days' notice to the ~~commissioner~~ and the insured by registered mail return receipt requested before cancellation of an insurance policy required in section 60-02.1-21. Unless the grain buyer files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commissioner~~, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commissioner~~.

SECTION 50. AMENDMENT. Section 60-02.1-26 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-26. Transfer of facility - Redemption of receipts.

~~Whenever~~If a facility-based grain buyer desires to transfer a facility, either by sale or lease to any other individual, firm, or corporation, the grain buyer shall:

1. Notify the ~~commissioner~~ first of its intention to transfer the facility, giving the name and address of the proposed lessee or purchaser.
2. Provide related information as may be required by the ~~commissioner~~.
3. Surrender to the ~~commissioner~~ the grain buyer's license for cancellation and at that time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commissioner~~, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the ~~commissioner~~ may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any facility will be recognized by the ~~commissioner~~ except when made in accordance with the provisions of this section.

SECTION 51. AMENDMENT. Section 60-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-27. Going out of business - Redemption of receipts.

~~When~~If a facility-based grain buyer ceases business through closure, the destruction of a facility by fire or other cause, or through insolvency, ~~such~~the grain buyer shall redeem all outstanding receipts at the price prevailing on the date the facility was closed, destroyed, or became insolvent. The holder of ~~such~~the receipts, upon due notice, ~~must~~shall accept this price and surrender the receipts. Any facility-based grain buyer who voluntarily ceases business or fails to renew an existing grain buyer license or whose grain buyer license is revoked shall notify the ~~commissioner~~ and all receipt holders of such closing and redeem all such receipts at the price prevailing on the date the business closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein ~~shall~~must be settled in cash and priced on the market on the day of closing.

SECTION 52. AMENDMENT. Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-29. Appointment of ~~commissioner~~ commissioner.

Upon the insolvency of any roving grain buyer, the ~~commissioner~~ commissioner shall apply to the district court of Burleigh County for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. If the insolvency involves a facility-based grain buyer, application must be to the district court of a county in which the licensee operates a licensed facility. Upon notice to the licensee as the court prescribes, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the receiptholders that the ~~commissioner~~ commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and the ~~commissioner~~ commissioner shall proceed to exercise ~~its~~ the commissioner's authority without further direction from the court.

Upon the filing of the ~~commission's~~ commissioner's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

SECTION 53. AMENDMENT. Section 60-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-30. Trust fund established.

Upon the insolvency of any licensee, a trust fund must be established for the benefit of noncredit-sale receiptholders and to pay the costs incurred by the ~~commissioner~~ commissioner in the administration of the insolvency. The trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commissioner~~ commissioner is appointed trustee must be remitted to the ~~commissioner~~ commissioner and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.
4. The claims for relief, and proceeds ~~therefrom~~ from the claims for relief, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
5. The claim for relief, and proceeds ~~therefrom~~ from the claim for relief, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.

8. Unencumbered grain product assets.

SECTION 54. AMENDMENT. Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-32. Notice to receiptholders and credit-sale contract claimants.

Upon ~~its~~the commissioner's appointment, the ~~commissioner~~commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~commissioner~~commissioner shall publish a notice of ~~its~~the commissioner's appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, disclosed by the licensee's records. If the insolvency involves a facility-based grain buyer, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located. The notice must require outstanding receiptholders and credit-sale contract claimants to file their claims with the ~~commissioner~~commissioner along with the receipts, contracts, or other evidence of the claims required by the ~~commissioner~~commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the ~~commissioner~~commissioner, the ~~commissioner~~commissioner is relieved of further duty in the administration of the insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder may be barred from participation in the trust fund, and the credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 55. AMENDMENT. Section 60-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-33. Remedy of receiptholders.

~~No~~A receiptholder ~~has~~does not have a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the ~~commissioner~~commissioner fails or refuses to apply for ~~its~~the commissioner's own appointment or unless the district court denies the application. This chapter does not prohibit any receiptholder, either individually or in conjunction with other receiptholders, from pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 56. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-34. CommissionerCommissioner to marshal trust assets.

Upon ~~its~~the commissioner's appointment, the ~~commissioner~~commissioner shall marshal all of the trust fund assets. The ~~commissioner~~commissioner may maintain suits in the name of the state of North Dakota for the benefit of all receiptholders against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any person who may have received preferential treatment by being paid by the insolvent licensee after the first default.

009/10/17
24 of 38

SECTION 57. AMENDMENT. Section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-35. Power of ~~commission~~ commissioner to prosecute or compromise claims.

The ~~commission~~ commissioner may:

1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action ~~when~~ if it will be in the best interests of the receiptholders.
4. Settle and compromise any action ~~when~~ if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

SECTION 58. AMENDMENT. Section 60-02.1-36 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-36. Money received by trustee - Deposited in Bank of North Dakota.

All funds received by the ~~commission~~ commissioner as trustee must be deposited in the Bank of North Dakota.

SECTION 59. AMENDMENT. Section 60-02.1-37 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-37. Report of trustee to court - Approval - Distribution.

1. Upon the receipt and evaluation of claims, the commission shall file with the court a report showing the amount and validity of each claim after recognizing:
 - a. Relevant liens or pledges.
 - b. Relevant assignments.
 - c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
 - d. In case of relevant cash claims or checks, the amount of the claim.
 - e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.
2. The report must also contain the proposed reimbursement to the ~~commission~~ commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the ~~commission~~ commissioner in the administration of the insolvency, and the proposed credit-sale contract

indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receiptholder claims in full, the report should list the funds as prorated.

3. The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commission's~~ commissioner's report should not be approved and distribution of the trust fund be made as proposed. Copies of the report and notice of hearing must be served by the ~~commission~~ commissioner by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the ~~commission~~ commissioner.
4. Any aggrieved person having an objection to the ~~commission's~~ commissioner's report shall file the objection with the court and serve copies on the ~~commission~~ commissioner, the licensee, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Following the hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the ~~commission~~ commissioner from ~~its~~ the commissioner's trust.

SECTION 60. AMENDMENT. Section 60-02.1-38 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-38. Filing fees and court costs - Expenses.

The ~~commission~~ commissioner may not be required to pay any filing fee or other court costs or disbursements. The attorney general may appoint outside legal counsel to assist the ~~commission~~ commissioner in the prosecution of the action and the cost of employing outside counsel must be paid from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the ~~commission~~ commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission, its~~ commissioner, the commissioner's employees, and others engaged in carrying out the provisions of sections 60-02.1-28 through 60-02.1-38, must be reimbursed to the ~~commission~~ commissioner from the trust fund and credit-sale contract indemnity funds as appropriate.

SECTION 61. AMENDMENT. Section 60-02.1-39 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-39. Cease and desist.

~~Whenever~~ If an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the ~~commission~~ commissioner, upon ~~its~~ the commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the ~~commission~~ commissioner. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 62. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 63. AMENDMENT. Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "~~Commission~~Commissioner" means the public service ~~commission~~agriculture commissioner.

SECTION 64. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03. Appointment of ~~commission~~commissioner.

Upon the insolvency of any warehouseman, the ~~commission~~commissioner shall apply to the district court of a county in which the warehouseman operates a licensed warehouse for authority to take all action necessary and appropriate to secure and act as trustee of the trust fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the warehouseman, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court ~~that~~ ~~such~~ the warehouseman is insolvent within the meaning of this chapter and ~~that~~ it would be for the best interests of the receipt holders that the ~~commission~~commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon~~ ~~at which time~~ the ~~commission~~commissioner shall proceed to exercise ~~its~~ the commissioner's authority without further direction from the court.

DE 9/10/19
27 of 38

Upon the filing of the ~~commission's~~commissioner's application, the court may issue ex parte such temporary order as may be necessary to preserve or protect the assets of the trust fund, or the value ~~thereof of the trust fund,~~ until the court issues ~~its an~~ order granting or denying the application.

SECTION 65. AMENDMENT. Section 60-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.1. Trust fund established.

1. Upon the insolvency of any warehouseman, a trust fund ~~shall~~must be established:
 - a. For the benefit of noncredit-sale receipt holders of the insolvent warehouseman, other than those who have waived their rights as beneficiaries of the trust fund in accordance with section 60-02-11; and
 - b. To pay the costs incurred by the ~~commission~~commissioner in the administration of this chapter.
2. The trust fund consists of the following:
 - a. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain;
 - b. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commission~~commissioner is appointed trustee;
 - c. The proceeds of insurance policies upon grain destroyed in the elevator;
 - d. The claims for relief, and proceeds ~~therefrom~~from the claims for relief, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman;
 - e. The claims for relief, and proceeds ~~therefrom~~from the claims for relief, for the conversion of any grain stored in the warehouse;
 - f. Unencumbered accounts receivable for grain sold ~~prior to~~before the filing of the claim that precipitated an insolvency;
 - g. Unencumbered equity in grain hedging accounts; and
 - h. Unencumbered grain product assets.

SECTION 66. AMENDMENT. Section 60-04-03.2 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.2. Possession of grain.

Upon ~~its~~the commissioner's appointment by the district court, the ~~commission~~commissioner shall seek possession of the grain to be included in the trust fund. Upon ~~its~~the commissioner's possession of any grain in the warehouse, the ~~commission~~commissioner shall sell such grain and apply the proceeds to the trust fund.

DP 4/10/19
28 of 38

SECTION 67. AMENDMENT. Section 60-04-03.3 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.3. Joinder of surety - Deposit of proceeds.

The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the ~~commissioner~~ commissioner if the ~~commissioner~~ commissioner believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. ~~When~~ If it appears in the best interests of the receiptholders, the court may order the surety to deposit the penal sum of the bond, or so much ~~thereof~~ of the sum as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

SECTION 68. AMENDMENT. Section 60-04-04 of the North Dakota Century Code is amended and reenacted as follows:

60-04-04. Notice to receiptholders and credit-sale contract claimants.

Upon ~~its~~ the ~~commissioner's~~ commissioner's appointment by the district court, the ~~commissioner~~ commissioner may take possession of relevant books and records of the warehouseman. The ~~commissioner~~ commissioner shall cause a notice of ~~its~~ the ~~commissioner's~~ commissioner's appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, as shown by the warehouseman's records. The notices must require outstanding receiptholders and credit-sale contract claimants to file their claims against the warehouseman with the ~~commissioner~~ commissioner along with the receipts, contracts, or any other evidence of the claims as required by the ~~commissioner~~ commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time as prescribed by the ~~commissioner~~ commissioner, the ~~commissioner~~ commissioner is relieved of further duty or action under this chapter on behalf of the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 69. AMENDMENT. Section 60-04-05 of the North Dakota Century Code is amended and reenacted as follows:

60-04-05. Remedy of receiptholders.

~~No~~ A receiptholder ~~has~~ does not have a separate claim for relief upon the warehouseman's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the ~~commissioner~~ commissioner fails or refuses to apply for ~~its~~ the ~~commissioner's~~ commissioner's own appointment from the district court or unless the district court denies the application for appointment. This chapter does not prohibit or prevent any receiptholder, either individually or in conjunction with other receiptholders, from pursuing concurrently such other remedy against the person or property of ~~such~~ the warehouseman, for the whole, or any deficiency occurring in the redemption, of the receipts.

SECTION 70. AMENDMENT. Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

60-04-06. ~~Commission~~Commissioner to marshal trust assets.

Upon ~~its~~the commissioner's appointment by the district court, the ~~commission~~commissioner may maintain suits at law or in equity, or any special proceeding, in the name of the state of North Dakota, upon ~~its~~the commissioner's own relation, but for the benefit of all such receiptholders against:

1. The insurers of grain;
2. The warehouseman's bond;
3. Any person who may have converted any grain; or
4. Any receiptholder who ~~shall have~~ received more than ~~its~~the receiptholder's just and pro rata share of grain,

for the purpose of marshalling all of the trust fund assets and distributing the same among the receiptholders. The ~~commission~~commissioner shall seek possession of any grain in the warehouse before recourse is had against the insurers of grain, and the remedy against the insurers of grain ~~shall must~~ be exhausted before recourse is had against the bond, and against the bond before recourse is had against the person honestly converting grain, unless the ~~commission shall deem~~commissioner deems it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

SECTION 71. AMENDMENT. Section 60-04-07 of the North Dakota Century Code is amended and reenacted as follows:

60-04-07. Power of ~~commission~~commissioner to prosecute or compromise claims.

The ~~commission~~commissioner may:

1. Prosecute any action provided in this chapter in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action ~~whenever~~if it is in the best interests of the receiptholders.
4. Settle and compromise any action ~~when~~if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of the compromise or of the full amount of any insurance policy, bond, or conversion claim, exonerate the person so compromising or paying in full from further liability growing out of the action.

SECTION 72. AMENDMENT. Section 60-04-08 of the North Dakota Century Code is amended and reenacted as follows:

60-04-08. Money received by trustee - Deposited in Bank of North Dakota.

All moneys collected and received by the ~~commission~~ commissioner as trustee under this chapter, pending the marshalling of the fund, ~~shall~~ must be deposited in the Bank of North Dakota.

SECTION 73. AMENDMENT. Section 60-04-09 of the North Dakota Century Code is amended and reenacted as follows:

60-04-09. Report of trustee to court - Approval - Distribution.

Upon the receipt and evaluation of claims filed with ~~the~~ the commissioner, the ~~commission~~ commissioner shall file with the court a report showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges ~~thereon~~ on the claims.
2. Assignments ~~thereof~~ of the claims.
3. Deductions ~~therefrom~~ from the claims by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount ~~thereof~~ of the claims or checks.
5. In the case of scale tickets or warehouse receipts, the amount ~~thereof~~ based upon the market price prevailing on the date the ~~commission~~ commissioner first received a copy of the written demand required by section 60-04-02.
6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.

The report must also contain the proposed reimbursement to the ~~commission~~ commissioner for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the ~~commission~~ commissioner in the administration of this chapter, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants as ~~the~~ the interests of the claimants are determined. If the trust fund is insufficient to redeem all receiptholder claims in full, the fund must be shown prorated in the report in the manner the ~~commission~~ commissioner deems fair and equitable.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commission's~~ commissioner's report should not be approved and credit-sale contract indemnity fund payments and distribution of the trust fund be made as proposed, and payments from the credit-sale contracts be made as proposed. Copies of the report and notice of hearing must be served by the ~~commission~~ commissioner by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the ~~commission~~ commissioner.

Any aggrieved person having an objection to the ~~commission's~~ commissioner's report shall file the objection with the court and serve copies on the ~~commission~~ commissioner, the warehouseman, and the surety at least twenty days

before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the ~~commission~~ commissioner from ~~the commissioner's~~ trust.

SECTION 74. AMENDMENT. Section 60-04-10 of the North Dakota Century Code is amended and reenacted as follows:

60-04-10. Filing fees and court costs - Expenses.

In any action in a state court in this state, the ~~commission shall~~ commissioner ~~may~~ not be required to pay any filing fee or other court costs or disbursements if the fees accrue to the county or to the state. The attorney general may employ outside legal services to assist the ~~commission~~ commissioner in the prosecution of such action as in the attorney general's judgment may be necessary and the ~~commission~~ commissioner shall deduct the expenses of the same from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the ~~commission~~ commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission, its~~ commissioner, the commissioner's employees, and others engaged in carrying out the provisions of this chapter, must be reimbursed to the ~~commission~~ commissioner from the trust fund and credit-sale indemnity funds as appropriate.

SECTION 75. AMENDMENT. Section 60-05-01 of the North Dakota Century Code is amended and reenacted as follows:

60-05-01. Public elevators and warehouses - ~~Commission~~ Commissioner may require uniform accounting system.

The ~~public service commission~~ commissioner may require every association, copartnership, corporation, or limited liability company conducting a public elevator or warehouse in this state to adopt a uniform accounting system established by ~~such~~ the commissioner.

SECTION 76. AMENDMENT. Section 60-05-02 of the North Dakota Century Code is amended and reenacted as follows:

60-05-02. Examination of financial accounts of elevator or warehouse by competent examiner - Request by percentage of stockholders.

The ~~commission~~ commissioner may install, and ~~whenever~~ if requested by not less than fifteen percent of the partners, stockholders, or members of any association, copartnership, corporation, or limited liability company conducting such public elevator or warehouse, shall install, the uniform system of accounting mentioned in section 60-05-01. The ~~commission~~ commissioner on ~~its~~ the commissioner's own motion may, or on request of the required percentage of partners, stockholders, or members, the ~~commission~~ commissioner shall, send a competent examiner to examine the books and financial accounts of ~~such~~ the elevator or warehouse. ~~Whenever~~ If a request for the examination of the accounts of any association, copartnership, corporation, or limited liability company has been made to the ~~commission~~ commissioner, as provided for in this section, ~~an examination thereafter shall~~ subsequent examinations must be made at least once every year until the ~~commission shall~~ commissioner is requested to

discontinue such examination by resolution adopted by the partners, stockholders, or members at any annual meeting. ~~When~~ If such examination has been made, the examiner shall report immediately the results ~~thereof~~ of the examination to the president and the secretary of such association, copartnership, corporation, or limited liability company and to the ~~commissioner~~ commissioner.

SECTION 77. AMENDMENT. Section 60-05-03 of the North Dakota Century Code is amended and reenacted as follows:

60-05-03. Certificate issued by ~~commissioner~~ commissioner after its examination of accounts.

If the ~~commissioner~~ commissioner is satisfied from ~~its~~ the commissioner's examination that the person, association, copartnership, corporation, or limited liability company examined is solvent and ~~its~~ the method of doing business is such as is likely to be beneficial to all of its members or persons interested therein, the ~~commissioner~~ commissioner shall issue a certificate, countersigned by the examiner, to the agent or manager. Such certificate ~~shall~~ must be kept posted conspicuously in the warehouse or elevator of such person, association, copartnership, corporation, or limited liability company and ~~shall~~ must state:

1. That said methods of doing business are sound.
2. That such person, association, copartnership, corporation, or limited liability company is solvent.
3. That its books and accounts are kept properly.

If the affairs and methods of doing business of such person, association, copartnership, corporation, or limited liability company ~~shall~~ do not seem sound or satisfactory to the ~~commissioner, its~~ commissioner, the commissioner shall issue a certificate or statement, countersigned by the person who made the examination, stating in what particular and in what respect the business methods practiced or methods of keeping books and accounts of such person, association, copartnership, corporation, or limited liability company are not deemed safe. The ~~commissioner~~ commissioner shall mail a copy of ~~said~~ the statement or certificate to each of such shareholders or stockholders as may have requested the ~~commissioner~~ commissioner to make such examination. The ~~commissioner~~ commissioner also shall send a copy thereof to the president and the secretary of such association, copartnership, corporation, or limited liability company.

SECTION 78. AMENDMENT. Section 60-05-04 of the North Dakota Century Code is amended and reenacted as follows:

60-05-04. Fees of examiner for installing and examining accounting system.

For making installation of a uniform accounting system and examining the financial accounts of an elevator or public warehouse, an association, copartnership, corporation, or limited liability company shall pay the examiner a reasonable fee, as determined by the ~~commissioner~~ commissioner. In case any such association, copartnership, corporation, or limited liability company shall wrongfully refuse or neglect to pay such fees, then the ~~commissioner~~ commissioner may cancel the license to do business. All such fees ~~shall~~ must be paid into the state treasury. The expenses incurred by the examiner under the provisions of this chapter shall be paid out of the appropriations made by the legislative assembly for this purpose and such expenses

~~shall~~ must be audited and paid in the same manner as other expenses are audited and paid.

SECTION 79. AMENDMENT. Section 60-06-05 of the North Dakota Century Code is amended and reenacted as follows:

60-06-05. Sidetracks to be provided by railroad company on its land.

Every railroad company or corporation organized under the laws of this state or doing business ~~therein~~ in this state, upon application in writing, shall provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator without reference to its size, cost, or capacity, ~~whereif~~ where grain or potatoes are or may be stored. The railroad company is not required to construct or furnish any sidetracks except upon its own land or right of way. Such elevators and warehouses may not be constructed within one hundred feet [30.48 meters] of any existing structure and must be at safe fire distance from the station buildings so as not to conflict essentially with the safe and convenient operation of the road. ~~Whereif~~ Where stations are ten miles [16.09 kilometers] or more apart the railroad company, ~~whenif~~ when required so to do by the ~~public service commissioner~~ commissioner, shall construct and maintain a sidetrack for the use of shippers between such stations.

SECTION 80. AMENDMENT. Section 60-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

60-06-06.1. Determination - ~~Appropriation~~ Expenses.

Any party may petition the ~~public service commissioner~~ commissioner to determine rights governed under this chapter. The ~~commissioner~~ commissioner shall determine the matter in accordance with chapter 28-32 and the parties' rights of appeal are as limited by chapter 28-32. The value of a leaseholder's improvements may not be considered in determining a reasonable lease rate or selling price. The parties to such a proceeding shall pay the expenses of the proceeding, as determined by the ~~commissioner~~ commissioner, directly to the entities owed. The ~~commissioner~~ commissioner may adopt rules to carry out this section.

SECTION 81. AMENDMENT. Section 60-10-01 of the North Dakota Century Code is amended and reenacted as follows:

60-10-01. Credit-sale contracts - Assessment on grain - Submission of assessment.

An assessment at the rate of two-tenths of one percent is placed on the value of all grain sold in this state under a credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14. The licensee purchasing the grain shall note the assessment on the contract required under sections 60-02-19.1 and 60-02.1-14 and shall deduct the assessment from the purchase price payable to the seller. The licensee shall submit any assessment collected under this section to the ~~public service commissioner~~ commissioner no later than thirty days after each calendar quarter. The ~~commissioner~~ commissioner shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

SECTION 82. AMENDMENT. Section 60-10-02 of the North Dakota Century Code is amended and reenacted as follows:

60-10-02. Credit-sale contract indemnity fund - Creation - Continuing appropriation.

There is created in the state treasury the credit-sale contract indemnity fund. The state treasurer shall invest available moneys in the fund in accordance with section 21-10-07 and in cooperation with the ~~public service commissioner~~ commissioner and shall deposit any income earned through the investments into the fund. The fund and earnings of the fund are appropriated to the ~~public service commissioner~~ commissioner on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

SECTION 83. AMENDMENT. Section 60-10-03 of the North Dakota Century Code is amended and reenacted as follows:

60-10-03. Credit-sale contract indemnity fund - Suspension of assessment.

At the end of the calendar quarter in which the credit-sale contract indemnity fund reaches a level of six million dollars, the ~~public service commissioner~~ commissioner shall suspend collection of the assessment required by this chapter. If after suspension of collection the balance in the fund is less than three million dollars, the ~~public service commissioner~~ commissioner shall require collection of the assessment.

SECTION 84. AMENDMENT. Section 60-10-05 of the North Dakota Century Code is amended and reenacted as follows:

60-10-05. Credit-sale contract indemnity fund - Availability of money.

Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the ~~public service commissioner~~ commissioner serve as the trustee, the ~~public service commissioner~~ commissioner shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

SECTION 85. AMENDMENT. Section 60-10-07 of the North Dakota Century Code is amended and reenacted as follows:

60-10-07. Credit-sale contract indemnity fund - Prorated claims.

If claims for indemnity payments from the credit-sale contract indemnity fund exceed the amount in the fund, the ~~public service commissioner~~ commissioner shall prorate the claims and pay the prorated amounts. As future assessments are collected, the ~~public service commissioner~~ commissioner shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this chapter.

SECTION 86. AMENDMENT. Section 60-10-08 of the North Dakota Century Code is amended and reenacted as follows:

60-10-08. Reimbursement for later insolvencies.

The ~~public service commissioner~~ commissioner shall ensure that all persons eligible for payment from the indemnity fund as a result of an insolvency are fully compensated to the extent permitted by this chapter before any payments from the indemnity fund are initiated as a result of a later insolvency. The chronological order of insolvencies is determined by the date the ~~public service commissioner~~ commissioner is appointed trustee under section 60-02.1-29 or 60-04-03.

SECTION 87. AMENDMENT. Section 60-10-09 of the North Dakota Century Code is amended and reenacted as follows:

60-10-09. Credit-sale contract indemnity fund - Reimbursement for administrative expenses.

Any expense incurred by the ~~public service commissioner~~ commissioner in administering the credit-sale contract indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

SECTION 88. AMENDMENT. Section 60-10-10 of the North Dakota Century Code is amended and reenacted as follows:

60-10-10. Credit-sale contract indemnity fund assessment - Failure to collect assessment - Penalty.

Any person who knowingly or intentionally refuses or fails to collect the assessment required under this chapter from producers or to submit any assessment collected from producers to the ~~public service commissioner~~ commissioner for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

SECTION 89. AMENDMENT. Section 60-10-11 of the North Dakota Century Code is amended and reenacted as follows:

60-10-11. Revocation and suspension.

The ~~commissioner~~ commissioner may suspend or revoke the license of any licensee for cause upon notice and hearing for violation of this chapter.

SECTION 90. AMENDMENT. Section 60-10-12 of the North Dakota Century Code is amended and reenacted as follows:

60-10-12. Cease and desist.

If a person engages in an activity or practice that is contrary to this chapter or rules adopted by the ~~commissioner~~ commissioner, the ~~commissioner~~ commissioner, upon ~~its~~ the commissioner's own motion without complaint and with or without a hearing, may order the person to cease and desist from the activity until further order of the ~~commissioner~~ commissioner. The order may include any corrective action up to and including license suspension. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 91. AMENDMENT. Section 60-10-14 of the North Dakota Century Code is amended and reenacted as follows:

60-10-14. Subrogation.

Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against whom the claim was made. The ~~commissioner~~ commissioner may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate ~~its~~ the interest of the claimant, if any, to the ~~commissioner~~ commissioner in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

SECTION 92. AMENDMENT. Section 60-10-15 of the North Dakota Century Code is amended and reenacted as follows:

60-10-15. Unlicensed facility-based grain buyer.

This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01, which is licensed under the United States Warehouse Act but which does not possess a state grain buyer license. The ~~commissioner~~ commissioner has the duty and power to examine and inspect, during regular business hours, all books, documents, and records related to collections and remittances pertaining to the credit-sale contract indemnity fund. In the case of insolvency, credit-sale contract payments to valid claimants must be reduced by an amount equal to the credit-sale contract indemnity payments received from payments administered by the United States department of agriculture."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2009 - Department of Agriculture - House Action

	Base Budget	Senate Version	House Changes	House Version
Salaries and wages	\$12,372,949	\$13,049,463	\$601,759	\$13,651,222
Operating expenses	6,444,336	6,577,780	125,000	6,702,780
Capital assets	13,000	15,000		15,000
Grants	8,817,774	8,823,774		8,823,774
State Board of Animal Health	865,718	865,718		865,718
Wildlife services	1,408,000	1,457,400		1,457,400
Crop Harmonization Board	75,000	75,000		75,000
Pipeline restoration and reclamation	200,000	200,000		200,000
Ag. Products Utilization Commission		3,176,791	823,209	4,000,000
Total all funds	\$30,196,777	\$34,240,926	\$1,549,968	\$35,790,894
Less estimated income	21,087,676	24,503,189	863,543	25,366,732
General fund	\$9,109,101	\$9,737,737	\$686,425	\$10,424,162
FTE	73.00	75.00	2.00	77.00

DR 4/10/19
37 of 3

Department 602 - Department of Agriculture - Detail of House Changes

	Adjusts Funding for Salary and Benefit Increases ¹	Removes 1 FTE Position ²	Removes Funding for Agriculture Commissioner Salary Equity Increase ³	Adjusts Funding for Wildlife Services Operating Fees ⁴	Adjusts Funding for APUC ⁵	Transfers Grain Warehouse Inspection Program from the PSC ⁵
Salaries and wages	\$45,913	(\$157,940)	(\$14,713)			\$728,499
Operating expenses						125,000
Capital assets						
Grants						
State Board of Animal Health						
Wildlife services						
Crop Harmonization Board						
Pipeline restoration and reclamation						
Ag. Products Utilization Commission					\$823,209	
Total all funds	\$45,913	(\$157,940)	(\$14,713)	\$0	\$823,209	\$853,499
Less estimated income	25,357	(34,423)	0	49,400	823,209	0
General fund	\$20,556	(\$123,517)	(\$14,713)	(\$49,400)	\$0	\$853,499
FTE	0.00	(1.00)	0.00	0.00	(1.00)	4.00

	Total House Changes
Salaries and wages	\$601,759
Operating expenses	125,000
Capital assets	
Grants	
State Board of Animal Health	
Wildlife services	
Crop Harmonization Board	
Pipeline restoration and reclamation	
Ag. Products Utilization Commission	823,209
Total all funds	\$1,549,968
Less estimated income	863,543
General fund	\$686,425
FTE	2.00

¹ Funding of \$45,913, of which \$20,556 is from the general fund and \$25,357 is from other funds, is added for 2019-21 biennium salary increases of 2 percent with a minimum monthly increase of \$120 and a maximum monthly increase of \$200 on July 1, 2019, and 2.5 percent on July 1, 2020. The Senate provided funding for a salary increase of 2 percent on July 1, 2019, and a 3 percent increase on July 1, 2020.

² One FTE undesignated position and funding of \$157,940 is removed, of which \$123,517 is from the general fund, \$6,673 is from the Department of Agriculture operating fund, and \$27,750 is from federal funds. The Senate did not remove any FTE positions.

³ Funding of \$14,713 provided by the Senate to increase the Agriculture Commissioner's salary to align with the Tax Commissioner's salary is removed.

⁴ The funding source for \$49,400 for wildlife services operating fees is changed to the environment and rangeland protection fund rather than the general fund to provide total funding of \$1,457,400 for wildlife services, the same amount as the Senate.

⁵ Funding for the Agricultural Products Utilization Commission (APUC) is adjusted as follows:

	<u>FTE</u>	<u>Other Funds</u>
Reduces funding from the APUC special funds	(1.00)	(\$1,176,791)
Adds funding from Bank of North Dakota profits	0.00	2,000,000
Total	(1.00)	\$823,209

DA 4/10/19
38 of 39

Total funding approved by the House for APUC is \$4 million, of which \$2 million is from the APUC fund and \$2 million is from the profits of the Bank of North Dakota. The House approved 1 FTE APUC position for the program. The Senate approved total funding of \$3,176,791 from the APUC fund and 2 FTE positions.

⁶ Transfers grain warehouse license and inspection program from the Public Service Commission to the Agriculture Commissioner as follows:

	Salaries and Wages	Operating Expenses	Total General Fund
Adds 3 FTE grain warehouse inspectors	\$563,006	\$120,000	\$683,006
Adds 1 FTE accounting budget specialist	<u>165,493</u>	<u>5,000</u>	<u>170,493</u>
Total	\$728,499	\$125,000	\$853,499

This amendment also:

- * Amends a section identifying the amount of funding from the environment and rangeland protection fund.
- * Amends a section relating to the salary of the Agriculture Commissioner.
- * Adds a section related to the transfer of \$2 million of the current earnings and undivided profits of the Bank of North Dakota to the Agriculture Commissioner for deposit in the APUC fund during the 2019-21 biennium.
- * Removes statutory sections related to APUC. The statutory changes needed to move APUC to the Agriculture Commissioner are included in Senate Bill No. 2328.
- * Adds statutory sections to transfer grain, grain buyers, warehousing, deposits, and warehousemen programs from the Public Service Commission to the Agriculture Commissioner and increases annual license fees, resulting in additional general fund revenues of approximately \$83,200 during the 2019-21 biennium.

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2009**

House Appropriations - Education and Environment Division Committee

Subcommittee

Amendment LC# or Description: Remove Ag Commissioner pay increase, adopt salary increase

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Representative Mike Nathe Seconded By Representative Bob Martinson

Representatives	Yes	No	Representatives	Yes	No
Chair David Monson			Representative Tracy Boe		
Vice Chair Jim Schmidt					
Representative Bob Martinson					
Representative Mike Nathe					
Representative Mark Sanford					
Representative Mike Schatz					

Total (Yes) Voice vote - carries No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: Motion to remove the special increase of the Agriculture Commissioner's salary increase and apply the agreed upon salary and wage increase adopted by all budgets.

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2009**

House Appropriations - Education and Environment Division Committee

Subcommittee

Amendment LC# or Description: Move inspectors from PSC to Ag Commissioner

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sanford Representative Mark Seconded By Representative Tracy Boe

Representatives	Yes	No	Representatives	Yes	No
Chair David Monson			Representative Tracy Boe		
Vice Chair Jim Schmidt					
Representative Bob Martinson					
Representative Mike Nathe					
Representative Mark Sanford					
Representative Mike Schatz					

Total (Yes) Voice vote - carries No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: Motion to move grain inspectors from Public Service Commission to the Agriculture Commissioner's budget.

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2009**

House Appropriations - Education and Environment Division Committee

Subcommittee

Amendment LC# or Description: Adopt the final amendment

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Representative Tracy Boe Seconded By Representative Mark Sanford

Representatives	Yes	No	Representatives	Yes	No
Chair David Monson			Representative Tracy Boe		
Vice Chair Jim Schmidt					
Representative Bob Martinson					
Representative Mike Nathe					
Representative Mark Sanford					
Representative Mike Schatz					

Total (Yes) Voice vote - carries No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: Motion to adopt the final amendment upon completion.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2009**

House Appropriations - Education and Environment Division Committee

Subcommittee

Amendment LC# or Description: Adopt the approved amendment

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Vice Chairman
Representative Jim

Motion Made By Schmidt Seconded By Representative Tracy Boe

Representatives	Yes	No	Representatives	Yes	No
Chair David Monson			Representative Tracy Boe		
Vice Chair Jim Schmidt					
Representative Bob Martinson					
Representative Mike Nathe					
Representative Mark Sanford					
Representative Mike Schatz					

Total (Yes) Voice vote - carries No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: Motion to adopt the final approved amendment.

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2009**

House Appropriations - Education and Environment Division Committee

Subcommittee

Amendment LC# or Description: Further amend to add statutory language from SB 2346

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Representative Tracy Boe Vice Chairman
 Seconded By Representative Jim Schmidt

Representatives	Yes	No	Representatives	Yes	No
Chair David Monson			Representative Tracy Boe		
Vice Chair Jim Schmidt					
Representative Bob Martinson					
Representative Mike Nathe					
Representative Mark Sanford					
Representative Mike Schatz					

Total (Yes) Voice vote - carries No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: Motion to move the statutory language regarding the transfer of grain inspectors from Public Service Commission to the Agriculture Commissioner to align with the funding.

Date: 4/8/2019
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2009**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: 19.02222.02003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Representative Boe Seconded By Representative Martinson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich					
Representative Anderson			Representative Schobinger		
Representative Beadle			Representative Vigesaa		
Representative Bellew					
Representative Brandenburg					
Representative Howe			Representative Boe		
Representative Kreidt			Representative Holman		
Representative Martinson			Representative Mock		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

Voice Vote/Motion Carries

Date: 4/8/2019
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2009**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Representative Boe Seconded By Representative Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	X				
Representative Anderson	X		Representative Schobinger	X	
Representative Beadle	X		Representative Vigesaa	X	
Representative Bellew	X				
Representative Brandenburg	X				
Representative Howe	X		Representative Boe	X	
Representative Kreidt	X		Representative Holman	X	
Representative Martinson	X		Representative Mock	A	
Representative Meier	X				
Representative Monson	X				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Sanford	X				
Representative Schatz	A				
Representative Schmidt	X				

Total (Yes) 19 No 0

Absent 2

Floor Assignment Representative Boe

Motion Carries

REPORT OF STANDING COMMITTEE

SB 2009, as engrossed: Appropriations Committee (Rep. Delzer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (19 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2009 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "to create and enact a new chapter to title 4.1 of the"

Page 1, line 3, replace "North Dakota Century Code, relating to the agricultural products utilization commission" with "to create and enact a new section to chapter 60-01, a new section to chapter 60-02, and three new sections to chapter 60-02.1 of the North Dakota Century Code, relating to the definition of agriculture commissioner, licensing and bonding for cash grain brokers, and records confidentiality for warehousemen and grain buyers"

Page 1, line 4, after "4.1-01-02" insert ", 49-02-01, subsection 1 of section 60-02-01, sections 60-02-02, 60-02-03, 60-02-04, 60-02-05.1, 60-02-07, 60-02-07.2, 60-02-09, 60-02-09.1, 60-02-10.1, 60-02-11, 60-02-14, 60-02-17, 60-02-24, 60-02-27, 60-02-35.1, 60-02-38, 60-02-40, 60-02-41, 60-02-42, 60-02.1-01, 60-02.1-02, 60-02.1-03, 60-02.1-04, 60-02.1-06, 60-02.1-07, 60-02.1-07.1, 60-02.1-08, 60-02.1-09, 60-02.1-11, 60-02.1-16, 60-02.1-17, 60-02.1-19, 60-02.1-22, 60-02.1-26, 60-02.1-27, 60-02.1-29, 60-02.1-30, 60-02.1-32, 60-02.1-33, 60-02.1-34, 60-02.1-35, 60-02.1-36, 60-02.1-37, 60-02.1-38, and 60-02.1-39, subsection 1 of section 60-04-01, and sections 60-04-03, 60-04-03.1, 60-04-03.2, 60-04-03.3, 60-04-04, 60-04-05, 60-04-06, 60-04-07, 60-04-08, 60-04-09, 60-04-10, 60-05-01, 60-05-02, 60-05-03, 60-05-04, 60-06-05, 60-06-06.1, 60-10-01, 60-10-02, 60-10-03, 60-10-05, 60-10-07, 60-10-08, 60-10-09, 60-10-10, 60-10-11, 60-10-12, 60-10-14, and 60-10-15"

Page 1, line 5, after "commissioner" insert ", moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner"

Page 1, line 5, remove "to repeal chapter 54-60.3 of the North Dakota Century Code,"

Page 1, line 6, remove "relating to the agricultural products utilization commission;"

Page 1, line 7, after "assembly" insert "to provide a penalty; to provide a continuing appropriation; and to provide for a transfer"

Page 1, remove lines 17 through 24

Page 2, replace lines 1 through 6 with:

"Salaries and wages	\$12,372,949	\$1,278,273	\$13,651,222
Operating expenses	6,444,336	258,444	6,702,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
Board of animal health	865,718	0	865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop harmonization board	75,000	0	75,000
Pipeline restoration and reclamation oversight program	200,000	0	200,000
Agricultural products utilization commission	<u>0</u>	<u>4,000,000</u>	<u>4,000,000</u>
Total all funds	\$30,196,777	\$5,594,117	\$35,790,894
Less estimated income	<u>21,087,676</u>	<u>4,279,056</u>	<u>25,366,732</u>
Total general fund	\$9,109,101	\$1,315,061	\$10,424,162
Full-time equivalent positions	73.00	4.00	77.00"

Page 2, line 27, replace "\$6,663,678" with "\$6,725,799"

Page 3, after line 16, insert:

"SECTION 9. TRANSFER - BANK OF NORTH DAKOTA PROFITS - AGRICULTURAL PRODUCTS UTILIZATION COMMISSION. The Bank of North Dakota shall transfer the sum of \$2,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the agriculture commissioner for deposit in the agricultural products utilization commission fund during the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 3, line 20, overstrike "five"

Page 3, line 20, replace "seventeen" with "ten"

Page 3, line 21, replace "eighty-seven" with "eight hundred twenty-nine"

Page 3, line 22, overstrike "eight"

Page 3, line 22, replace "twenty" with "thirteen"

Page 3, remove lines 23 through 31

Page 4, remove lines 1 through 31

Page 5, replace lines 1 through 24 with:

"SECTION 11. AMENDMENT. Section 49-02-01 of the North Dakota Century Code is amended and reenacted as follows:

49-02-01. General jurisdiction of the public service commission over public utilities.

The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.
2. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.
3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
4. Electric utilities engaged in the generation and distribution of light, heat, or power.
5. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
6. All heating utilities engaged in the distribution of heat.
7. ~~Warehouse companies engaged in the marketing, storage, or handling of agricultural products.~~
- 8- All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

SECTION 12. A new section to chapter 60-01 of the North Dakota Century Code is created and enacted as follows:

Definition.

For purposes of this title, "commissioner" means the agriculture commissioner.

SECTION 13. AMENDMENT. Subsection 1 of section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~"Commissioner"~~ means the ~~public service commissioner~~ agriculture commissioner.

SECTION 14. AMENDMENT. Section 60-02-02 of the North Dakota Century Code is amended and reenacted as follows:

60-02-02. ~~Commissioner~~ - Powers and duties.

~~The commissioner has the powers and duties imposed by the provisions enumerated under this chapter and the powers conferred herein devolve upon the commissioner.~~

SECTION 15. AMENDMENT. Section 60-02-03 of the North Dakota Century Code is amended and reenacted as follows:

60-02-03. Duties and powers of the ~~commissioner~~.

~~The commissioner shall have the duty and power to~~ commissioner has the following powers and duties:

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any licensed warehouse, including all books, documents, and records.
4. Require the filing of reports pertaining to the operation of the warehouse.
5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

SECTION 16. AMENDMENT. Section 60-02-04 of the North Dakota Century Code is amended and reenacted as follows:

60-02-04. Federal licensed inspector - ~~Appointed by commissioner.~~

~~The commissioner may employ a federal licensed inspector whose duties are hereinafter prescribed and such enumerated under this chapter and may employ other employees as may be necessary to carry out the provisions of this chapter.~~

SECTION 17. AMENDMENT. Section 60-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-05.1. Notice of procedures for resolving disputes over grain.

A public warehouse shall post a notice containing the procedures specified in section 60-02-05 for resolving disputes. The ~~commissioner~~ shall prescribe the form of the notice and shall provide a copy of the notice to each public

warehouse. The public warehouseman shall post the notice in the grain inspection room of the warehouse. The notice must specifically mention that the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

SECTION 18. AMENDMENT. Section 60-02-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07. Public warehouse license - Fee - Financial statement.

A license must be obtained from the ~~commission~~ commissioner for each public warehouse in operation in this state.

1. a. ~~The commission shall stagger by lot the expiration date of all licenses issued for the period beginning August 1, 2015, so that one half of all the licenses issued expire on July 31, 2016, and one half of all the licenses issued expire on July 31, 2017. Thereafter, all~~ All licenses issued under this section must be for a period of two years and terminate on the thirty-first day of July in the year of expiration.
- b. (1) Notwithstanding the provisions of subdivision a, the ~~commission~~ commissioner shall license a warehouse annually, for the first six years of the warehouse's operation.
- (2) An initial annual license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year.
2. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described.
3. a. The annual license fee for a public warehouse is:
 - (1) ~~Three~~ Four hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) ~~Four~~ Five hundred fifty dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
 - (3) ~~Five~~ Six hundred fifty dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- b. The biennial license fee for a public warehouse is:
 - (1) ~~Six~~ Seven hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) ~~Nine hundred~~ One thousand dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and

- (3) One thousand ~~one~~two hundred dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- c. An application for an annual license renewal that is received after July fifteenth must include an additional one hundred dollar fee per warehouse. An application for a biennial license renewal that is received after July fifteenth must include an additional two hundred dollar fee per warehouse.
4. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. When two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses.
5. If required to obtain United States department of agriculture approval of the ~~commission's~~commissioner's warehouse inspection program, the ~~commission~~commissioner may require that the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this subsection is a confidential trade secret and is not a public record.

SECTION 19. AMENDMENT. Section 60-02-07.2 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07.2. Receiving stations.

A licensed public warehouseman may establish a receiving station without a separate warehouse license for that facility if all of the following conditions are met:

1. The station is colocated with another licensed public warehouse, the operator of which will take delivery of the grain on behalf of the warehouseman who established the receiving station.
2. The storage space used by the receiving station is used solely by the receiving station and is not licensed as part of the warehouse that is located at that site.
3. The grain taken in by the receiving station is not commingled with other grain at that site.
4. The warehouseman establishing the station requests and receives ~~commission~~ permission from the commissioner to increase licensed capacity to include the space to be used at the receiving station.
5. Grain received at the receiving station is recorded on scale tickets issued by the warehouseman who established the station and is covered by that warehouseman's bond.
6. Warehouse-receipted grain received at the receiving station is available for redelivery to the receipt holder at that location even if the station has been closed. A charge for redelivery must be stated in the warehouseman's redelivery policy.

The storage space used by a receiving station need not be physically disconnected from the facilities of the other licensed warehouse located at that site.

SECTION 20. AMENDMENT. Section 60-02-09 of the North Dakota Century Code is amended and reenacted as follows:

60-02-09. Bond filed by public warehouseman.

Before any license is effective for any public warehouseman under this chapter, the applicant for the license shall file a bond with the ~~commission~~commissioner which must:

1. Be in a sum not less than five thousand dollars for any one warehouse.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in that warehouse.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a public warehouseman.
 - b. For compliance with the provisions of law and the rules of the ~~commission~~commissioner relating to the storage and purchase of grain by such warehouseman.
5. Specify the location of each public warehouse intended to be covered by such bond.
6. Be for the specific purpose of:
 - a. Protecting the holders of outstanding receipts.
 - b. Covering the costs incurred by the ~~commission~~commissioner in the administration of chapter 60-04 in the event of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.
8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The ~~commission~~commissioner shall set the amount of the bond and may require an increase in the amount of any bond, from time to time, as the ~~commission~~commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commission~~commissioner, and authorized to do business within the state. The ~~commission~~commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond ~~when~~if, in ~~its~~the ~~commissioner's~~commissioner's judgment, the cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. One bond only may be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and the bond must be construed to cover ~~such~~the elevators, mills, or warehouses, as a whole and not a specific amount for each.

SECTION 21. AMENDMENT. Section 60-02-09.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-09.1. Bond cancellation - Release of surety.

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commissioner~~ commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the warehouseman files a new bond at least thirty days before liability ceases, the ~~commissioner~~ commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commissioner~~ commissioner. ~~When~~ If a license is so suspended, the warehouseman shall give notice of such suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse that the grain must be removed from the warehouse or ~~the~~ the grain will be priced and redeemed in cash in accordance with section 60-02-41.

SECTION 22. AMENDMENT. Section 60-02-10.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-10.1. Revocation and suspension.

The ~~commissioner~~ commissioner may suspend or revoke the license of any warehouseman for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license the warehouseman may, upon the ~~commissioner's~~ commissioner's approval, operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping, or processing. Grain may be sold only with the prior approval of the ~~commissioner~~ commissioner.

SECTION 23. AMENDMENT. Section 60-02-11 of the North Dakota Century Code is amended and reenacted as follows:

60-02-11. Scale ticket - Contents - Conversion.

1. a. Every public warehouseman, upon receiving grain into the warehouse, shall issue a uniform scale ticket for each load of grain received. The scale tickets must be numbered consecutively, and one copy of each ticket must be retained and remain as a permanent record. The original ticket must be delivered to the person from whom the grain is received, upon receipt of each load of grain.
- b. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within forty-five days after the grain is delivered to the warehouse, unless:
 - (1) The person to whom the scale ticket is issued signs a form waiving all rights to trust benefits under section 60-04-03.1;
 - (2) The form identifies by number each scale ticket to which the waiver applies; and
 - (3) The form is signed by the warehouseman.

- c. The ~~commission~~commissioner shall prepare the waiver form required by subdivision b and make the form available to each warehouse.
 - d. The warehouseman shall keep one copy of the signed waiver form with the records of the warehouse, provide one copy to the person who was issued the scale ticket and signed the form, and file one copy with the ~~commission~~commissioner.
2. Nothing in this chapter requires a warehouseman to receive grain for storage. A warehouseman shall publish and post, in a conspicuous place in the warehouse, a publication identifying whether storage will be available to patrons or whether grain will be accepted via cash or a credit-sale contract arrangement.

SECTION 24. AMENDMENT. Section 60-02-14 of the North Dakota Century Code is amended and reenacted as follows:

60-02-14. Warehouse receipts - Copy.

Provision ~~shall~~must be made for a stub record or copy of each warehouse receipt issued by a warehouseman, showing:

1. The serial number and date of receipt.
2. The kind and grade of grain.
3. The dockage and net weight of the grain.

The record or copy ~~shall~~must remain in the possession of the warehouseman for inspection by the ~~commission~~commissioner and persons properly interested.

SECTION 25. AMENDMENT. Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.

1. A warehouse receipt must contain, either on its face or reverse side, the following warehouse and storage contract:

This grain is received, insured, and stored subject to the laws and rules of the state of North Dakota, the terms of this contract, and the charges and conditions stated herein and as filed with the North Dakota ~~public service~~ ~~commission~~agriculture commissioner. Upon surrender of this receipt and payment or tender of all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. This receipt does not require the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

2. A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts. This publication must be filed with the ~~commissioner~~ commissioner as a part of the warehouse license process or annual renewal. The fees and termination date must be stated on the warehouse receipt issued for the grain. The fees or termination date may be changed upon filing a revised publication with the ~~commissioner~~ commissioner.

SECTION 26. AMENDMENT. Section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

60-02-24. Reports to be made by public warehouseman - Penalty for failure.

Each licensed and bonded public warehouseman shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commissioner~~ commissioner. The report must contain or be verified by a written declaration ~~that the report is~~ made under the penalties of perjury. The report may be called for more frequently if the ~~commissioner~~ commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commissioner~~ commissioner may make the information available for use by other governmental entities, but the ~~commissioner~~ commissioner may not release the information in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the ~~commissioner~~ commissioner not later than the last day of the following month, and failure to file this report promptly will be considered cause for revoking the warehouse license after due notice and hearing.
3. Keep a separate account of the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances ~~shall~~ may the grain account and other accounts be mixed.

The ~~commissioner~~ commissioner may refuse to renew a license to any public warehouseman who fails to make a required report.

SECTION 27. AMENDMENT. Section 60-02-27 of the North Dakota Century Code is amended and reenacted as follows:

60-02-27. Federal grades to control - Grades to be posted.

All public warehousemen shall purchase and store grain except dry edible beans in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law. ~~They~~ Public warehousemen shall post in a conspicuous place in ~~their~~ the public warehousemen's warehouse the official grades so established and also any change that may be made from time to time. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with ~~their~~ the policy of the warehousemen which must be filed with the ~~commissioner~~ commissioner and posted in a conspicuous place in ~~their~~ the warehouse of the public warehousemen. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards. The ~~commissioner~~ commissioner, after hearing, may prohibit the use of nonfederal grades.

SECTION 28. AMENDMENT. Section 60-02-35.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-35.1. Insurance - Cancellation - Suspension of license.

An insurance company shall give at least sixty days' notice to the ~~commissioner~~ commissioner and the insured by certified mail return receipt requested before cancellation of an insurance policy required in section 60-02-35. Unless the warehouseman files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commissioner~~ commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commissioner~~ commissioner. ~~When~~ If a license is so suspended, the warehouseman shall give notice of ~~such~~ the suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse that the grain must be removed from the warehouse or ~~if~~ the grain will be priced and redeemed in cash in accordance with section 60-02-41.

SECTION 29. AMENDMENT. Section 60-02-38 of the North Dakota Century Code is amended and reenacted as follows:

60-02-38. Refund of license fee by commissioner.

~~When~~ If requested in writing, the ~~commissioner~~ commissioner shall refund the license fee of a public warehouse, or so much as in ~~its~~ the commissioner's judgment is just and reasonable, ~~when~~ if satisfactory proof is furnished that the warehouse has been transferred to some other person, and the new owner has obtained a license for the same warehouse for the unexpired period for which the original license was issued. ~~When~~ If a warehouse is destroyed by fire or other cause, the license fee may be prorated as the ~~commissioner~~ commissioner may determine.

SECTION 30. AMENDMENT. Section 60-02-40 of the North Dakota Century Code is amended and reenacted as follows:

60-02-40. Transfer of warehouse - Redemption of receipts.

~~Whenever~~ If a public warehouseman desires to transfer a warehouse, either by sale or lease to any other individual, firm, or corporation, the warehouseman shall:

1. Notify the ~~commissioner~~ commissioner first of ~~its~~ the warehouseman's intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
2. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain, together with a statement of:
 - a. The number of bushels [cubic meters] of grain of each kind and grade in store in the warehouse;
 - b. The number and amount of receipts outstanding; and
 - c. The names and addresses of the receipt holders.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receipt holders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery. The ~~commissioner~~ commissioner may waive the

thirty-day notice period upon receipt of written consent of all receiptholders.

4. Transfer all stored grain undelivered at the expiration of such thirty-day period to ~~its~~ the warehouseman's successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred.
5. Surrender to the ~~commission~~ its commissioner the warehouseman's license for cancellation and at such, at which time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commission~~, whereupon, its commissioner, at which time, the commissioner, first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof of all outstanding receipts has been provided for, the ~~commission~~ commissioner may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any warehouse will be recognized by the ~~commission~~ commissioner except when made in accordance with the provisions of this section.

SECTION 31. AMENDMENT. Section 60-02-41 of the North Dakota Century Code is amended and reenacted as follows:

60-02-41. Going out of business - Redemption of receipts.

~~When~~ If a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, ~~such~~ the warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of such receipts, upon due notice, ~~must~~ shall accept this price and surrender the receipts. Any public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license or whose warehouse license is revoked shall notify the ~~commission~~ commissioner and all outstanding receiptholders of such closing and redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein ~~shall~~ must be settled in cash and priced on the market on the day of closing.

SECTION 32. AMENDMENT. Section 60-02-42 of the North Dakota Century Code is amended and reenacted as follows:

60-02-42. Cease and desist.

~~Whenever~~ If an entity engages in an activity or practice ~~that is~~ contrary to the provisions of this chapter or related rules, the ~~commission~~ commissioner, upon ~~its~~ the commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the ~~commission~~ commissioner. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 33. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a public warehouse license; or
 - b. An investigation after issuance or renewal of a public warehouse license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a public warehouse license; or
 - b. An investigation after issuance or renewal of a public warehouse license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 34. AMENDMENT. Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "~~Commissioner~~Cash grain broker" means a person who:
 - a. Is involved in the negotiation of cash grain transactions in the state;
 - b. Receives compensation from at least one party to the transaction; and
 - c. Does not take title to the grain and is not under any financial or contractual obligation related to the transaction.
2. "Commissioner" means the ~~public service commissioner~~agriculture commissioner.
- 2-3. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.

- 3-4. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
- 4-5. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
- 5-6. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
- 6-7. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:
- A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
 - A person who is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.
 - A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.
- 7-8. "Grain processor" means an entity that purchases grain to process into end products that are of a substantially different makeup or nature than the original grain.
9. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
- 8-10. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.
- 9-11. "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

SECTION 35. AMENDMENT. Section 60-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-02. ~~Commission~~Commissioner - Powers and duties.

The powers and duties imposed and the powers conferred by this chapter devolve upon the commission of the commissioner are enumerated in this chapter.

SECTION 36. AMENDMENT. Section 60-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-03. Duties and powers of the ~~commission~~commissioner.

The ~~commission~~commissioner has the duty and power to:

1. Exercise general supervision of grain buyers of this state.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any books, documents, and records.
4. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

SECTION 37. AMENDMENT. Section 60-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-04. Federal licensed inspector –Appointed by commission.

The ~~commission~~ commissioner may employ a federal licensed inspector whose duties are hereinafter prescribed, and such enumerated in this chapter and may employ other employees as may be necessary to carry out the provisions of this chapter.

SECTION 38. AMENDMENT. Section 60-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-06. Notice of procedures for resolving disputes over grain.

A facility-based grain buyer shall post a notice containing the procedures specified in section 60-02.1-05 for resolving disputes. The ~~commission~~ commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each facility-based grain buyer. The facility-based grain buyer shall post the notice in the grain inspection room of the facility. The notice must specifically mention that the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

SECTION 39. AMENDMENT. Section 60-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.

Grain buyers ~~must~~ shall obtain an annual license from the ~~commission~~ commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~ If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. A facility-based grain buyer ~~must~~ shall obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such facilities, and scale tickets and checks of but one series are issued for the grain, purchased, only one license is required for the operation of all such facilities. The annual license fee for a facility-based grain buyer is ~~three~~ four hundred dollars and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location.

If required to obtain United States department of agriculture approval of the ~~commission~~ commissioner's grain buyer inspection program, the ~~commission~~ commissioner may require that grain buyers submit a current financial statement prepared in accordance with generally accepted accounting principles. A

financial statement furnished under this section is a confidential trade secret and is not a public record.

SECTION 40. AMENDMENT. Section 60-02.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07.1. Roving grain buyer license - How obtained - Fee.

Roving grain buyers that purchase, solicit, merchandise, or take possession of grain in this state ~~must~~ shall obtain an annual license from the ~~commissioner~~ commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~ If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee for a roving grain buyer is ~~two~~ three hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

SECTION 41. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Cash grain broker license - Application - Bond - How obtained - Fee - Report - Disclosure.

1. Before conducting business in the state, a cash grain broker must submit an application to obtain an annual license from the commissioner. To conduct business in the state, a cash grain broker must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee of a cash grain broker is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
2. An application for licensure must include:
 - a. The name under which the applicant intends to conduct business in the state as a cash grain broker;
 - b. The name of each partner if the cash grain broker is in a partnership;
 - c. The name of each corporate officer and the state of incorporation if the cash grain broker is a corporation;
 - d. The name of each manager and the state of organization if the cash grain broker is a limited liability company;
 - e. The mailing address of the applicant; and
 - f. The location of the principal place of business of the applicant.
3. The commissioner may refuse to issue, renew, or may revoke a license if:
 - a. The licensee or applicant has been convicted of a criminal offense;
 - b. The licensee or applicant has failed to comply with the requirements of this section;

- c. The commissioner has evidence the licensee negotiated in bad faith;
or
- d. Any other reason determined by the commissioner.
- 4. A licensed cash grain broker must submit a monthly report to the commissioner by the tenth day of each month. The report must include:
 - a. The total volume of each commodity brokered in the preceding month; and
 - b. The name and contact information of any buyer who had more than two hundred fifty thousand dollars in total purchases in transactions brokered by the cash grain broker during the preceding month.
- 5. A licensed cash grain broker must notify each potential commodity seller of the identity of the potential commodity buyer before the final confirmation of the transaction.
- 6. Before a license is effective for a cash grain broker under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

SECTION 42. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Grain processor license - Application - Bond - How obtained - Fee - Report - Disclosure.

- 1. Before conducting business in the state, a grain processor must submit an application to obtain an annual license from the commissioner. To conduct business in the state, a grain processor must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee of a grain processor is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
- 2. An application for licensure must include:
 - a. The name under which the applicant intends to conduct business in the state as a grain processor;
 - b. The name of each partner if the grain processor is in a partnership;
 - c. The name of each corporate officer and the state of incorporation if the grain processor is a corporation;
 - d. The name of each manager and the state of organization if the grain processor is a limited liability company;
 - e. The mailing address of the applicant; and
 - f. The location of the principal place of business of the applicant.
- 3. The commissioner may refuse to issue, renew, or may revoke a license if:

- a. The licensee or applicant has been convicted of a criminal offense;
 - b. The licensee or applicant has failed to comply with the requirements of this section;
 - c. The commissioner has evidence the licensee negotiated in bad faith; or
 - d. Any other reason determined by the commissioner.
4. A licensed grain processor must submit a monthly report to the commissioner by the tenth day of each month. The report must include the total volume of each commodity processed in the preceding month.
 5. Before a license is effective for a grain processor under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

SECTION 43. AMENDMENT. Section 60-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-08. Bond filed by grain buyer.

Before any license is effective for any grain buyer under this chapter, the applicant for the license shall file a bond with the ~~commission~~ commissioner which must:

1. Be in a sum not less than ~~five~~ten thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~ commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a grain buyer.
 - b. For compliance with the provisions of law and the rules of the ~~commission~~ commissioner relating to the purchase of grain by such grain buyer.
5. For facility-based grain buyers, specify the location of each facility intended to be covered by the bond.
6. Be for the specific purpose of:
 - a. Protecting the sellers of grain.
 - b. Covering the costs incurred by the ~~commission~~ commissioner in the administration of the licensee's insolvency.
7. Not accrue to the benefit of any person entering ~~into~~ a credit-sale contract with a grain buyer.
8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is

limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The ~~commissioner~~ commissioner may require an increase in the amount of any bond, from time to time, as ~~if the commissioner~~ deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commissioner~~ commissioner, and authorized to do business within the state. The ~~commissioner~~ commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in ~~its~~ the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts. Only one bond may be required for any series of facilities operated by a facility-based grain buyer, and the bond must be construed to cover those facilities as a whole and not a specific amount for each.

SECTION 44. AMENDMENT. Section 60-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-09. Bond cancellation - Release of surety.

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commissioner~~ commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the grain buyer files a new bond at least thirty days before liability ceases, the ~~commissioner~~ commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commissioner~~ commissioner.

SECTION 45. AMENDMENT. Section 60-02.1-11 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-11. Revocation and suspension.

The ~~commissioner~~ commissioner may suspend or revoke the license of any grain buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a grain buyer must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license a facility-based grain buyer, upon the ~~commissioner's~~ commissioner's approval, may operate its facility and purchase or redeliver grain previously received, but may not receive additional grain for purchase, shipping, or processing. Grain may be sold only with the prior approval of the ~~commissioner~~ commissioner.

SECTION 46. AMENDMENT. Section 60-02.1-16 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-16. Records required to be kept by grain buyers.

Each grain buyer shall keep such accounts, records, and memoranda concerning the buyer's dealing as such grain buyer as from time to time may be required by the ~~commissioner~~ commissioner and shall make such reports of purchases of grain as may be required by the rules ~~made~~ adopted by the ~~commissioner~~ commissioner. The ~~commissioner~~ commissioner at all times ~~shall~~ must have access to such accounts, records, and memoranda.

SECTION 47. AMENDMENT. Section 60-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-17. Reports to be made by grain buyers - Penalty for failure.

Each licensed and bonded grain buyer shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commissioner~~ commissioner. The report must contain or be verified by a written declaration ~~that the report is~~ made under the penalties of perjury. The report may be called for more frequently if the ~~commissioner~~ commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commissioner~~ commissioner may make this information available for use by other governmental entities, but the information may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the ~~commissioner~~ commissioner not later than the last day of the following month. Failure to file this report promptly will be considered cause for revoking the grain buyer license after due notice and hearing.
3. Keep a separate account of the grain business, if the grain buyer is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.

The ~~commissioner~~ commissioner may refuse to renew a license to any grain buyer who fails to make a required report.

SECTION 48. AMENDMENT. Section 60-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-19. Federal grades to control - Grades to be posted.

All grain buyers shall purchase grain, except dry edible beans, in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in applicable rules and regulations ~~applicable thereto~~ adopted by federal officials pursuant to law. A facility-based grain buyer shall post in a conspicuous place in the buyer's facility the official grades so established and also any change that may be made from time to time. A grain buyer of dry edible beans shall purchase and deliver beans in accordance with the buyer's policy, which must be filed with the ~~commissioner~~ commissioner and, if applicable, posted in a conspicuous place in the buyer's facility. Other grading standards may be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However, the owner may demand the use of federal grading standards. After hearing, the ~~commissioner~~ commissioner may prohibit the use of nonfederal grades.

SECTION 49. AMENDMENT. Section 60-02.1-22 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-22. Insurance - Cancellation - Suspension of license.

An insurance company shall give at least sixty days' notice to the ~~commissioner~~ commissioner and the insured by registered mail return receipt requested before cancellation of an insurance policy required in section 60-02.1-21. Unless the grain buyer files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commissioner~~ commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commissioner~~ commissioner.

SECTION 50. AMENDMENT. Section 60-02.1-26 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-26. Transfer of facility - Redemption of receipts.

~~Whenever~~ If a facility-based grain buyer desires to transfer a facility, either by sale or lease to any other individual, firm, or corporation, the grain buyer shall:

1. Notify the ~~commissioner~~ commissioner first of its intention to transfer the facility, giving the name and address of the proposed lessee or purchaser.
2. Provide related information as may be required by the ~~commissioner~~ commissioner.
3. Surrender to the ~~commissioner~~ commissioner the grain buyer's license for cancellation and at that time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commissioner~~ commissioner, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the ~~commissioner~~ commissioner may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any facility will be recognized by the ~~commissioner~~ commissioner except when made in accordance with the provisions of this section.

SECTION 51. AMENDMENT. Section 60-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-27. Going out of business - Redemption of receipts.

~~When~~ If a facility-based grain buyer ceases business through closure, the destruction of a facility by fire or other cause, or through insolvency, ~~such~~ the grain buyer shall redeem all outstanding receipts at the price prevailing on the date the facility was closed, destroyed, or became insolvent. The holder of ~~such~~ the receipts, upon due notice, ~~must~~ shall accept this price and surrender the receipts. Any facility-based grain buyer who voluntarily ceases business or fails to renew an existing grain buyer license or whose grain buyer license is revoked shall notify the ~~commissioner~~ commissioner and all receipt holders of such closing and redeem all such receipts at the price prevailing on the date the business closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein ~~shall~~ must be settled in cash and priced on the market on the day of closing.

SECTION 52. AMENDMENT. Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-29. Appointment of ~~commissioner~~ commissioner.

Upon the insolvency of any roving grain buyer, the ~~commissioner~~ commissioner shall apply to the district court of Burleigh County for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. If the insolvency involves a facility-based grain buyer, application must be to the district court of a county in which the licensee operates a licensed facility. Upon notice to the licensee as the court prescribes, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the receipt holders that the ~~commissioner~~ commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and the ~~commissioner~~ commissioner shall proceed to exercise ~~its~~ the commissioner's authority without further direction from the court.

Upon the filing of the ~~commission's~~ commissioner's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

SECTION 53. AMENDMENT. Section 60-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-30. Trust fund established.

Upon the insolvency of any licensee, a trust fund must be established for the benefit of noncredit-sale receipt holders and to pay the costs incurred by the ~~commission~~ commissioner in the administration of the insolvency. The trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commission~~ commissioner is appointed trustee must be remitted to the ~~commission~~ commissioner and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.
4. The claims for relief, and proceeds ~~therefrom~~ from the claims for relief, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
5. The claim for relief, and proceeds ~~therefrom~~ from the claim for relief, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

SECTION 54. AMENDMENT. Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-32. Notice to receipt holders and credit-sale contract claimants.

Upon ~~its~~ the commissioner's appointment, the ~~commission~~ commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~commission~~ commissioner shall publish a notice of ~~its~~ the commissioner's appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, disclosed by the licensee's records. If the insolvency involves a facility-based grain buyer, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located. The notice must require outstanding receipt holders and credit-sale contract claimants to file their claims with the ~~commission~~ commissioner along with the receipts, contracts, or other evidence of the claims required by the ~~commission~~ commissioner. If an outstanding receipt holder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the ~~commission~~ commissioner, the ~~commission~~ commissioner is relieved of further duty in the administration of the insolvency on behalf of the receipt holder or credit-sale contract claimant and the receipt holder may be barred from participation in the trust fund, and the credit-sale contract claimant may be barred from payment for any amount due. Outstanding

receipholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 55. AMENDMENT. Section 60-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-33. Remedy of receipholders.

NoA receipholder ~~has~~does not have a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other receipholder, except through the trustee, unless, upon demand of five or more receipholders, the ~~commission~~commissioner fails or refuses to apply for ~~it~~the commissioner's own appointment or unless the district court denies the application. This chapter does not prohibit any receipholder, either individually or in conjunction with other receipholders, from pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 56. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-34. ~~Commission~~Commissioner to marshal trust assets.

Upon ~~it~~the commissioner's appointment, the ~~commission~~commissioner shall marshal all of the trust fund assets. The ~~commission~~commissioner may maintain suits in the name of the state of North Dakota for the benefit of all receipholders against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any person who may have received preferential treatment by being paid by the insolvent licensee after the first default.

SECTION 57. AMENDMENT. Section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-35. Power of ~~commission~~commissioner to prosecute or compromise claims.

The ~~commission~~commissioner may:

1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action ~~when~~if it will be in the best interests of the receipholders.
4. Settle and compromise any action ~~when~~if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

SECTION 58. AMENDMENT. Section 60-02.1-36 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-36. Money received by trustee - Deposited in Bank of North Dakota.

All funds received by the ~~commission~~commissioner as trustee must be deposited in the Bank of North Dakota.

SECTION 59. AMENDMENT. Section 60-02.1-37 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-37. Report of trustee to court - Approval - Distribution.

1. Upon the receipt and evaluation of claims, the commission shall file with the court a report showing the amount and validity of each claim after recognizing:
 - a. Relevant liens or pledges.
 - b. Relevant assignments.
 - c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
 - d. In case of relevant cash claims or checks, the amount of the claim.
 - e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.
2. The report must also contain the proposed reimbursement to the ~~commission~~ commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the ~~commission~~ commissioner in the administration of the insolvency, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receiptholder claims in full, the report should list the funds as prorated.
3. The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commission's~~ commissioner's report should not be approved and distribution of the trust fund be made as proposed. Copies of the report and notice of hearing must be served by the ~~commission~~ commissioner by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the ~~commission~~ commissioner.
4. Any aggrieved person having an objection to the ~~commission's~~ commissioner's report shall file the objection with the court and serve copies on the ~~commission~~ commissioner, the licensee, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Following the hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the ~~commission~~ commissioner from ~~its~~ the commissioner's trust.

SECTION 60. AMENDMENT. Section 60-02.1-38 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-38. Filing fees and court costs - Expenses.

The ~~commission~~ commissioner may not be required to pay any filing fee or other court costs or disbursements. The attorney general may appoint outside legal counsel to assist the ~~commission~~ commissioner in the prosecution of the action and the cost of employing outside counsel must be paid from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the ~~commission~~ commissioner in carrying out the provisions of this

chapter, including adequate insurance to protect the ~~commission~~, its commissioner, the commissioner's employees, and others engaged in carrying out the provisions of sections 60-02.1-28 through 60-02.1-38, must be reimbursed to the ~~commission~~commissioner from the trust fund and credit-sale contract indemnity funds as appropriate.

SECTION 61. AMENDMENT. Section 60-02.1-39 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-39. Cease and desist.

~~Whenever~~If an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the ~~commission~~commissioner, upon ~~its~~the commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the ~~commission~~commissioner. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 62. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 63. AMENDMENT. Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Commissioner" means the public service
commission agriculture commissioner.

SECTION 64. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03. Appointment of ~~commission~~commissioner.

Upon the insolvency of any warehouseman, the ~~commission~~commissioner shall apply to the district court of a county in which the warehouseman operates a licensed warehouse for authority to take all action necessary and appropriate to secure and act as trustee of the trust fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the warehouseman, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court ~~that such~~the warehouseman is insolvent within the meaning of this chapter and ~~that~~ it would be for the best interests of the receipt holders that the ~~commission~~commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon at which time the~~ ~~commission~~commissioner shall proceed to exercise ~~it~~the commissioner's authority without further direction from the court.

Upon the filing of the ~~commission's~~commissioner's application, the court may issue ex parte such temporary order as may be necessary to preserve or protect the assets of the trust fund, or the value ~~thereof of the trust fund~~, until the court issues ~~its~~an order granting or denying the application.

SECTION 65. AMENDMENT. Section 60-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.1. Trust fund established.

1. Upon the insolvency of any warehouseman, a trust fund ~~shall~~must be established:
 - a. For the benefit of noncredit-sale receipt holders of the insolvent warehouseman, other than those who have waived their rights as beneficiaries of the trust fund in accordance with section 60-02-11; and
 - b. To pay the costs incurred by the ~~commission~~commissioner in the administration of this chapter.
2. The trust fund consists of the following:
 - a. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain;
 - b. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commission~~commissioner is appointed trustee;
 - c. The proceeds of insurance policies upon grain destroyed in the elevator;
 - d. The claims for relief, and proceeds ~~therefrom~~from the claims for relief, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman;
 - e. The claims for relief, and proceeds ~~therefrom~~from the claims for relief, for the conversion of any grain stored in the warehouse;
 - f. Unencumbered accounts receivable for grain sold ~~prior to~~before the filing of the claim that precipitated an insolvency;
 - g. Unencumbered equity in grain hedging accounts; and

- h. Unencumbered grain product assets.

SECTION 66. AMENDMENT. Section 60-04-03.2 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.2. Possession of grain.

Upon ~~its~~the commissioner's appointment by the district court, the ~~commission~~commissioner shall seek possession of the grain to be included in the trust fund. Upon ~~its~~the commissioner's possession of any grain in the warehouse, the ~~commission~~commissioner shall sell such grain and apply the proceeds to the trust fund.

SECTION 67. AMENDMENT. Section 60-04-03.3 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.3. Joinder of surety - Deposit of proceeds.

The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the ~~commission~~when commissioner if the ~~commission~~commissioner believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. ~~When~~If it appears in the best interests of the receiptholders, the court may order the surety to deposit the penal sum of the bond, or so much ~~thereof~~of the sum as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

SECTION 68. AMENDMENT. Section 60-04-04 of the North Dakota Century Code is amended and reenacted as follows:

60-04-04. Notice to receiptholders and credit-sale contract claimants.

Upon ~~its~~the commissioner's appointment by the district court, the ~~commission~~commissioner may take possession of relevant books and records of the warehouseman. The ~~commission~~commissioner shall cause a notice of ~~its~~the commissioner's appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, as shown by the warehouseman's records. The notices must require outstanding receiptholders and credit-sale contract claimants to file their claims against the warehouseman with the ~~commission~~commissioner along with the receipts, contracts, or any other evidence of the claims as required by the ~~commission~~commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time as prescribed by the ~~commission~~commissioner, the ~~commission~~commissioner is relieved of further duty or action under this chapter on behalf of the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 69. AMENDMENT. Section 60-04-05 of the North Dakota Century Code is amended and reenacted as follows:

60-04-05. Remedy of receiptholders.

~~No~~A receiptholder ~~has~~does not have a separate claim for relief upon the warehouseman's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the ~~commission~~commissioner fails or refuses

to apply for ~~its~~the commissioner's own appointment from the district court or unless the district court denies the application for appointment. This chapter does not prohibit or prevent any receiptholder, either individually or in conjunction with other receiptholders, from pursuing concurrently such other remedy against the person or property of ~~such~~the warehouseman, for the whole, or any deficiency occurring in the redemption, of the receipts.

SECTION 70. AMENDMENT. Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

60-04-06. ~~Commission~~Commissioner to marshal trust assets.

Upon ~~its~~the commissioner's appointment by the district court, the ~~commission~~commissioner may maintain suits at law or in equity, or any special proceeding, in the name of the state of North Dakota, upon ~~its~~the commissioner's own relation, but for the benefit of all such receiptholders against:

1. The insurers of grain;
2. The warehouseman's bond;
3. Any person who may have converted any grain; or
4. Any receiptholder who ~~shall have~~ received more than ~~its~~the receiptholder's just and pro rata share of grain,

for the purpose of marshalling all of the trust fund assets and distributing the same among the receiptholders. The ~~commission~~commissioner shall seek possession of any grain in the warehouse before recourse is had against the insurers of grain, and the remedy against the insurers of grain ~~shall must~~ be exhausted before recourse is had against the bond, and against the bond before recourse is had against the person honestly converting grain, unless the ~~commission shall deem~~commissioner ~~deems~~ it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

SECTION 71. AMENDMENT. Section 60-04-07 of the North Dakota Century Code is amended and reenacted as follows:

60-04-07. Power of ~~commission~~commissioner to prosecute or compromise claims.

The ~~commission~~commissioner may:

1. Prosecute any action provided in this chapter in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action ~~whenever~~if it is in the best interests of the receiptholders.
4. Settle and compromise any action ~~when~~if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of the compromise or of the full amount of any insurance policy, bond, or conversion claim, exonerate the person so compromising or paying in full from further liability growing out of the action.

SECTION 72. AMENDMENT. Section 60-04-08 of the North Dakota Century Code is amended and reenacted as follows:

60-04-08. Money received by trustee - Deposited in Bank of North Dakota.

All moneys collected and received by the ~~commission~~ commissioner as trustee under this chapter, pending the marshalling of the fund, ~~shall~~ must be deposited in the Bank of North Dakota.

SECTION 73. AMENDMENT. Section 60-04-09 of the North Dakota Century Code is amended and reenacted as follows:

60-04-09. Report of trustee to court - Approval - Distribution.

Upon the receipt and evaluation of claims filed with ~~it~~ the commissioner, the ~~commission~~ commissioner shall file with the court a report showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges ~~thereon~~ on the claims.
2. Assignments ~~thereof~~ of the claims.
3. Deductions ~~therefrom~~ from the claims by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount ~~thereof~~ of the claims or checks.
5. In the case of scale tickets or warehouse receipts, the amount ~~thereof~~ based upon the market price prevailing on the date the ~~commission~~ commissioner first received a copy of the written demand required by section 60-04-02.
6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.

The report must also contain the proposed reimbursement to the ~~commission~~ commissioner for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the ~~commission~~ commissioner in the administration of this chapter, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants as ~~the~~ the interests of the claimants are determined. If the trust fund is insufficient to redeem all receiptholder claims in full, the fund must be shown prorated in the report in the manner the ~~commission~~ commissioner deems fair and equitable.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commission's~~ commissioner's report should not be approved and credit-sale contract indemnity fund payments and distribution of the trust fund be made as proposed, and payments from the credit-sale contracts be made as proposed. Copies of the report and notice of hearing must be served by the ~~commission~~ commissioner by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the ~~commission~~ commissioner.

Any aggrieved person having an objection to the ~~commission's~~ commissioner's report shall file the objection with the court and serve copies on the ~~commission~~ commissioner, the warehouseman, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust

fund, payments from the credit-sale contract indemnity fund, and discharge of the ~~commission~~ commissioner from ~~its~~ the commissioner's trust.

SECTION 74. AMENDMENT. Section 60-04-10 of the North Dakota Century Code is amended and reenacted as follows:

60-04-10. Filing fees and court costs - Expenses.

In any action in a state court in this state, the ~~commission shall~~ commissioner may not be required to pay any filing fee or other court costs or disbursements if the fees accrue to the county or to the state. The attorney general may employ outside legal services to assist the ~~commission~~ commissioner in the prosecution of such action as in the attorney general's judgment may be necessary and the ~~commission~~ commissioner shall deduct the expenses of the same from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the ~~commission~~ commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission~~; ~~its~~ commissioner, the commissioner's employees, and others engaged in carrying out the provisions of this chapter, must be reimbursed to the ~~commission~~ commissioner from the trust fund and credit-sale indemnity funds as appropriate.

SECTION 75. AMENDMENT. Section 60-05-01 of the North Dakota Century Code is amended and reenacted as follows:

60-05-01. Public elevators and warehouses - ~~Commission~~ Commissioner may require uniform accounting system.

The ~~public service commission~~ commissioner may require every association, copartnership, corporation, or limited liability company conducting a public elevator or warehouse in this state to adopt a uniform accounting system established by ~~such~~ the commissioner.

SECTION 76. AMENDMENT. Section 60-05-02 of the North Dakota Century Code is amended and reenacted as follows:

60-05-02. Examination of financial accounts of elevator or warehouse by competent examiner - Request by percentage of stockholders.

The ~~commission~~ commissioner may install, and ~~whenever~~ if requested by not less than fifteen percent of the partners, stockholders, or members of any association, copartnership, corporation, or limited liability company conducting such public elevator or warehouse, shall install, the uniform system of accounting mentioned in section 60-05-01. The ~~commission~~ commissioner on ~~its~~ the commissioner's own motion may, or on request of the required percentage of partners, stockholders, or members, the ~~commission~~ commissioner shall, send a competent examiner to examine the books and financial accounts of ~~such~~ the elevator or warehouse. ~~Whenever~~ If a request for the examination of the accounts of any association, copartnership, corporation, or limited liability company has been made to the ~~commission~~ commissioner, as provided for in this section, ~~an examination thereafter shall~~ subsequent examinations must be made at least once every year until the ~~commission shall~~ commissioner is requested to discontinue such examination by resolution adopted by the partners, stockholders, or members at any annual meeting. ~~When~~ If such examination has been made, the examiner shall report immediately the results ~~thereof~~ of the examination to the president and the secretary of such association, copartnership, corporation, or limited liability company and to the ~~commission~~ commissioner.

SECTION 77. AMENDMENT. Section 60-05-03 of the North Dakota Century Code is amended and reenacted as follows:

60-05-03. Certificate issued by ~~commission~~ commissioner after its examination of accounts.

If the ~~commission~~ commissioner is satisfied from ~~its~~ the commissioner's examination that the person, association, copartnership, corporation, or limited liability company examined is solvent and ~~its~~ the method of doing business is such as is likely to be beneficial to all of its members or persons interested therein, the ~~commission~~ commissioner shall issue a certificate, countersigned by the examiner, to the agent or manager. Such certificate ~~shall~~ must be kept posted conspicuously in the warehouse or elevator of such person, association, copartnership, corporation, or limited liability company and ~~shall~~ must state:

1. That said methods of doing business are sound.
2. That such person, association, copartnership, corporation, or limited liability company is solvent.
3. That its books and accounts are kept properly.

If the affairs and methods of doing business of such person, association, copartnership, corporation, or limited liability company ~~shall~~ do not seem sound or satisfactory to the ~~commission~~, ~~it~~ commissioner, the commissioner shall issue a certificate or statement, countersigned by the person who made the examination, stating in what particular and in what respect the business methods practiced or methods of keeping books and accounts of such person, association, copartnership, corporation, or limited liability company are not deemed safe. The ~~commission~~ commissioner shall mail a copy of ~~said~~ the statement or certificate to each of such shareholders or stockholders as may have requested the ~~commission~~ commissioner to make such examination. The ~~commission~~ commissioner also shall send a copy thereof to the president and the secretary of such association, copartnership, corporation, or limited liability company.

SECTION 78. AMENDMENT. Section 60-05-04 of the North Dakota Century Code is amended and reenacted as follows:

60-05-04. Fees of examiner for installing and examining accounting system.

For making installation of a uniform accounting system and examining the financial accounts of an elevator or public warehouse, an association, copartnership, corporation, or limited liability company shall pay the examiner a reasonable fee, as determined by the ~~commission~~ commissioner. In case any such association, copartnership, corporation, or limited liability company shall wrongfully refuse or neglect to pay such fees, then the ~~commission~~ commissioner may cancel the license to do business. All such fees ~~shall~~ must be paid into the state treasury. The expenses incurred by the examiner under the provisions of this chapter shall be paid out of the appropriations made by the legislative assembly for this purpose and such expenses ~~shall~~ must be audited and paid in the same manner as other expenses are audited and paid.

SECTION 79. AMENDMENT. Section 60-06-05 of the North Dakota Century Code is amended and reenacted as follows:

60-06-05. Sidetracks to be provided by ~~railroad company on its land.~~

Every railroad company or corporation organized under the laws of this state or doing business ~~therein~~ in this state, upon application in writing, shall provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator

without reference to its size, cost, or capacity, ~~whereif~~ grain or potatoes are or may be stored. The railroad company is not required to construct or furnish any sidetracks except upon its own land or right of way. Such elevators and warehouses may not be constructed within one hundred feet [30.48 meters] of any existing structure and must be at safe fire distance from the station buildings so as not to conflict essentially with the safe and convenient operation of the road. ~~Whereif~~ stations are ten miles [16.09 kilometers] or more apart the railroad company, ~~whenif~~ required so to do by the ~~public service commission~~ commissioner, shall construct and maintain a sidetrack for the use of shippers between such stations.

SECTION 80. AMENDMENT. Section 60-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

60-06-06.1. Determination - ~~Appropriation~~ Expenses.

Any party may petition the ~~public service commission~~ commissioner to determine rights governed under this chapter. The ~~commissioner~~ commissioner shall determine the matter in accordance with chapter 28-32 and the parties' rights of appeal are as limited by chapter 28-32. The value of a leaseholder's improvements may not be considered in determining a reasonable lease rate or selling price. The parties to such a proceeding shall pay the expenses of the proceeding, as determined by the ~~commissioner~~ commissioner, directly to the entities owed. The ~~commissioner~~ commissioner may adopt rules to carry out this section.

SECTION 81. AMENDMENT. Section 60-10-01 of the North Dakota Century Code is amended and reenacted as follows:

60-10-01. Credit-sale contracts - Assessment on grain - Submission of assessment.

An assessment at the rate of two-tenths of one percent is placed on the value of all grain sold in this state under a credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14. The licensee purchasing the grain shall note the assessment on the contract required under sections 60-02-19.1 and 60-02.1-14 and shall deduct the assessment from the purchase price payable to the seller. The licensee shall submit any assessment collected under this section to the ~~public service commission~~ commissioner no later than thirty days after each calendar quarter. The ~~commissioner~~ commissioner shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

SECTION 82. AMENDMENT. Section 60-10-02 of the North Dakota Century Code is amended and reenacted as follows:

60-10-02. Credit-sale contract indemnity fund - Creation - Continuing appropriation.

There is created in the state treasury the credit-sale contract indemnity fund. The state treasurer shall invest available moneys in the fund in accordance with section 21-10-07 and in cooperation with the ~~public service commission~~ commissioner and shall deposit any income earned through the investments into the fund. The fund and earnings of the fund are appropriated to the ~~public service commission~~ commissioner on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

SECTION 83. AMENDMENT. Section 60-10-03 of the North Dakota Century Code is amended and reenacted as follows:

60-10-03. Credit-sale contract indemnity fund - Suspension of assessment.

At the end of the calendar quarter in which the credit-sale contract indemnity fund reaches a level of six million dollars, the ~~public service commissioner~~ shall suspend collection of the assessment required by this chapter. If after suspension of collection the balance in the fund is less than three million dollars, the ~~public service commissioner~~ shall require collection of the assessment.

SECTION 84. AMENDMENT. Section 60-10-05 of the North Dakota Century Code is amended and reenacted as follows:

60-10-05. Credit-sale contract indemnity fund - Availability of money.

Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the ~~public service commissioner~~ serve as the trustee, the ~~public service commissioner~~ shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

SECTION 85. AMENDMENT. Section 60-10-07 of the North Dakota Century Code is amended and reenacted as follows:

60-10-07. Credit-sale contract indemnity fund - Prorated claims.

If claims for indemnity payments from the credit-sale contract indemnity fund exceed the amount in the fund, the ~~public service commissioner~~ shall prorate the claims and pay the prorated amounts. As future assessments are collected, the ~~public service commissioner~~ shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this chapter.

SECTION 86. AMENDMENT. Section 60-10-08 of the North Dakota Century Code is amended and reenacted as follows:

60-10-08. Reimbursement for later insolvencies.

The ~~public service commissioner~~ shall ensure that all persons eligible for payment from the indemnity fund as a result of an insolvency are fully compensated to the extent permitted by this chapter before any payments from the indemnity fund are initiated as a result of a later insolvency. The chronological order of insolvencies is determined by the date the ~~public service commissioner~~ is appointed trustee under section 60-02.1-29 or 60-04-03.

SECTION 87. AMENDMENT. Section 60-10-09 of the North Dakota Century Code is amended and reenacted as follows:

60-10-09. Credit-sale contract indemnity fund - Reimbursement for administrative expenses.

Any expense incurred by the ~~public service commissioner~~ in administering the credit-sale contract indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

SECTION 88. AMENDMENT. Section 60-10-10 of the North Dakota Century Code is amended and reenacted as follows:

60-10-10. Credit-sale contract indemnity fund assessment - Failure to collect assessment - Penalty.

Any person who knowingly or intentionally refuses or fails to collect the assessment required under this chapter from producers or to submit any assessment collected from producers to the ~~public service commission~~ commissioner for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

SECTION 89. AMENDMENT. Section 60-10-11 of the North Dakota Century Code is amended and reenacted as follows:

60-10-11. Revocation and suspension.

The ~~commission~~ commissioner may suspend or revoke the license of any licensee for cause upon notice and hearing for violation of this chapter.

SECTION 90. AMENDMENT. Section 60-10-12 of the North Dakota Century Code is amended and reenacted as follows:

60-10-12. Cease and desist.

If a person engages in an activity or practice that is contrary to this chapter or rules adopted by the ~~commission~~ commissioner, the ~~commission~~ commissioner, upon ~~its~~ the commissioner's own motion without complaint and with or without a hearing, may order the person to cease and desist from the activity until further order of the ~~commission~~ commissioner. The order may include any corrective action up to and including license suspension. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 91. AMENDMENT. Section 60-10-14 of the North Dakota Century Code is amended and reenacted as follows:

60-10-14. Subrogation.

Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against whom the claim was made. The ~~commission~~ commissioner may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate ~~its~~ the interest of the claimant, if any, to the ~~commission~~ commissioner in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

SECTION 92. AMENDMENT. Section 60-10-15 of the North Dakota Century Code is amended and reenacted as follows:

60-10-15. Unlicensed facility-based grain buyer.

This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01, which is licensed under the United States Warehouse Act but which does not possess a state grain buyer license. The ~~commission~~ commissioner has the duty and power to examine and inspect, during regular business hours, all books, documents, and records related to collections and remittances pertaining to the credit-sale contract indemnity fund. In the case of insolvency, credit-sale contract payments to valid claimants must be reduced by an amount equal to the credit-sale contract indemnity payments received from payments administered by the United States department of agriculture."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2009 - Department of Agriculture - House Action

	Base Budget	Senate Version	House Changes	House Version
Salaries and wages	\$12,372,949	\$13,049,463	\$601,759	\$13,651,222
Operating expenses	6,444,336	6,577,780	125,000	6,702,780
Capital assets	13,000	15,000		15,000
Grants	8,817,774	8,823,774		8,823,774
State Board of Animal Health	865,718	865,718		865,718
Wildlife services	1,408,000	1,457,400		1,457,400
Crop Harmonization Board	75,000	75,000		75,000
Pipeline restoration and reclamation	200,000	200,000		200,000
Ag. Products Utilization Commission		3,176,791	823,209	4,000,000
Total all funds	\$30,196,777	\$34,240,926	\$1,549,968	\$35,790,894
Less estimated income	21,087,676	24,503,189	863,543	25,366,732
General fund	\$9,109,101	\$9,737,737	\$686,425	\$10,424,162
FTE	73.00	75.00	2.00	77.00

Department 602 - Department of Agriculture - Detail of House Changes

	Adjusts Funding for Salary and Benefit Increases ¹	Removes 1 FTE Position ²	Removes Funding for Agriculture Commissioner Salary Equity Increase ²	Adjusts Funding for Wildlife Services Operating Fees ¹	Adjusts Funding for APUC ³	Transfers Grain Warehouse Inspection Program from the PSC ³
Salaries and wages	\$45,913	(\$157,940)	(\$14,713)			\$728,499
Operating expenses						125,000
Capital assets						
Grants						
State Board of Animal Health						
Wildlife services						
Crop Harmonization Board						
Pipeline restoration and reclamation						
Ag. Products Utilization Commission					\$823,209	
Total all funds	\$45,913	(\$157,940)	(\$14,713)	\$0	\$823,209	\$853,499
Less estimated income	25,357	(34,423)	0	49,400	823,209	0
General fund	\$20,556	(\$123,517)	(\$14,713)	(\$49,400)	\$0	\$853,499
FTE	0.00	(1.00)	0.00	0.00	(1.00)	4.00

	Total House Changes
Salaries and wages	\$601,759
Operating expenses	125,000
Capital assets	
Grants	
State Board of Animal Health	
Wildlife services	
Crop Harmonization Board	
Pipeline restoration and reclamation	
Ag. Products Utilization Commission	823,209
Total all funds	\$1,549,968
Less estimated income	863,543
General fund	\$686,425
FTE	2.00

¹ Funding of \$45,913, of which \$20,556 is from the general fund and \$25,357 is from other funds, is added for 2019-21 biennium salary increases of 2 percent with a minimum monthly increase of \$120 and a maximum monthly increase of \$200 on July 1, 2019, and 2.5 percent on July 1, 2020. The Senate provided funding for a salary increase of 2 percent on July 1, 2019, and a 3 percent increase on July 1, 2020.

² One FTE undesignated position and funding of \$157,940 is removed, of which \$123,517 is from the general fund, \$6,673 is from the Department of Agriculture operating fund, and \$27,750 is from federal funds. The Senate did not remove any FTE positions.

³ Funding of \$14,713 provided by the Senate to increase the Agriculture Commissioner's salary to align with the Tax Commissioner's salary is removed.

⁴ The funding source for \$49,400 for wildlife services operating fees is changed to the environment and rangeland protection fund rather than the general fund to provide total funding of \$1,457,400 for wildlife services, the same amount as the Senate.

⁵ Funding for the Agricultural Products Utilization Commission (APUC) is adjusted as follows:

	<u>FTE</u>	<u>Other Funds</u>
Reduces funding from the APUC special funds	(1.00)	(\$1,176,791)
Adds funding from Bank of North Dakota profits	<u>0.00</u>	<u>2,000,000</u>
Total	(1.00)	\$823,209

Total funding approved by the House for APUC is \$4 million, of which \$2 million is from the APUC fund and \$2 million is from the profits of the Bank of North Dakota. The House approved 1 FTE APUC position for the program. The Senate approved total funding of \$3,176,791 from the APUC fund and 2 FTE positions.

⁶ Transfers grain warehouse license and inspection program from the Public Service Commission to the Agriculture Commissioner as follows:

	<u>Salaries and Wages</u>	<u>Operating Expenses</u>	<u>Total General Fund</u>
Adds 3 FTE grain warehouse inspectors	\$563,006	\$120,000	\$683,006
Adds 1 FTE accounting budget specialist	<u>165,493</u>	<u>5,000</u>	<u>170,493</u>
Total	\$728,499	\$125,000	\$853,499

This amendment also:

- Amends a section identifying the amount of funding from the environment and rangeland protection fund.
- Amends a section relating to the salary of the Agriculture Commissioner.
- Adds a section related to the transfer of \$2 million of the current earnings and undivided profits of the Bank of North Dakota to the Agriculture Commissioner for deposit in the APUC fund during the 2019-21 biennium.
- Removes statutory sections related to APUC. The statutory changes needed to move APUC to the Agriculture Commissioner are included in Senate Bill No. 2328.
- Adds statutory sections to transfer grain, grain buyers, warehousing, deposits, and warehousemen programs from the Public Service Commission to the Agriculture Commissioner and increases annual license fees, resulting in additional general fund revenues of approximately \$83,200 during the 2019-21 biennium.

2019 CONFERENCE COMMITTEE

SB 2009

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2009
4/17/2019
Job #34823

Subcommittee
 Conference Committee

Committee Clerk: Rose Laning and Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner.

Minutes:

Testimony # 1 - 2

Legislative Council: Levi Kinnischtzke
OMB: Larry Martin

Conferees:

Senator Wanzek, Senator Erbele, Senator Grabinger
Representative Monson, Representative Schmidt, Representative Boe

Levi Kinnischtzke handed out:

Base Level Funding Changes – **Attached # 1.**

Statement of Purpose of Amendment – **Attached # 2.**

Senator Wanzek: I haven't had much time to look over the statement of purpose or the spreadsheet yet. Asked the House to explain the changes they made to the bill.

Representative Boe: On the spreadsheet, we did the salary adjustments. We removed one FTE position. We left the capitol assets line with the \$2,000 alone. You had \$49,400 coming out of general funds. We switched that to ERP (Environment & Rangeland Protection) Funds. We took one of the APUC FTE and removed it. We added an amendment that took \$2 M from Bank of North Dakota (BND) profits to go into ERP with the percentage of the profits from the state mill and elevator. We moved two FTE for grain warehouse inspectors and then one accounting budget specialist. We moved programming fees and took all of the existing language for the grain inspection and moved that into the bill. That is also into a separate bill. The reason we moved that into this bill was because wanted to tie them with the programming funding and the FTEs. We figured that would be more tidy. We took the salary increase and we reduced that down to the same two for the Ag Commissioner to the 2 and 2.5 of the state employees. We also put \$2M into APUC. I think that is everything that we did that you did not.

Senator Wanzek: Why did you remove the 1st FTE? How did you come up with that?

Representative Monson: There were 3 vacant FTEs and the executive budget said they were going to take two. You did not take those two. We took one of the them.

Senator Wanzek: It has been brought to my attention that last biennium we took 4 FTEs from them and now we are taking another one. The new FTE for APUC and the grain inspection are over and above the base. I am hearing they took a cut of 4 last time and a lot of their employees, when you look at the comparative ratio of pay they are on, it is on the lower end. It does not leave them much room or flexibility. They are at a base need now. We're actually giving them added responsibilities now in many different areas. I am not sure if we want to cut them of that one employee.

What was the rationale on APUC? We looked at the base budget before the last downturn in the economy. We went with a base numbers to two APUC FTEs, at that time, knowing the dollar amount would probably change. I do understand the BND said they were going to take \$4M of profits to provide for grants in that program they highly recommend or like.

Representative Monson: When we were working with APUC moving from Commerce to Ag, we still did not have the bill passed on the floor. We assumed it was going to happen. We asked Commerce how many FTEs they had dedicated to APUC and they had none. They only had \$670,000+ in anticipated revenue from the mill and elevator. If it wasn't going to change from Commerce, we would have been looking at no FTEs dedicated to this program in Commerce, with \$670,000 anticipated income. It is no wonder that nothing good was happening anymore in APUC.

We thought to take a few million from the BND profits to shore this up. We were not going to use any FTEs at all. The Ag Commissioner came in and said they needed someone to run this. It makes sense because they will have more money to give out in programs. I don't know that we needed 2 but we gave them 2. We thought that was a fair compromise. It's trying to build up APUC again. I don't know if we ever got a list of all the projects that APUC has actually done. We asked Commerce to give us what has been funded. We did get something from the Ag Commissioner's office because he sits on APUC. We had a bit of heartburn over that move because the ag commissioner sits on that board that decides it. Then to move the whole thing into his office is like he has a guaranteed one vote for everything. Maybe that is okay. The people in our House voted to move it in the end. We put in two FTEs even though Commerce didn't have that and we took \$2M from the BND plus the Mill and Elevator profits.

Senator Wanzek: It is my understanding that the bank has offered to put \$4M in grants. I sense there's a desire to rejuvenate APUC and that it has been a positive program. However, the funding sources like with the refund of gas tax has kind of dried up. It has all been solely on the state mill & elevator to fund it which has not provided enough funding and now the BND said they're willing to put in \$4M.

Representative Boe: We are sensitive on how much money we put into some of these bills. When we get to the floor, we are getting chopped a little by one faction that is really watching what we are doing. When I was waiting to carry my bill, I was envisioning what my line of questioning was going to be. I knew it was going to be APUC. To my surprise, it was not. I think we are a little cautious on that so that it wouldn't call that big of attention to it.

Senator Wanzek: Maybe the department can provide some of this. I would like to hear a little more and be confirmed that the APUC program is viewed as successful, has potential, and that the bank is willing. Kelvin, would you mind commenting?

Representative Monson: Before we have the BND come in and comment, we've asked the Bank of ND for other things too. Just because they offered to put in profits for this one, maybe they will and maybe they won't. We've got lots of other spending that we have to cover. We thought this was a good compromise.

Senator Wanzek: I want to be sure that the program is worthy and it has potential to come back. I am not sure why it has not been utilized much other than I do not think the funding hasn't been there. I understand \$1,000 came in under the gas tax deal. No one files for gas tax refunds anymore. I can remember doing that years ago, but not anymore. I know the state mill and elevator provided most of the funding now.

Kelvin Hullet, Bank of North Dakota

To address some of the questions of APUC and where it fits into the mix of the various funding things, as you know, we spend 6 months to a year traveling the state meeting with entrepreneurs, business people, bankers, and elected officials to talk about where the funding gaps are in the ecosystem as we are looking at business development. One of those key places was in seed capital. How do you get projects across the valley of death? As we thought about the various mechanisms that are out there and available and are tools related to other state agencies, we looked around to see what those were in relating to the Department of Commerce.

We looked at all the bank programs and the Ag Product Utilization Commission at APUC as one of the pieces of the ecosystem that could help bring projects forward and help advance the economy, in particular, towards that whole idea of diversification of the economy. We had discussions with both the governor and the Ag Commissioner who asked if there would be funding capability. It was included as part of 1014 which is the Industrial Commission budget for the BND. It is in part of the capital draw that the bank went in to providing to the legislature. Having said that, it is obviously a decision of the legislature, from a policy perspective, on how the funding levels should work and the BND's profits and how they are utilized as a dividend. We feel there is value in the program. In 1014, there is \$4M that has been appropriated to this program. I would leave it at that to the committee's discretion to move forward or make a decision on how they would like to do that.

Senator Wanzek: Thank you, Kelvin. I am asking Levi Kinnischtzke – what are the APUC revenue sources?

State mill and Elevator – 5%

Certain percentage of requested gas tax refunds.

Is there anything else other than the BND putting in \$4M?

Levi Kinnischtzke: No. Those are the revenue sources, so you captured all three of them.

Senator Wanzek: Would we even have to mention a number? Could we give them a continued appropriation to use the funds that are identified for APUC? Do we have to limit them? Do we have to put a number in here for what they spend on APUC grants?

Levi Kinnischtzke: The BND profits are a biennium to biennium one-time item. If the BND are to be continually used for APUC, that would have to be addressed each biennium unless some statutory changes were made.

Senator Wanzek: If \$4M is put into APUC fund this next biennium and the APUC committee obligates a certain part of that and it was not fully obligated, can they continue to use the money in that fund, or do we have to limit what they hand out in grants?

Levi Kinnischtzke: Currently the Agriculture Commissioner does not have a continuing appropriation for APUC. Any funding not utilized at the end of the biennium would have to be returned to the fund it originates from. If the committee would like a continued appropriation, that would have to be drafted and put into statute.

Representative Monson: Continuing appropriations are bad words in the House, especially when it is a new source of funding. We would like to be able to see how that money got spent. What did we get for our money? Every time we meet, if they show that they do good things with that money, we wouldn't have problems of funding it again in the future. That is one of the reasons why we left it at \$2M from the BND. That is \$2M more than they were going to get this time around. We thought it was a good way to see if extra money that is dumped into APUC, will rejuvenate some of it so rather than dump in \$4M, we put in \$2M.

I think I did misspeak on the FTEs. We put in only one FTE for that. I got down on to the line where we were talking about the two FTE for the grain warehouse inspectors. If you want to switch topics. You do not have any problem with the grain inspection deal being at 2-1-1 and the money we put in, do you? That is exactly what was in the Public Service Commission. It would probably be the same 4 people.

Senator Wanzek: Given those numbers, I have a problem with the numbers. I'm not sure they should be in the Ag Commissioner's office. They should not be back in the Public Service Commission. This is not the only bill dealing with that. I know the Public Service Commission budget will be in conference. This one is in conference. The bills with the policy are all in conference. I am not quite sure how to handle that yet. I have to do some investigating to figure that one out.

Representative Monson: That was the reason that was one of the last budgets to kick out. We were waiting on that one to see what was going to happen with the other bill that did this. This might be the final issue at the end of the session. We assumed it was going to pass. Maybe we made the wrong assumption. If it doesn't pass, I guess this all changes.

Representative Boe: This was when they brought the PSC budget to us and they had removed the FTE and the funding. In order for it to have a home, we had to put it in here. We put the statutory changes that was in another bill all together because I did not feel comfortable seeing that flopping out there. It should all be bundled. We'll see where it goes.

Senator Wanzek: I guess I can appreciate that. We'll be meeting a few more times. This will sit until the two chambers have an understanding of where this will end up. I am not sure we're there yet. In talking to the conferees on the two policy bills, I am not sure where

we are going to end up.

Representative Boe: You are a great bunch of guys. I look forward to hanging out with you.

Representative Monson: I do not think we have a lot of huge differences here. We have talked about everything. That salary business is okay. I do not think we have a huge problem on the ERP funding for \$49,400.

Senator Grabinger: What are the funds that we're going to be used for that \$49,400?

Representative Monson: There is some from the fish and wildlife. I guess they can provide us with that.

Senator Wanzek: Our time is up. I will have the meeting rescheduled. Thank you.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2009
4/22/2019
Job #34907

Subcommittee
 Conference Committee

Committee Clerk: Rose Laning and Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture commissioner.

Minutes:

--

Legislative Council: Levi Kinnischtzke

OMB: Larry Martin

Conferees:

Senator Wanzek, Senator Erbele, Senator Grabinger

Representative Monson, Representative Schmidt, Representative Boe

Senator Wanzek: In addressing the differences, I am trying to recall what they all mean. The House removed 1 FTE and \$123,517. There were federal and special funds included in that position for a total of \$157,940. Also, the 2 APUC employees had a reduction of one. I am not fully understanding how you arrive at the dollars for APUC grants. I know the BND has offered or promoted \$4M of profits to the APUC fund for grants. As far as the salaries for the 2 FTEs – the House funding for their salaries are not included. I'm not sure if we come together on any of those? Then the Commissioner's salary had an equity increase of \$14,713 that the House removed. Are any of those positions negotiable?

Senator Wanzek: I failed to mention that there are 4 more FTEs added for grain warehouse inspectors, licensing, and inspectors to manage the grain buyers and public warehouse licensing. There is also one accountant or a budget specialist included in that. That is basically what the Senate put in the Public Service Commission (PSC) and the House has taken it out of there and put it into the House. We are not going to be able to get this bill out of committee until that had been settled. I have been involved in some of the talks on that. We are still up in the air about that.

Representative Boe: On the APUC front, the amount of staff that the Dept. of Commerce claimed they devoted to this was .7 FTE. We thought going to one was a little bit higher. The \$4M was the target but we got a sheet that showed that the Bank of North Dakota (BND) profits have been overspent by about double. We thought you might as well go with \$2M. That was the number we picked. We started with \$1M and then decided we should go with

\$2M because if you're devoting an FTE to watch over that small of an amount of money, it is very inefficient. As far as the PSC, we're not going to settle that as it sits today because there is other legislation for that. When this budget was given to us, it was the PSC budget that was in the sub section. That subsection came to us and said they removed the FTEs out of the budget. Unless we put them somewhere, they were just going to hang out there. I thought it would be a good idea to tie that all together in one bundle so the programming fees, the FTEs, and the statutory language in order to give them the authority, should all be bundled into one so that when we find a home for it, we keep track of it.

Representative Monson: Rep. Boe was the bill carrier on House side so he dug into this very well. I will add that this is a convoluted thing. The government ops section of House Appropriations has the PSC budget. We used to have it but this session we don't have it and instead, we have the Governor's budget. We are new at this and they are new at the PSC. They turned it over to us in the EE section when it looked like that bill was going to pass.

The recommendation though, from gov. ops, was that they really didn't think they needed an accounting budget specialist. When they turned this over to us, they said three FTEs should be fine. They took 4 out of PSC for this program but their recommendation to us was that they didn't think we needed to add 4 FTEs to this budget. We did. We didn't hear the testimony. We said that if PSC had four, then we'll put in four. That is the only reason that accounting budget specialist is even in there. We felt we were generous in that one.

We put in one FTE for APUC. I know the Ag Commissioner made the case that they would really like two. They showed us the data that commerce actually paid for two, but didn't have two people doing the work. APUC wasn't accomplishing a whole lot of things when they were paying two people out of that. If we don't put any money in, they'd only have \$670,000 in APUC. That is the profits from the Mill & Elevator and gas tax is like \$1000. So we thought that first shot at the Ag Commissioner doing APUC in his realm, we'll give him two million and one FTE and see if he does good stuff with it.

Representative Schmidt: The Dept. of Commerce indicated four staff were dedicated to APUC. We were always told they didn't have anybody by the Department of Commerce but they listed four. I don't know who those are. When we look at four managing 20 projects for a total \$1.3M, that does not make a lot of sense to me in Commerce. If that is the way they are managing their program, I want to see it go to someone who is a little more productive.

Senator Wanzek: Could that be because the grant funding was much more limited? There weren't as many dollars in grant program.

Representative Schmidt: Even if it is, then why would you have four staff working on it?

Senator Wanzek: That is a question for the Department of Commerce. I visited with the BND and asked about the \$4M and wanted them to put together a list. Today, on the floor, we voted on the school loan financing as well as grants and the BND profits are going to fund that too. I am wondering how many total dollars they are committing and if they are able to do that. I was told yes. I know they have an interest in that \$4M going towards grants. They offered that. If you throw in the money from the Mill and Elevator, that would bring us somewhere between \$5M and \$6M. If we can identify those grants and put a

number there and if they get it, they can grant that out for pogroms. In the past, I know APUC has been quite successful. I know of a few people who have used APUC locally. I'm a citizen legislator who doesn't have all the information or know where to look for it. If the grant money is meant for that purpose, I would hope we would allow them to grant it for those cases. Maybe we should provide the funding at the full level. If we do, we could probably use some of those special fund dollars to cover for the FTE, whether it's one or two FTEs. Otherwise, if we stick with the level we're at, we will have to put some separate funding for that FTE or two FTEs. If we allow the full funding for grants to be utilized for grants, would be \$4M from the bank and whatever comes in.

Representative Monson: You are saying all the money we put in for BND and then the profits from the mill and elevator is all money from grants. Once that is in there and that gets spent, that is gone. You are saying they would get a certain amount of dollars from either the mill and elevator or the BND but we don't let them take any money for operating or FTEs. The whole amount of goes for grants and then we'd fund the FTE. Is that what you said?

Senator Wanzek: I believe that if we're going to cut short the money of grants, then I think in order to make sure we get mostly grants out there, we would have to fund that FTE. I have not visited with the Senators yet but I am thinking we would promote two. We'd have to provide that funding for those two FTEs. If we get the full funding, I would 't object to some of it being special funds to cover the cost of those FTEs.

Representative Monson: We did, in here. We said \$2M plus the profits of the mill and elevator. We said that is for grants. We funded one FTE and that would be for the administration of it.

Senator Wanzek: Where did that funding come from?

Representative Monson: Levi could probably tell you. That would be my intention to do it like I thought I understood you to say. When we put one FTE in there, that is general funds?

Levi Kinnischtzke: The House version related to the APUC line item was a \$4M appropriation. That is its own separate line item. Any salaries or operating grants related to APUC are all in that line item. All the funding for APUC is from the APUC fund. The revenue behind that is from the mill & elevator profits and the BND.

Representative Monson: So, we had \$2M plus the profits of the mill and elevator but the FTE is being paid out of that. That was not how I thought it was. I thought we did it in the way Senator Wanzek said it. If you're going to put money in a grant program and see some good things happen out of it, then let's be upfront and say this is the amount for the grants. If we want to say we'll add an FTE, if we let the dept. use that person to the best of their ability, maybe they don't need the full time FTE. Maybe there's a time when all the money for grants is gone and they will change what that person is working on. If we fund it out of a salary line item, I don't know if we have to say it's for APUC. We can let that person be used wherever. That gives them the flexibility to use that person.

Senator Wanzek: I think you're right. If we're going to fund them out of grant lines, you can't utilize that FTE in other program areas. If we're cutting the grant line, we have to fund that separately.

What I'm hearing, from the department, is that last time, we cut them 4 FTEs. Putting that one back in, actually brings them back to the base level. That is not including additional programs like APUC or the bonding and licensing.

Representative Boe: The executive budget is 71.

Representative Monson: You guys sent it to us with 73. We kept it at 73 until we got down here. We removed one FTE and then we put one back in for the APUC and added the 4. Now, they would be at 77 FTEs which is the same as the base was in 2015. They would have a new program added – APUC.

Senator Wanzek: They actually have two new programs, and bonding licensing and grain buyers.

Representative Monson: That isn't done yet.

Senator Wanzek: I will be honest, it's looking more and more like it's going to go to ag. I am not convinced of that yet. Some Senators are starting to warm up to the idea. The PSC had three, so when we had it in the Senate, we put the three in but they also wanted an accountant which was going to work with the financial authority, but that accountant also had other duties beyond the inspection. If we're going to make the move, and it is going to go from PSC to ag, they're inheriting a large insolvency. I hear today that the claims went from \$7-\$8M up to \$11M. They are still pouring in. That is going to take 2-3 years to resolve. We're going to hand them this program with that kind of situation. I want to make sure they are able to take care of that.

Representative Monson: When you're working on this, maybe leave it where it's at. The indemnity fund is your baby. I am not in the middle of this. I am saying this is out of our hands. I don't know what you and Representative Johnson and Senator Klein are coming up with. We have things in here that we cannot finish. This is probably the last budget that is going out. I would recommend that we do not even bother to meet again until that is resolved. I don't know where grain inspection is at. APUC is pretty much a done deal. Representative Boe had a better handle on that. I am going to let him explain the four FTEs versus three FTEs and the money.

Representative Boe: It is my understanding that the PSC budget analyst was an existing FTE that was unfunded. The funding was put in to fill the position. When the PSC took out the grain inspectors, the budget analyst FTE position was unfunded but still resides in the PSC.

Senator Wanzek: As far as grain inspectors, we currently have 1 ¾ and we made the second one full time and we added one. There would be three grain inspectors. The accountant we were going to fully fund, I can't recall that that FTE was in there. I thought they were requesting for an additional FTE. You said it was in there but that it wasn't funded. The intent was that that financial accountant would work with this new authority that was being given to the PSC to request audit financial information. The grain inspector does inventory inspection

on sight and in the field where the accountant was viewed as being responsible for reviewing financial information they gained from licensees.

Representative Monson: On the long sheet, it says “adds two FTE grain warehouse inspectors”. That is what we did. They are the ones out there doing the warehouse inspection. We added one FTE grain house inspector and funding for an existing inspector. We added one FTE accounting budget specialist. We added the position but I don’t know if we added enough money in to cover that. Levi can tell us that.

Levi Kinnischtzke: Funding was funded for that position. The funding that was transferred from the PSC to the Ag Commissioners budget is exactly the same. The only difference is that there were 3 FTE removed in PSC’s budget and a 4th FTE was added in the Ag Commissioner’s budget. The funding is exactly the same, but one FTE authority was left in PSC. That is an unfunded position staying in PSC. From the Ag Commissioner’s perspective, their budget included the funding for four FTE but also for FTE authorization.

Representative Monson: Since you have the PSC budget, you can straighten out what the PSC did on that. We made them whole.

Senator Wanzek: I tend to agree with you Rep. Monson. Until we resolve where the grain buyers licensing and public warehouse licensing program is going, I am not sure there is a need to meet. That is going to be resolved for sure by tomorrow. I would just watch the calendars. I will be in contact with you.

Representative Monson: This is up to you to reschedule. I will leave it in your hands. When you have the other item resolved, you can schedule this one. This is your baby.

Senator Wanzek: The conference committee is adjourned.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2009
4/26/2019
JOB #35006

Subcommittee
 Conference Committee

Committee Clerk: Alice Delzer and Alicia Larsgaard
--

Explanation or reason for introduction of bill/resolution:

A Conference Committee Hearing for the agriculture department.

Minutes:

1. Proposed Amendment # 19.0222.02006

SENATORS: Terry Wanzek, Robert Erbele, John Grabinger
REPRESENTATIVES: David Monson, Jim Schmidt, Tracy Boe

Levi Kinnischtzke, Legislative Council
Larry Martin, OMB

Chairman Wanzek: Called the Conference Committee to order on SB 2009 at 9:30 am in the Harvest Room. Roll call was taken. All committee members were present.

Chairman Wanzek: About two months ago, I predicted that this issue would be one of the last issues in the legislative session that we reconcile. I did not realize that would be a profound thought. **See Attached #1** for proposed amendments.

It is the point in time of the session when the Senate is, to a degree, waving a white flag. We are trying to make a compromise. Over the last 3-4 months, I feel like I have been in the middle while trying to be the peace maker. We think we have come to the conclusion that can work for everyone. I hope you understand all the work we put into it. It is an issue that is hard to know where to start on. Obviously, the most significant part of these amendments will transfer the public warehouse and grain buyers licensing and inspection program from the Public Service Commission (PSC) to Department of Agriculture. One of the changes from what we have seen throughout the session is that there is an additional \$100,000 to pay the PSC to finish the current insolvency litigation case that is out there. The language works to provide that it will cover all expenses. There are expenses when receivership has been taken. That PSC is now the trust manager. They have expenses of liquidating grain and cleaning up the situation. There are a lot of other expenses that are not just legal. We make sure the language refers to that. Also, we are not going to require that \$100,000 to be subject to other sections of law. That would be 60-10.04 or 60-2.1-08. That language requires that the state be reimbursed from the trust fund or the credit sale indemnity fund for expenses in this case.

By putting it at \$100,000, we are helping put that \$100,000. Not that it is going to solve a lot of problems but it is going into the pockets of the claimants and the farmers who are losing money in this situation. It is an unfortunate situation. I am not sure we can write enough laws to prevent what happened in that case. It has cause a lot of angst and it is resulted in this final solution. When we had the policy issues before us, the Senate defeated it the other day. The concern was that it was just moving the program and not providing any other sort of assistance or tools to try to manage the situation better. Within these amendments, there is language that allows the Department of Ag to seek more pertinent financial information in licensing and administrating the program and provide regulatory oversight. It also requires that this financial information stays confidential. With that, I will walk through some of the other changes. We agreed to provide \$159,852 to the Department of Ag for temporary salaries We agreed to provide an equity salary increase for Ag Commissioner to the same extent of dollars as the Treasurer in the equity increase and salary. We changed \$49,400 for wildlife service fees from the General Fund into special funds. We are now moving the APUC program to the Department of Ag and there will be 1 FTE that will be funded through General Fund dollars of \$239,583 which will leave us \$3.7M for APUC grants. That takes the House's version of \$2M of profits coming from the Bank of North Dakota (BND) to help with that program. Again, it transfers the grain warehouse licensing inspection program from the PSC to the Ag Committee which I have already talked about. The one-time funding of \$100,000 for the PSC to continue to provide services and to finish out that grain insolvency litigation case that is currently there. I think I covered the brunt of the amendments as they are presented. With that, is there any other discussion? At one point, I did notice, we are raising the license fee for public warehouse by \$100 for all sized categories. Which means I will pay \$100 more to license my bean business.

Representative Monson: We know you can afford that \$100.

Representative Boe: I will just point out that on our original amendment, there was a section 41 and 42 that had been taken out since we put it in there. That has been removed in this new amendment and it is now in a study.

V. Chairman Wanzek: Can you tell us what those sections did?

Representative Boe: They were about grain processor licenses and the roving grain buyer.

Chairman Wanzek: In visiting our side and with the folks on legislative management, it has been emphasized to them how important that study is that has passed both house. The intent is to look into not only the public warehouse, but also the brokers role and the roving grain buyer's role and how that might be different. I think we all understand, in the ag industry, how the way we market our grain is changing. Their needs to be an effort to address those things. I think we want to be careful not to go too quickly on this and overreact to this case. I think we are going far enough in providing some additional tools for them to do their job and to try to prevent insolvency. That said, I would insist that it needs to studied. In the case that is out there, the broker probably influenced some of that activity more than anyone. People trusted that broker and the deal went bad.

Representative Boe: It has been indicated to me that the study is in there and it was in HB 1467. I noted that these sections 41 and 42, on the original amended bill, were in there. Those had been removed and put into the study in 1461. I wanted to note that was no longer in there. That was taken care of in policy. I am fine with it.

Senator Erbele: I move the adoption of the Amendment #19.0222.02006 and that the House Recede from House amendments and amend as follows. 2nd by Representative Monson

Chairman Wanzek: Any other discussion? I hope we are doing the right thing. I do believe compromise has been done on both sides. If I did not think the Ag Department could do a good job on this, I wouldn't support it. I felt the PSC has done a good job all these years. Maybe some of the blame is to us. We did not always provide them with all the necessary tools. I think we are realizing that this is a significant issue. There's a lot of folks in this particular case. This might impact whether they farm or not. I heard there are some young folks that sold a lot of their crop last year through this bonding license entity and they might come out with 10-20 cents on a dollar. That doesn't just hurt the family farm, it reverberates through the whole community when they don't get their check and cannot pay their bills. It is a serious issue. I think we are doing what we can and we are going to move forward. I would like to thank everybody that's worked on this. It has not been easy. I feel like I have been peacemaker while hearing both sides. I am feeling better about what we are doing.

Representative Boe: I look at this as an efficiency issue where we have the Ag Department who has been doing inspections for fertilizer. We send someone up there as an inspector, pay mileage, pay an FTE to do an inspection and theoretically, another inspector is coming up from another agency to inspect a facility that is adjacent to the facility that was just inspected and probably owned by the same company. This should be an efficiency model where the inspectors can go up and do the inspection and should get efficient. I am ready to vote.

Chairman Wanzek: One last thing to make clear, moving forward, any new insolvency cases will be under the purview of the Department of Ag. We were concerned about this current on-going case. That is why we put the \$100,000 in to make sure the PSC can finish carrying out their duties without switching and disrupting that situation. That would hurt people in the end. I think that was a move too that needs to be emphasized in carrying this bill to the floor. We'll ask the clerk to call the roll.

A Roll Call vote was taken – Yea: 6 Nay: 0 Absent: 0. Motion Carried

Carriers:

Chairman Wanzek- Senate Chambers

Representative Boe – House Chambers

Chairman Wanzek: Thanked all the people involved in this bill and closed the hearing on SB 2009.

4/26/19
C
1937

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2009

That the House recede from its amendments as printed on pages 1539-1571 of the Senate Journal and pages 1674-1706 of the House Journal and that Engrossed Senate Bill No. 2009 be amended as follows:

Page 1, line 2, remove "to create and enact a new chapter to title 4.1 of the"

Page 1, line 3, replace "North Dakota Century Code, relating to the agricultural products utilization commission" with "to create and enact a new section to chapter 60-01, a new section to chapter 60-02, and a new section to chapter 60-02.1 of the North Dakota Century Code, relating to the definition of agriculture commissioner, and records confidentiality for warehousemen and grain buyers"

Page 1, line 4, replace "section" with "sections"

Page 1, line 4, after "4.1-01-02" insert "and 49-02-01, subsection 1 of section 60-02-01, sections 60-02-02, 60-02-03, 60-02-04, 60-02-05.1, 60-02-07, 60-02-07.2, 60-02-09, 60-02-09.1, 60-02-10.1, 60-02-11, 60-02-14, 60-02-17, 60-02-24, 60-02-27, 60-02-35.1, 60-02-38, 60-02-40, 60-02-41, 60-02-42, 60-02.1-01, 60-02.1-02, 60-02.1-03, 60-02.1-04, 60-02.1-06, 60-02.1-07, 60-02.1-07.1, 60-02.1-08, 60-02.1-09, 60-02.1-11, 60-02.1-16, 60-02.1-17, 60-02.1-19, 60-02.1-22, 60-02.1-26, 60-02.1-27, 60-02.1-29, 60-02.1-30, 60-02.1-32, 60-02.1-33, 60-02.1-34, 60-02.1-35, 60-02.1-36, 60-02.1-37, 60-02.1-38, and 60-02.1-39, subsection 1 of section 60-04-01, and sections 60-04-03, 60-04-03.1, 60-04-03.2, 60-04-03.3, 60-04-04, 60-04-05, 60-04-06, 60-04-07, 60-04-08, 60-04-09, 60-04-10, 60-05-01, 60-05-02, 60-05-03, 60-05-04, 60-06-05, 60-06-06.1, 60-10-01, 60-10-02, 60-10-03, 60-10-05, 60-10-07, 60-10-08, 60-10-09, 60-10-10, 60-10-11, 60-10-12, 60-10-14, and 60-10-15"

Page 1, line 5, after "commissioner" insert "and moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner"

Page 1, line 5, remove "to repeal chapter 54-60.3 of the North Dakota Century Code,"

Page 1, line 6, remove "relating to the agricultural products utilization commission;"

Page 1, line 7, after "assembly" insert "; to provide a penalty; and to provide a continuing appropriation"

Page 1, remove lines 17 through 24

Page 2, replace lines 1 through 6 with:

"Salaries and wages	\$12,372,949	\$1,859,797	\$14,232,746
Operating expenses	6,444,336	258,444	6,702,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
Board of animal health	865,718	0	865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop harmonization board	75,000	0	75,000
Pipeline restoration and reclamation oversight program	200,000	0	200,000

2931

Agricultural products utilization commission	<u>0</u>	<u>3,760,417</u>	<u>3,760,417</u>
Total all funds	\$30,196,777	\$5,936,058	\$36,132,835
Less estimated income	<u>21,087,676</u>	<u>4,234,730</u>	<u>25,322,406</u>
Total general fund	\$9,109,101	\$1,701,328	\$10,810,429
Full-time equivalent positions	73.00	5.00	78.00"

Page 2, replace lines 12 through 17 with:

"National genomics center	\$120,000	\$0
Federal environmental law impact review	1,000,000	0
Master customer database	0	110,000
Agricultural products utilization commission	<u>0</u>	<u>2,000,000</u>
Total all funds	\$1,120,000	\$2,110,000
Less estimated income	<u>1,120,000</u>	<u>2,000,000</u>
Total general fund	\$0	\$110,000"

Page 2, line 27, replace "\$6,663,678" with "\$6,725,799"

Page 3, after line 16, insert:

"SECTION 9. TRANSFER - BANK OF NORTH DAKOTA PROFITS - AGRICULTURAL PRODUCTS UTILIZATION COMMISSION. The Bank of North Dakota shall transfer the sum of \$2,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the agriculture commissioner for deposit in the agricultural products utilization commission fund during the biennium beginning July 1, 2019, and ending June 30, 2021. This funding is considered a one-time funding item."

Page 3, line 20, replace "seventeen" with "sixteen"

Page 3, line 21, replace "eighty-seven" with "eight hundred thirty-six"

Page 3, line 22, replace "twenty" with "nineteen"

Page 3, line 22, overstrike "six" and insert immediately thereafter "seven"

Page 3, line 22, after "fifty-six" insert "fifty-seven"

Page 3, remove lines 23 through 31

Page 4, remove lines 1 through 31

Page 5, replace lines 1 through 24 with:

"SECTION 11. APPROPRIATION - GRAIN INSOLVENCY LITIGATION - ONE-TIME FUNDING - APPLICATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of paying the public service commission to continue providing services related to grain insolvency litigation that began prior to July 1, 2019, for the biennium beginning July 1, 2019, and ending June 30, 2021. This funding is considered a one-time funding item. Sections 60-02.1-8 and 60-04-10 do not apply to any expenses paid from the appropriation provided in this section.

SECTION 12. AMENDMENT. Section 49-02-01 of the North Dakota Century Code is amended and reenacted as follows:

3/2/21

49-02-01. General jurisdiction of the public service commission over public utilities.

The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.
2. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.
3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
4. Electric utilities engaged in the generation and distribution of light, heat, or power.
5. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
6. All heating utilities engaged in the distribution of heat.
7. ~~Warehouse companies engaged in the marketing, storage, or handling of agricultural products.~~
8. All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

SECTION 13. A new section to chapter 60-01 of the North Dakota Century Code is created and enacted as follows:

Definition.

For purposes of this title, "commissioner" means the agriculture commissioner.

SECTION 14. AMENDMENT. Subsection 1 of section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "~~Commission~~Commissioner" means the public service ~~commission~~agriculture commissioner.

SECTION 15. AMENDMENT. Section 60-02-02 of the North Dakota Century Code is amended and reenacted as follows:

60-02-02. ~~Commission~~Commissioner - Powers and duties.

The commissioner has the powers and duties imposed by the provisions ~~enumerated under this chapter and the powers conferred herein devolve upon the~~ commission.

SECTION 16 AMENDMENT. Section 60-02-03 of the North Dakota Century Code is amended and reenacted as follows:

60-02-03. Duties and powers of the ~~commission~~commissioner.

The ~~commission~~ shall have the duty and power ~~to~~ commissioner has the following powers and duties:

4031

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any licensed warehouse, including all books, documents, and records.
4. Require the filing of reports pertaining to the operation of the warehouse.
5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

SECTION 17. AMENDMENT. Section 60-02-04 of the North Dakota Century Code is amended and reenacted as follows:

60-02-04. Federal licensed inspector – ~~Appointed by commission.~~

The ~~commission~~commissioner may employ a federal licensed inspector whose duties are ~~hereinafter prescribed and such~~enumerated under this chapter and may employ other employees as may be necessary to carry out the provisions of this chapter.

SECTION 18. AMENDMENT. Section 60-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-05.1. Notice of procedures for resolving disputes over grain.

A public warehouse shall post a notice containing the procedures specified in section 60-02-05 for resolving disputes. The ~~commission~~commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each public warehouse. The public warehouseman shall post the notice in the grain inspection room of the warehouse. The notice must specifically mention ~~that~~ the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

SECTION 19. AMENDMENT. Section 60-02-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07. Public warehouse license - Fee - Financial statement.

A license must be obtained from the ~~commission~~commissioner for each public warehouse in operation in this state.

1. a. ~~The commission shall stagger by lot the expiration date of all licenses issued for the period beginning August 1, 2015, so that one half of all the licenses issued expire on July 31, 2016, and one half of all the licenses issued expire on July 31, 2017. Thereafter, all~~All licenses issued under this section must be for a period of two years and terminate on the thirty-first day of July in the year of expiration.

5037

- b. (1) Notwithstanding the provisions of subdivision a, the ~~commission~~ commissioner shall license a warehouse annually, for the first six years of the warehouse's operation.
- (2) An initial annual license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year.
- 2. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described.
- 3. a. The annual license fee for a public warehouse is:
 - (1) ~~Three~~ Four hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) ~~Four~~ Five hundred fifty dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
 - (3) ~~Five~~ Six hundred fifty dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- b. The biennial license fee for a public warehouse is:
 - (1) ~~Six~~ Seven hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) ~~Nine hundred~~ One thousand dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
 - (3) One thousand ~~one~~ two hundred dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- c. An application for an annual license renewal that is received after July fifteenth must include an additional one hundred dollar fee per warehouse. An application for a biennial license renewal that is received after July fifteenth must include an additional two hundred dollar fee per warehouse.
- 4. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. When two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses.

6937

5. If required to obtain United States department of agriculture approval of the ~~commission's~~ commissioner's warehouse inspection program, the ~~commission~~ commissioner may require that the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this subsection is a confidential trade secret and is not a public record.

SECTION 20. AMENDMENT. Section 60-02-07.2 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07.2. Receiving stations.

A licensed public warehouseman may establish a receiving station without a separate warehouse license for that facility if all of the following conditions are met:

1. The station is colocated with another licensed public warehouse, the operator of which will take delivery of the grain on behalf of the warehouseman who established the receiving station.
2. The storage space used by the receiving station is used solely by the receiving station and is not licensed as part of the warehouse that is located at that site.
3. The grain taken in by the receiving station is not commingled with other grain at that site.
4. The warehouseman establishing the station requests and receives ~~commission~~ permission from the commissioner to increase licensed capacity to include the space to be used at the receiving station.
5. Grain received at the receiving station is recorded on scale tickets issued by the warehouseman who established the station and is covered by that warehouseman's bond.
6. Warehouse-receipted grain received at the receiving station is available for redelivery to the receipt holder at that location even if the station has been closed. A charge for redelivery must be stated in the warehouseman's redelivery policy.

The storage space used by a receiving station need not be physically disconnected from the facilities of the other licensed warehouse located at that site.

SECTION 21. AMENDMENT. Section 60-02-09 of the North Dakota Century Code is amended and reenacted as follows:

60-02-09. Bond filed by public warehouseman.

Before any license is effective for any public warehouseman under this chapter, the applicant for the license shall file a bond with the ~~commission~~ commissioner which must:

1. Be in a sum not less than five thousand dollars for any one warehouse.

7037

2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~ commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in that warehouse.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a public warehouseman.
 - b. For compliance with the provisions of law and the rules of the ~~commission~~ commissioner relating to the storage and purchase of grain by such warehouseman.
5. Specify the location of each public warehouse intended to be covered by such bond.
6. Be for the specific purpose of:
 - a. Protecting the holders of outstanding receipts.
 - b. Covering the costs incurred by the ~~commission~~ commissioner in the administration of chapter 60-04 in the event of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.
8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The ~~commission~~ commissioner shall set the amount of the bond and may require an increase in the amount of any bond, from time to time, as the ~~commission~~ commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commission~~ commissioner, and authorized to do business within the state. The ~~commission~~ commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond ~~when if, in its~~ the commissioner's judgment, the cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. One bond only may be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and the bond must be construed to cover ~~such~~ the elevators, mills, or warehouses, as a whole and not a specific amount for each.

SECTION 22. AMENDMENT. Section 60-02-09.1 of the North Dakota Century Code is amended and reenacted as follows:

8/27

60-02-09.1. Bond cancellation - Release of surety.

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commissioner~~ commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the warehouseman files a new bond at least thirty days before liability ceases, the ~~commissioner~~ commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commissioner~~ commissioner. ~~When~~ If a license is so suspended, the warehouseman shall give notice of such suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse that the grain must be removed from the warehouse or ~~if~~ the grain will be priced and redeemed in cash in accordance with section 60-02-41.

SECTION 23. AMENDMENT. Section 60-02-10.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-10.1. Revocation and suspension.

The ~~commissioner~~ commissioner may suspend or revoke the license of any warehouseman for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license the warehouseman may, upon the ~~commissioner's~~ commissioner's approval, operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping, or processing. Grain may be sold only with the prior approval of the ~~commissioner~~ commissioner.

SECTION 24. AMENDMENT. Section 60-02-11 of the North Dakota Century Code is amended and reenacted as follows:

60-02-11. Scale ticket - Contents - Conversion.

1. a. Every public warehouseman, upon receiving grain into the warehouse, shall issue a uniform scale ticket for each load of grain received. The scale tickets must be numbered consecutively, and one copy of each ticket must be retained and remain as a permanent record. The original ticket must be delivered to the person from whom the grain is received, upon receipt of each load of grain.
- b. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within forty-five days after the grain is delivered to the warehouse, unless:
 - (1) The person to whom the scale ticket is issued signs a form waiving all rights to trust benefits under section 60-04-03.1;
 - (2) The form identifies by number each scale ticket to which the waiver applies; and
 - (3) The form is signed by the warehouseman.

9/13/17

- c. The ~~commission~~ commissioner shall prepare the waiver form required by subdivision b and make the form available to each warehouse.
 - d. The warehouseman shall keep one copy of the signed waiver form with the records of the warehouse, provide one copy to the person who was issued the scale ticket and signed the form, and file one copy with the ~~commission~~ commissioner.
2. Nothing in this chapter requires a warehouseman to receive grain for storage. A warehouseman shall publish and post, in a conspicuous place in the warehouse, a publication identifying whether storage will be available to patrons or whether grain will be accepted via cash or a credit-sale contract arrangement.

SECTION 25. AMENDMENT. Section 60-02-14 of the North Dakota Century Code is amended and reenacted as follows:

60-02-14. Warehouse receipts - Copy.

Provision ~~shall~~ must be made for a stub record or copy of each warehouse receipt issued by a warehouseman, showing:

- 1. The serial number and date of receipt.
- 2. The kind and grade of grain.
- 3. The dockage and net weight of the grain.

The record or copy ~~shall~~ must remain in the possession of the warehouseman for inspection by the ~~commission~~ commissioner and persons properly interested.

SECTION 26. AMENDMENT. Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.

- 1. A warehouse receipt must contain, either on its face or reverse side, the following warehouse and storage contract:

This grain is received, insured, and stored subject to the laws and rules of the state of North Dakota, the terms of this contract, and the charges and conditions stated herein and as filed with the North Dakota ~~public service~~ agriculture commissioner. Upon surrender of this receipt and payment or tender of all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal

10/15

point. This receipt does not require the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

- 2. A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts. This publication must be filed with the ~~commissioner~~ commissioner as a part of the warehouse license process or annual renewal. The fees and termination date must be stated on the warehouse receipt issued for the grain. The fees or termination date may be changed upon filing a revised publication with the ~~commissioner~~ commissioner.

SECTION 27. AMENDMENT. Section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

60-02-24. Reports to be made by public warehouseman - Penalty for failure.

Each licensed and bonded public warehouseman shall:

- 1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commissioner~~ commissioner. The report must contain or be verified by a written declaration ~~that it~~ the report is made under the penalties of perjury. The report may be called for more frequently if the ~~commissioner~~ commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commissioner~~ commissioner may make the information available for use by other governmental entities, but the ~~commissioner~~ commissioner may not release the information in a manner that jeopardizes the confidentiality of individual licensees.
- 2. File the report with the ~~commissioner~~ commissioner not later than the last day of the following month, and failure to file this report promptly will be considered cause for revoking the warehouse license after due notice and hearing.
- 3. Keep a separate account of the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances ~~shall~~ may the grain account and other accounts be mixed.

The ~~commissioner~~ commissioner may refuse to renew a license to any public warehouseman who fails to make a required report.

SECTION 28. AMENDMENT. Section 60-02-27 of the North Dakota Century Code is amended and reenacted as follows:

60-02-27. Federal grades to control - Grades to be posted.

All public warehousemen shall purchase and store grain except dry edible beans in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law. ~~They~~ Public warehousemen shall post in a conspicuous place in ~~the~~ the public warehousemen's warehouse the official grades so established and also any change that may be made

11/03/17

from time to time. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with ~~their~~the policy of the warehousemen which must be filed with the ~~commissioner~~commissioner and posted in a conspicuous place in ~~their~~the warehouse of the public warehousemen. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards. The ~~commissioner~~commissioner, after hearing, may prohibit the use of nonfederal grades.

SECTION 29. AMENDMENT. Section 60-02-35.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-35.1. Insurance - Cancellation - Suspension of license.

An insurance company shall give at least sixty days' notice to the ~~commissioner~~commissioner and the insured by certified mail return receipt requested before cancellation of an insurance policy required in section 60-02-35. Unless the warehouseman files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commissioner~~commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commissioner~~commissioner. ~~When~~If a license is so suspended, the warehouseman shall give notice of ~~such~~the suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse ~~that~~ the grain must be removed from the warehouse or ~~if~~the grain will be priced and redeemed in cash in accordance with section 60-02-41.

SECTION 30. AMENDMENT. Section 60-02-38 of the North Dakota Century Code is amended and reenacted as follows:

60-02-38. Refund of license fee by ~~commissioner~~commissioner.

~~When~~If requested in writing, the ~~commissioner~~commissioner shall refund the license fee of a public warehouse, or so much as in ~~its~~the commissioner's judgment is just and reasonable, ~~when~~if satisfactory proof is furnished ~~that~~ the warehouse has been transferred to some other person, and the new owner has obtained a license for the same warehouse for the unexpired period for which the original license was issued. ~~When~~If a warehouse is destroyed by fire or other cause, the license fee may be prorated as the ~~commissioner~~commissioner may determine.

SECTION 31. AMENDMENT. Section 60-02-40 of the North Dakota Century Code is amended and reenacted as follows:

60-02-40. Transfer of warehouse - Redemption of receipts.

~~Whenever~~If a public warehouseman desires to transfer a warehouse, either by sale or lease to any other individual, firm, or corporation, the warehouseman shall:

1. Notify the ~~commissioner~~commissioner first of ~~its~~the warehouseman's intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
2. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain, together with a statement of:

12/9/31

- a. The number of bushels [cubic meters] of grain of each kind and grade in store in the warehouse;
 - b. The number and amount of receipts outstanding; and
 - c. The names and addresses of the receiptholders.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receiptholders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery. The ~~commission~~ commissioner may waive the thirty-day notice period upon receipt of written consent of all receiptholders.
 4. Transfer all stored grain undelivered at the expiration of such thirty-day period to ~~its~~ the warehouseman's successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred.
 5. Surrender to the ~~commission~~ its commissioner the warehouseman's license for cancellation ~~and at such, at which time~~ the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commission, whereupon, it commissioner, at which time, the commissioner,~~ first being duly satisfied ~~that~~ that all the outstanding receipts have been redeemed, or that the redemption ~~thereof~~ of all outstanding receipts has been provided for, the ~~commission~~ commissioner may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any warehouse will be recognized by the ~~commission~~ commissioner except when made in accordance with the provisions of this section.

SECTION 32. AMENDMENT. Section 60-02-41 of the North Dakota Century Code is amended and reenacted as follows:

60-02-41. Going out of business - Redemption of receipts.

~~When~~ If a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, ~~such~~ the warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of such receipts, upon due notice, ~~must~~ shall accept this price and surrender the receipts. Any public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license or whose warehouse license is revoked shall notify the ~~commission~~ commissioner and all outstanding receiptholders of such closing and redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein ~~shall~~ must be settled in cash and priced on the market on the day of closing.

SECTION 33. AMENDMENT. Section 60-02-42 of the North Dakota Century Code is amended and reenacted as follows:

13/8/37

60-02-42. Cease and desist.

~~Whenever~~ If an entity engages in an activity or practice ~~that is~~ contrary to the provisions of this chapter or related rules, the ~~commission~~ commissioner, upon ~~its~~ the commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the ~~commission~~ commissioner. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 34. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a public warehouse license; or
 - b. An investigation after issuance or renewal of a public warehouse license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a public warehouse license; or
 - b. An investigation after issuance or renewal of a public warehouse license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 35. AMENDMENT. Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the public service ~~commission~~ agriculture commissioner.

- 140621
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
 3. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
 4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
 5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
 6. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:
 - a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
 - b. A person who is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.
 - c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.
 7. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
 8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.
 9. "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

SECTION 36. AMENDMENT. Section 60-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

15/03/21

60-02.1-02. ~~Commission~~Commissioner - Powers and duties.

The ~~powers and duties imposed and the powers conferred by this chapter devolve upon the commission~~of the commissioner are enumerated in this chapter.

SECTION 37. AMENDMENT. Section 60-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-03. Duties and powers of the ~~commission~~commissioner.

The ~~commission~~commissioner has the duty and power to:

1. Exercise general supervision of grain buyers of this state.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any books, documents, and records.
4. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

SECTION 38. AMENDMENT. Section 60-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-04. Federal licensed inspector ~~Appointed by commission.~~

The ~~commission~~commissioner may employ a federal licensed inspector whose duties are ~~hereinafter prescribed, and such enumerated in this chapter and may employ other employees as may be necessary to carry out the provisions of this chapter.~~

SECTION 39. AMENDMENT. Section 60-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-06. Notice of procedures for resolving disputes over grain.

A facility-based grain buyer shall post a notice containing the procedures specified in section 60-02.1-05 for resolving disputes. The ~~commission~~commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each facility-based grain buyer. The facility-based grain buyer shall post the notice in the grain inspection room of the facility. The notice must specifically mention ~~that~~ the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

SECTION 40. AMENDMENT. Section 60-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.

Grain buyers ~~must~~shall obtain an annual license from the ~~commission~~commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. A

16 of 37

facility-based grain buyer ~~must~~ shall obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such facilities, and scale tickets and checks of but one series are issued for the grain, purchased, only one license is required for the operation of all such facilities. The annual license fee for a facility-based grain buyer is ~~three~~ four hundred dollars and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location.

If required to obtain United States department of agriculture approval of the ~~commission's~~ commissioner's grain buyer inspection program, the ~~commission~~ commissioner may require that grain buyers submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

SECTION 41. AMENDMENT. Section 60-02.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07.1. Roving grain buyer license - How obtained - Fee.

Roving grain buyers that purchase, solicit, merchandise, or take possession of grain in this state ~~must~~ shall obtain an annual license from the ~~commission~~ commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~ If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee for a roving grain buyer is ~~two~~ three hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

SECTION 42. AMENDMENT. Section 60-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-08. Bond filed by grain buyer.

Before any license is effective for any grain buyer under this chapter, the applicant for the license shall file a bond with the ~~commission~~ commissioner which must:

1. Be in a sum not less than ~~five~~ ten thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~ commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a grain buyer.

17037

- b. For compliance with the provisions of law and the rules of the ~~commission~~ commissioner relating to the purchase of grain by such grain buyer.
- 5. For facility-based grain buyers, specify the location of each facility intended to be covered by the bond.
- 6. Be for the specific purpose of:
 - a. Protecting the sellers of grain.
 - b. Covering the costs incurred by the ~~commission~~ commissioner in the administration of the licensee's insolvency.
- 7. Not accrue to the benefit of any person entering into a credit-sale contract with a grain buyer.
- 8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The ~~commission~~ commissioner may require an increase in the amount of any bond; ~~from time to time, as it~~ the commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commission~~ commissioner, and authorized to do business within the state. The ~~commission~~ commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in ~~its~~ the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts. Only one bond may be required for any series of facilities operated by a facility-based grain buyer, and the bond must be construed to cover those facilities as a whole and not a specific amount for each.

SECTION 43. AMENDMENT. Section 60-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-09. Bond cancellation - Release of surety.

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commission~~ commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the grain buyer files a new bond at least thirty days before liability ceases, the ~~commission~~ commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commission~~ commissioner.

SECTION 44. AMENDMENT. Section 60-02.1-11 of the North Dakota Century Code is amended and reenacted as follows:

18037

60-02.1-11. Revocation and suspension.

The ~~commission~~commissioner may suspend or revoke the license of any grain buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a grain buyer must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license a facility-based grain buyer, upon the ~~commission's~~commissioner's approval, may operate its facility and purchase or redeliver grain previously received, but may not receive additional grain for purchase, shipping, or processing. Grain may be sold only with the prior approval of the ~~commission~~commissioner.

SECTION 45. AMENDMENT. Section 60-02.1-16 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-16. Records required to be kept by grain buyers.

Each grain buyer shall keep such accounts, records, and memoranda concerning the buyer's dealing as such grain buyer as ~~from time to time~~ may be required by the ~~commission~~commissioner and shall make such reports of purchases of grain as may be required by the rules ~~made~~adopted by the ~~commission~~commissioner. The ~~commission~~commissioner at all times ~~shall~~must have access to such accounts, records, and memoranda.

SECTION 46. AMENDMENT. Section 60-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-17. Reports to be made by grain buyers - Penalty for failure.

Each licensed and bonded grain buyer shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commission~~commissioner. The report must contain or be verified by a written declaration ~~that it~~the report is made under the penalties of perjury. The report may be called for more frequently if the ~~commission~~commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commission~~commissioner may make this information available for use by other governmental entities, but the information may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the ~~commission~~commissioner not later than the last day of the following month. Failure to file this report promptly will be considered cause for revoking the grain buyer license after due notice and hearing.
3. Keep a separate account of the grain business, if the grain buyer is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.

The ~~commission~~commissioner may refuse to renew a license to any grain buyer who fails to make a required report.

SECTION 47. AMENDMENT. Section 60-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

19 827

60-02.1-19. Federal grades to control - Grades to be posted.

All grain buyers shall purchase grain, except dry edible beans, in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in applicable rules and regulations ~~applicable thereto~~ adopted by federal officials pursuant to law. A facility-based grain buyer shall post in a conspicuous place in the buyer's facility the official grades so established and also any change that may be made from time to time. A grain buyer of dry edible beans shall purchase and deliver beans in accordance with the buyer's policy, which must be filed with the ~~commissioner~~ commissioner and, if applicable, posted in a conspicuous place in the buyer's facility. Other grading standards may be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However, the owner may demand the use of federal grading standards. After hearing, the ~~commissioner~~ commissioner may prohibit the use of nonfederal grades.

SECTION 48. AMENDMENT. Section 60-02.1-22 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-22. Insurance - Cancellation - Suspension of license.

An insurance company shall give at least sixty days' notice to the ~~commissioner~~ commissioner and the insured by registered mail return receipt requested before cancellation of an insurance policy required in section 60-02.1-21. Unless the grain buyer files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commissioner~~ commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commissioner~~ commissioner.

SECTION 49. AMENDMENT. Section 60-02.1-26 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-26. Transfer of facility - Redemption of receipts.

~~Whenever~~ If a facility-based grain buyer desires to transfer a facility, either by sale or lease to any other individual, firm, or corporation, the grain buyer shall:

1. Notify the ~~commissioner~~ commissioner first of its intention to transfer the facility, giving the name and address of the proposed lessee or purchaser.
2. Provide related information as may be required by the ~~commissioner~~ commissioner.
3. Surrender to the ~~commissioner~~ commissioner the grain buyer's license for cancellation and at that time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commissioner~~ commissioner, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the ~~commissioner~~ commissioner may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any facility will be recognized by the ~~commissioner~~ commissioner except when made in accordance with the provisions of this section.

20/2/21

SECTION 50. AMENDMENT. Section 60-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-27. Going out of business - Redemption of receipts.

~~When~~ If a facility-based grain buyer ceases business through closure, the destruction of a facility by fire or other cause, or through insolvency, ~~such~~ the grain buyer shall redeem all outstanding receipts at the price prevailing on the date the facility was closed, destroyed, or became insolvent. The holder of ~~such~~ the receipts, upon due notice, ~~must~~ shall accept this price and surrender the receipts. Any facility-based grain buyer who voluntarily ceases business or fails to renew an existing grain buyer license or whose grain buyer license is revoked shall notify the ~~commissioner~~ commissioner and all receiptholders of such closing and redeem all such receipts at the price prevailing on the date the business closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein ~~shall~~ must be settled in cash and priced on the market on the day of closing.

SECTION 51. AMENDMENT. Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-29. Appointment of ~~commissioner~~ commissioner.

Upon the insolvency of any roving grain buyer, the ~~commissioner~~ commissioner shall apply to the district court of Burleigh County for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. If the insolvency involves a facility-based grain buyer, application must be to the district court of a county in which the licensee operates a licensed facility. Upon notice to the licensee as the court prescribes, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the receiptholders that the ~~commissioner~~ commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and the ~~commissioner~~ commissioner shall proceed to exercise ~~its~~ the commissioner's authority without further direction from the court.

Upon the filing of the ~~commission's~~ commissioner's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

SECTION 52. AMENDMENT. Section 60-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-30. Trust fund established.

Upon the insolvency of any licensee, a trust fund must be established for the benefit of noncredit-sale receiptholders and to pay the costs incurred by the ~~commissioner~~ commissioner in the administration of the insolvency. The trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.

2/19/37

2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commissioner~~ commissioner is appointed trustee must be remitted to the ~~commissioner~~ commissioner and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.
4. The claims for relief, and proceeds ~~therefrom~~ from the claims for relief, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
5. The claim for relief, and proceeds ~~therefrom~~ from the claim for relief, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

SECTION 53. AMENDMENT. Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-32. Notice to receiptholders and credit-sale contract claimants.

Upon ~~its~~ the commissioner's appointment, the ~~commissioner~~ commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~commissioner~~ commissioner shall publish a notice of ~~its~~ the commissioner's appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, disclosed by the licensee's records. If the insolvency involves a facility-based grain buyer, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located. The notice must require outstanding receiptholders and credit-sale contract claimants to file their claims with the ~~commissioner~~ commissioner along with the receipts, contracts, or other evidence of the claims required by the ~~commissioner~~ commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the ~~commissioner~~ commissioner, the ~~commissioner~~ commissioner is relieved of further duty in the administration of the insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder may be barred from participation in the trust fund, and the credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 54. AMENDMENT. Section 60-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-33. Remedy of receiptholders.

~~No~~ A receiptholder ~~has~~ does not have a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand

22/23

of five or more receipt holders, the ~~commissioner~~ commissioner fails or refuses to apply for ~~its~~ the commissioner's own appointment or unless the district court denies the application. This chapter does not prohibit any receipt holder, either individually or in conjunction with other receipt holders, from pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 55. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-34. ~~Commission~~ Commissioner to marshal trust assets.

Upon ~~its~~ the commissioner's appointment, the ~~commissioner~~ commissioner shall marshal all of the trust fund assets. The ~~commissioner~~ commissioner may maintain suits in the name of the state of North Dakota for the benefit of all receipt holders against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any person who may have received preferential treatment by being paid by the insolvent licensee after the first default.

SECTION 56. AMENDMENT. Section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-35. Power of ~~commissioner~~ commissioner to prosecute or compromise claims.

The ~~commissioner~~ commissioner may:

1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action ~~when~~ if it will be in the best interests of the receipt holders.
4. Settle and compromise any action ~~when~~ if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

SECTION 57. AMENDMENT. Section 60-02.1-36 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-36. Money received by trustee - Deposited in Bank of North Dakota.

All funds received by the ~~commissioner~~ commissioner as trustee must be deposited in the Bank of North Dakota.

SECTION 58. AMENDMENT. Section 60-02.1-37 of the North Dakota Century Code is amended and reenacted as follows:

23837

60-02.1-37. Report of trustee to court - Approval - Distribution.

1. Upon the receipt and evaluation of claims, the ~~commission~~ commissioner shall file with the court a report showing the amount and validity of each claim after recognizing:
 - a. Relevant liens or pledges.
 - b. Relevant assignments.
 - c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
 - d. In case of relevant cash claims or checks, the amount of the claim.
 - e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.
2. The report must also contain the proposed reimbursement to the ~~commission~~ commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the ~~commission~~ commissioner in the administration of the insolvency, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receiptholder claims in full, the report should list the funds as prorated.
3. The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commission's~~ commissioner's report should not be approved and distribution of the trust fund be made as proposed. Copies of the report and notice of hearing must be served by the ~~commission~~ commissioner by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the ~~commission~~ commissioner.
4. Any aggrieved person having an objection to the ~~commission's~~ commissioner's report shall file the objection with the court and serve copies on the ~~commission~~ commissioner, the licensee, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Following the hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the ~~commission~~ commissioner from ~~its~~ the commissioner's trust.

SECTION 59. AMENDMENT. Section 60-02.1-38 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-38. Filing fees and court costs - Expenses.

The ~~commission~~ commissioner may not be required to pay any filing fee or other court costs or disbursements. The attorney general may appoint outside legal counsel to assist the ~~commission~~ commissioner in the prosecution of the action and the cost of employing outside counsel must be paid from the trust fund and the credit-sale contract

24 9/31

indemnity fund as appropriate. All other necessary expenses incurred by the ~~commissioner~~ commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission, its commissioner,~~ commissioner's employees, and others engaged in carrying out the provisions of sections 60-02.1-28 through 60-02.1-38, must be reimbursed to the ~~commissioner~~ commissioner from the trust fund and credit-sale contract indemnity funds as appropriate.

SECTION 60. AMENDMENT. Section 60-02.1-39 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-39. Cease and desist.

~~Whenever~~ If an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the ~~commissioner,~~ commissioner, upon ~~its~~ the ~~commissioner's~~ commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the ~~commissioner.~~ commissioner. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 61. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 62. AMENDMENT. Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

25032

- 1. "~~Commission~~Commissioner" means the ~~public service~~ agriculture commissioner.

SECTION 63. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03. Appointment of commissioner.

Upon the insolvency of any warehouseman, the ~~commissioner~~ shall apply to the district court of a county in which the warehouseman operates a licensed warehouse for authority to take all action necessary and appropriate to secure and act as trustee of the trust fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the warehouseman, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court ~~that such~~ the warehouseman is insolvent within the meaning of this chapter and ~~that~~ it would be for the best interests of the receipt holders that the ~~commissioner~~ secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon~~ at which time the ~~commissioner~~ shall proceed to exercise ~~its~~ the commissioner's authority without further direction from the court.

Upon the filing of the ~~commissioner's~~ application, the court may issue ex parte such temporary order as may be necessary to preserve or protect the assets of the trust fund, or the value ~~thereof~~ of the trust fund, until the court issues ~~its~~ an order granting or denying the application.

SECTION 64. AMENDMENT. Section 60-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.1. Trust fund established.

- 1. Upon the insolvency of any warehouseman, a trust fund ~~shall~~ must be established:
 - a. For the benefit of noncredit-sale receipt holders of the insolvent warehouseman, other than those who have waived their rights as beneficiaries of the trust fund in accordance with section 60-02-11; and
 - b. To pay the costs incurred by the ~~commissioner~~ in the administration of this chapter.
- 2. The trust fund consists of the following:
 - a. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain;
 - b. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commissioner~~ is appointed trustee;
 - c. The proceeds of insurance policies upon grain destroyed in the elevator;

2/6/27

- d. The claims for relief, and proceeds ~~therefrom~~ from the claims for relief, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman;
- e. The claims for relief, and proceeds ~~therefrom~~ from the claims for relief, for the conversion of any grain stored in the warehouse;
- f. Unencumbered accounts receivable for grain sold ~~prior to~~ before the filing of the claim that precipitated an insolvency;
- g. Unencumbered equity in grain hedging accounts; and
- h. Unencumbered grain product assets.

SECTION 65. AMENDMENT. Section 60-04-03.2 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.2. Possession of grain.

Upon ~~its~~ the commissioner's appointment by the district court, the ~~commissioner~~ commissioner shall seek possession of the grain to be included in the trust fund. Upon ~~its~~ the commissioner's possession of any grain in the warehouse, the ~~commissioner~~ commissioner shall sell such grain and apply the proceeds to the trust fund.

SECTION 66. AMENDMENT. Section 60-04-03.3 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.3. Joinder of surety - Deposit of proceeds.

The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the ~~commissioner~~ commissioner ~~when~~ if the ~~commissioner~~ commissioner believes ~~that~~ proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. ~~When~~ If it appears in the best interests of the receiptholders, the court may order the surety to deposit the penal sum of the bond, or so much ~~thereof~~ of the sum as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

SECTION 67. AMENDMENT. Section 60-04-04 of the North Dakota Century Code is amended and reenacted as follows:

60-04-04. Notice to receiptholders and credit-sale contract claimants.

Upon ~~its~~ the commissioner's appointment by the district court, the ~~commissioner~~ commissioner may take possession of relevant books and records of the warehouseman. The ~~commissioner~~ commissioner shall cause a notice of ~~its~~ the commissioner's appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, as shown by the warehouseman's records. The notices must require outstanding receiptholders and credit-sale contract claimants to file their claims against the warehouseman with the ~~commissioner~~ commissioner along with the receipts, contracts, or any other evidence of the claims as required by the ~~commissioner~~ commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the

27/3/37

notice or a longer time as prescribed by the ~~commission~~ commissioner, the ~~commission~~ commissioner is relieved of further duty or action under this chapter on behalf of the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 68. AMENDMENT. Section 60-04-05 of the North Dakota Century Code is amended and reenacted as follows:

60-04-05. Remedy of receiptholders.

~~No~~ A receiptholder ~~has~~ does not have a separate claim for relief upon the warehouseman's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the ~~commission~~ commissioner fails or refuses to apply for ~~its~~ the commissioner's own appointment from the district court or unless the district court denies the application for appointment. This chapter does not prohibit or prevent any receiptholder, either individually or in conjunction with other receiptholders, from pursuing concurrently such other remedy against the person or property of ~~such~~ the warehouseman, for the whole, or any deficiency occurring in the redemption, of the receipts.

SECTION 69. AMENDMENT. Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

60-04-06. ~~Commission~~ Commissioner to marshal trust assets.

Upon ~~its~~ the commissioner's appointment by the district court, the ~~commission~~ commissioner may maintain suits at law or in equity, or any special proceeding, in the name of the state of North Dakota, upon ~~its~~ the commissioner's own relation, but for the benefit of all such receiptholders against:

1. The insurers of grain;
2. The warehouseman's bond;
3. Any person who may have converted any grain; or
4. Any receiptholder who ~~shall~~ have received more than ~~its~~ the receiptholder's just and pro rata share of grain,

for the purpose of marshalling all of the trust fund assets and distributing the same among the receiptholders. The ~~commission~~ commissioner shall seek possession of any grain in the warehouse before recourse is had against the insurers of grain, and the remedy against the insurers of grain ~~shall~~ must be exhausted before recourse is had against the bond, and against the bond before recourse is had against the person honestly converting grain, unless the ~~commission~~ ~~shall deem~~ commissioner deems it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

SECTION 70. AMENDMENT. Section 60-04-07 of the North Dakota Century Code is amended and reenacted as follows:

28/2/21

60-04-07. Power of ~~commission~~commissioner to prosecute or compromise claims.

The ~~commission~~commissioner may:

1. Prosecute any action provided in this chapter in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action ~~whenever~~if it is in the best interests of the receiptholders.
4. Settle and compromise any action ~~when~~if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of the compromise or of the full amount of any insurance policy, bond, or conversion claim, exonerate the person so compromising or paying in full from further liability growing out of the action.

SECTION 71. AMENDMENT. Section 60-04-08 of the North Dakota Century Code is amended and reenacted as follows:

60-04-08. Money received by trustee - Deposited in Bank of North Dakota.

All moneys collected and received by the ~~commission~~commissioner as trustee under this chapter, pending the marshalling of the fund, ~~shall~~must be deposited in the Bank of North Dakota.

SECTION 72. AMENDMENT. Section 60-04-09 of the North Dakota Century Code is amended and reenacted as follows:

60-04-09. Report of trustee to court - Approval - Distribution.

Upon the receipt and evaluation of claims filed with ~~it~~the commissioner, the ~~commission~~commissioner shall file with the court a report showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges ~~thereon~~on the claims.
2. Assignments ~~thereof~~of the claims.
3. Deductions ~~therefrom~~from the claims by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount ~~thereof~~of the claims or checks.
5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the market price prevailing on the date the ~~commission~~commissioner first received a copy of the written demand required by section 60-04-02.

29 9/31

- 6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.

The report must also contain the proposed reimbursement to the ~~commission~~ commissioner for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the ~~commission~~ commissioner in the administration of this chapter, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants as ~~the~~ their interests of the claimants are determined. If the trust fund is insufficient to redeem all receiptholder claims in full, the fund must be shown prorated in the report in the manner the ~~commission~~ commissioner deems fair and equitable.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commission's~~ commissioner's report should not be approved and credit-sale contract indemnity fund payments and distribution of the trust fund be made as proposed, and payments from the credit-sale contracts be made as proposed. Copies of the report and notice of hearing must be served by the ~~commission~~ commissioner by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the ~~commission~~ commissioner.

Any aggrieved person having an objection to the ~~commission's~~ commissioner's report shall file the objection with the court and serve copies on the ~~commission~~ commissioner, the warehouseman, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the ~~commission~~ commissioner from ~~its~~ the commissioner's trust.

SECTION 73. AMENDMENT. Section 60-04-10 of the North Dakota Century Code is amended and reenacted as follows:

60-04-10. Filing fees and court costs - Expenses.

In any action in a state court in this state, the ~~commission shall~~ commissioner may not be required to pay any filing fee or other court costs or disbursements if the fees accrue to the county or to the state. The attorney general may employ outside legal services to assist the ~~commission~~ commissioner in the prosecution of such action as in the attorney general's judgment may be necessary and the ~~commission~~ commissioner shall deduct the expenses of the same from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the ~~commission~~ commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission, its~~ commissioner, the commissioner's employees, and others engaged in carrying out the provisions of this chapter, must be reimbursed to the ~~commission~~ commissioner from the trust fund and credit-sale indemnity funds as appropriate.

SECTION 74. AMENDMENT. Section 60-05-01 of the North Dakota Century Code is amended and reenacted as follows:

30837

60-05-01. Public elevators and warehouses - ~~Commission~~Commissioner may require uniform accounting system.

The ~~public service commissioner~~commissioner may require every association, copartnership, corporation, or limited liability company conducting a public elevator or warehouse in this state to adopt a uniform accounting system established by ~~such~~ the commissioner.

SECTION 75. AMENDMENT. Section 60-05-02 of the North Dakota Century Code is amended and reenacted as follows:

60-05-02. Examination of financial accounts of elevator or warehouse by competent examiner - Request by percentage of stockholders.

The ~~commissioner~~commissioner may install, and ~~whenever~~if requested by not less than fifteen percent of the partners, stockholders, or members of any association, copartnership, corporation, or limited liability company conducting such public elevator or warehouse, shall install, the uniform system of accounting mentioned in section 60-05-01. The ~~commissioner~~commissioner on ~~its~~the commissioner's own motion may, or on request of the required percentage of partners, stockholders, or members, the ~~commissioner~~commissioner shall, send a competent examiner to examine the books and financial accounts of ~~such~~the elevator or warehouse. ~~Whenever~~If a request for the examination of the accounts of any association, copartnership, corporation, or limited liability company has been made to the ~~commissioner~~commissioner, as provided for in this section, ~~an examination thereafter shall~~subsequent examinations must be made at least once every year until the ~~commission shall be~~commissioner is requested to discontinue such examination by resolution adopted by the partners, stockholders, or members at any annual meeting. ~~When~~If such examination has been made, the examiner shall report immediately the results ~~thereof of the examination~~ to the president and the secretary of such association, copartnership, corporation, or limited liability company and to the ~~commissioner~~commissioner.

SECTION 76. AMENDMENT. Section 60-05-03 of the North Dakota Century Code is amended and reenacted as follows:

60-05-03. Certificate issued by ~~commissioner~~commissioner after its examination of accounts.

If the ~~commissioner~~commissioner is satisfied from ~~its~~the commissioner's examination that the person, association, copartnership, corporation, or limited liability company examined is solvent and ~~its~~the method of doing business is such as is likely to be beneficial to all of its members or persons interested therein, the ~~commissioner~~commissioner shall issue a certificate, countersigned by the examiner, to the agent or manager. Such certificate ~~shall~~must be kept posted conspicuously in the warehouse or elevator of such person, association, copartnership, corporation, or limited liability company and ~~shall~~must state:

1. That said methods of doing business are sound.
2. That such person, association, copartnership, corporation, or limited liability company is solvent.
3. That its books and accounts are kept properly.

31/9/21

If the affairs and methods of doing business of such person, association, copartnership, corporation, or limited liability company ~~shall do~~ not seem sound or satisfactory to the ~~commission, it~~ commissioner, the commissioner shall issue a certificate or statement, countersigned by the person who made the examination, stating in what particular and in what respect the business methods practiced or methods of keeping books and accounts of such person, association, copartnership, corporation, or limited liability company are not deemed safe. The ~~commission~~ commissioner shall mail a copy of ~~said~~ the statement or certificate to each of such shareholders or stockholders as may have requested the ~~commission~~ commissioner to make such examination. The ~~commission~~ commissioner also shall send a copy thereof to the president and the secretary of such association, copartnership, corporation, or limited liability company.

SECTION 77. AMENDMENT. Section 60-05-04 of the North Dakota Century Code is amended and reenacted as follows:

60-05-04. Fees of examiner for installing and examining accounting system.

For making installation of a uniform accounting system and examining the financial accounts of an elevator or public warehouse, an association, copartnership, corporation, or limited liability company shall pay the examiner a reasonable fee, as determined by the ~~commission~~ commissioner. In case any such association, copartnership, corporation, or limited liability company shall wrongfully refuse or neglect to pay such fees, then the ~~commission~~ commissioner may cancel the license to do business. All such fees ~~shall~~ must be paid into the state treasury. The expenses incurred by the examiner under the provisions of this chapter shall be paid out of the appropriations made by the legislative assembly for this purpose and such expenses ~~shall~~ must be audited and paid in the same manner as other expenses are audited and paid.

SECTION 78. AMENDMENT. Section 60-06-05 of the North Dakota Century Code is amended and reenacted as follows:

60-06-05. Sidetracks to be provided by railroad company on its land.

Every railroad company or corporation organized under the laws of this state or doing business ~~therein~~ this state, upon application in writing, shall provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator without reference to its size, cost, or capacity, ~~whereif~~ where grain or potatoes are or may be stored. The railroad company is not required to construct or furnish any sidetracks except upon its own land or right of way. Such elevators and warehouses may not be constructed within one hundred feet [30.48 meters] of any existing structure and must be at safe fire distance from the station buildings so as not to conflict essentially with the safe and convenient operation of the road. ~~Whereif~~ where stations are ten miles [16.09 kilometers] or more apart the railroad company, ~~whenif~~ when required so to do by the ~~public service~~ commissioner, shall construct and maintain a sidetrack for the use of shippers between such stations.

SECTION 79. AMENDMENT. Section 60-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

32 of 37

60-06-06.1. Determination - Appropriation Expenses.

Any party may petition the ~~public service commissioner~~ commissioner to determine rights governed under this chapter. The ~~commissioner~~ commissioner shall determine the matter in accordance with chapter 28-32 and the parties' rights of appeal are as limited by chapter 28-32. The value of a leaseholder's improvements may not be considered in determining a reasonable lease rate or selling price. The parties to such a proceeding shall pay the expenses of the proceeding, as determined by the ~~commissioner~~ commissioner, directly to the entities owed. The ~~commissioner~~ commissioner may adopt rules to carry out this section.

SECTION 80. AMENDMENT. Section 60-10-01 of the North Dakota Century Code is amended and reenacted as follows:

60-10-01. Credit-sale contracts - Assessment on grain - Submission of assessment.

An assessment at the rate of two-tenths of one percent is placed on the value of all grain sold in this state under a credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14. The licensee purchasing the grain shall note the assessment on the contract required under sections 60-02-19.1 and 60-02.1-14 and shall deduct the assessment from the purchase price payable to the seller. The licensee shall submit any assessment collected under this section to the ~~public service commissioner~~ commissioner no later than thirty days after each calendar quarter. The ~~commissioner~~ commissioner shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

SECTION 81. AMENDMENT. Section 60-10-02 of the North Dakota Century Code is amended and reenacted as follows:

60-10-02. Credit-sale contract indemnity fund - Creation - Continuing appropriation.

There is created in the state treasury the credit-sale contract indemnity fund. The state treasurer shall invest available moneys in the fund in accordance with section 21-10-07 and in cooperation with the ~~public service commissioner~~ commissioner and shall deposit any income earned through the investments into the fund. The fund and earnings of the fund are appropriated to the ~~public service commissioner~~ commissioner on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

SECTION 82. AMENDMENT. Section 60-10-03 of the North Dakota Century Code is amended and reenacted as follows:

60-10-03. Credit-sale contract indemnity fund - Suspension of assessment.

At the end of the calendar quarter in which the credit-sale contract indemnity fund reaches a level of six million dollars, the ~~public service commissioner~~ commissioner shall suspend collection of the assessment required by this chapter. If after suspension of collection the balance in the fund is less than three million dollars, the ~~public service commissioner~~ commissioner shall require collection of the assessment.

SECTION 83. AMENDMENT. Section 60-10-05 of the North Dakota Century Code is amended and reenacted as follows:

33 of 37

60-10-05. Credit-sale contract indemnity fund - Availability of money.

Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the ~~public service commissioner~~ commissioner serve as the trustee, the ~~public service commissioner~~ commissioner shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

SECTION 84. AMENDMENT. Section 60-10-07 of the North Dakota Century Code is amended and reenacted as follows:

60-10-07. Credit-sale contract indemnity fund - Prorated claims.

If claims for indemnity payments from the credit-sale contract indemnity fund exceed the amount in the fund, the ~~public service commissioner~~ commissioner shall prorate the claims and pay the prorated amounts. As future assessments are collected, the ~~public service commissioner~~ commissioner shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this chapter.

SECTION 85. AMENDMENT. Section 60-10-08 of the North Dakota Century Code is amended and reenacted as follows:

60-10-08. Reimbursement for later insolvencies.

The ~~public service commissioner~~ commissioner shall ensure that all persons eligible for payment from the indemnity fund as a result of an insolvency are fully compensated to the extent permitted by this chapter before any payments from the indemnity fund are initiated as a result of a later insolvency. The chronological order of insolvencies is determined by the date the ~~public service commissioner~~ commissioner is appointed trustee under section 60-02.1-29 or 60-04-03.

SECTION 86. AMENDMENT. Section 60-10-09 of the North Dakota Century Code is amended and reenacted as follows:

60-10-09. Credit-sale contract indemnity fund - Reimbursement for administrative expenses.

Any expense incurred by the ~~public service commissioner~~ commissioner in administrating the credit-sale contract indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

SECTION 87. AMENDMENT. Section 60-10-10 of the North Dakota Century Code is amended and reenacted as follows:

60-10-10. Credit-sale contract indemnity fund assessment - Failure to collect assessment - Penalty.

Any person who knowingly or intentionally refuses or fails to collect the assessment required under this chapter from producers or to submit any assessment collected from producers to the ~~public service commissioner~~ commissioner for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

34 9/37

SECTION 88. AMENDMENT. Section 60-10-11 of the North Dakota Century Code is amended and reenacted as follows:

60-10-11. Revocation and suspension.

The ~~commission~~commissioner may suspend or revoke the license of any licensee for cause upon notice and hearing for violation of this chapter.

SECTION 89. AMENDMENT. Section 60-10-12 of the North Dakota Century Code is amended and reenacted as follows:

60-10-12. Cease and desist.

If a person engages in an activity or practice that is contrary to this chapter or rules adopted by the ~~commission~~commissioner, the ~~commission~~commissioner, upon ~~its~~the commissioner's own motion without complaint and with or without a hearing, may order the person to cease and desist from the activity until further order of the ~~commission~~commissioner. The order may include any corrective action up to and including license suspension. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 90. AMENDMENT. Section 60-10-14 of the North Dakota Century Code is amended and reenacted as follows:

60-10-14. Subrogation.

Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against whom the claim was made. The ~~commission~~commissioner may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate ~~its~~the interest of the claimant, if any, to the ~~commission~~commissioner in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

SECTION 91. AMENDMENT. Section 60-10-15 of the North Dakota Century Code is amended and reenacted as follows:

60-10-15. Unlicensed facility-based grain buyer.

This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01, which is licensed under the United States Warehouse Act but which does not possess a state grain buyer license. The ~~commission~~commissioner has the duty and power to examine and inspect, during regular business hours, all books, documents, and records related to collections and remittances pertaining to the credit-sale contract indemnity fund. In the case of insolvency, credit-sale contract payments to valid claimants must be reduced by an amount equal to the credit-sale contract indemnity payments received from payments administered by the United States department of agriculture."

Renumber accordingly

350/37

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2009 - Department of Agriculture - Conference Committee Action

	Base Budget	Senate Version	Conference Committee Changes	Conference Committee Version	House Version	Comparison to House
Salaries and wages	\$12,372,949	\$13,049,463	\$1,183,283	\$14,232,746	\$13,651,222	\$581,524
Operating expenses	6,444,336	6,577,780	125,000	6,702,780	6,702,780	
Capital assets	13,000	15,000		15,000	15,000	
Grants	8,817,774	8,823,774		8,823,774	8,823,774	
State Board of Animal Health	865,718	865,718		865,718	865,718	
Wildlife services	1,408,000	1,457,400		1,457,400	1,457,400	
Crop Harmonization Board	75,000	75,000		75,000	75,000	
Pipeline restoration and reclamation	200,000	200,000		200,000	200,000	
Ag. Products Utilization Commission		3,176,791	583,626	3,760,417	4,000,000	(239,583)
Grain insolvency litigation			100,000	100,000		100,000
Total all funds	\$30,196,777	\$34,240,926	\$1,991,909	\$36,232,835	\$35,790,894	\$441,941
Less estimated income	21,087,676	24,503,189	819,217	25,322,406	25,366,732	(44,326)
General fund	\$9,109,101	\$9,737,737	\$1,172,692	\$10,910,429	\$10,424,162	\$486,267
FTE	73.00	75.00	3.00	78.00	77.00	1.00

Department 602 - Department of Agriculture - Detail of Conference Committee Changes

	Adjusts Funding for Salary and Benefit Increases ¹	Adds Funding for Temporary Salaries ²	Adjusts Funding for Agriculture Commissioner Salary Equity Increase ³	Adjusts Funding for Wildlife Services Operating Fees ⁴	Adjusts Funding for APUC ⁵	Transfers Grain Warehouse Inspection Program from the PSC ⁶
Salaries and wages	\$55,476	\$159,852	(\$127)		\$239,583	\$728,499
Operating expenses						125,000
Capital assets						
Grants						
State Board of Animal Health						
Wildlife services						
Crop Harmonization Board						
Pipeline restoration and reclamation						
Ag. Products Utilization Commission					583,626	
Grain insolvency litigation						
Total all funds	\$55,476	\$159,852	(\$127)	\$0	\$823,209	\$853,499
Less estimated income	26,339	159,852	0	49,400	583,626	0
General fund	\$29,137	\$0	(\$127)	(\$49,400)	\$239,583	\$853,499
FTE	0.00	0.00	0.00	0.00	(1.00)	4.00

36 of 37

	Adds Funding for Grain Insolvency Litigation ²	Total Conference Committee Changes
Salaries and wages		\$1,183,283
Operating expenses		125,000
Capital assets		
Grants		
State Board of Animal Health		
Wildlife services		
Crop Harmonization Board		
Pipeline restoration and reclamation		
Ag. Products Utilization Commission		583,626
Grain insolvency litigation	\$100,000	100,000
Total all funds	\$100,000	\$1,991,909
Less estimated income	0	819,217
General fund	\$100,000	\$1,172,692
FTE	0.00	3.00

¹ Funding of \$51,014, of which \$24,675 is from the general fund and \$26,339 is from other funds, is added for 2019-21 biennium salary increases of 2 percent with a minimum monthly increase of \$120 and a maximum monthly increase of \$200 on July 1, 2019, and 2.5 percent on July 1, 2020. The Senate provided funding for salary increases of 2 percent on July 1, 2019, and 3 percent increase on July 1, 2020. Funding of \$4,462 is also added from the general fund for increases in health insurance premiums related to the transfer of 1 FTE from the Public Service Commission.

² Funding of \$159,852 is added from the Department of Agriculture operating fund for temporary salaries. The Senate and House did not add funding for temporary salaries.

³ Funding of \$127 is reduced from the general fund to provide a salary equity increase of \$14,586, including increases for fringe benefits, for the Agriculture Commissioner. Of this amount, \$5,889 is related to a salary equity increase, the same salary equity increase provided to the State Treasurer. The Senate provided total funding for a salary equity increase for the Agriculture Commissioner of \$14,713 to align the Agriculture Commissioner's salary to the Tax Commissioner's salary. The House did not provide a salary equity increase for the Agriculture Commissioner.

⁴ The funding source for \$49,400 for wildlife services operating fees is changed to the environment and rangeland protection fund rather than the general fund to provide total funding of \$1,457,400 for wildlife services, the same amount as the Senate. The House also provided for this funding source change to provide a total of \$1,457,400 for the program.

⁵ Funding for the Agricultural Products Utilization Commission (APUC) is adjusted as follows:

	FTE	General Fund	Other Funds	Total
Reduces funding from APUC special funds	(1.00)	\$0	(\$1,176,791)	(\$1,176,791)
Adjusts funding for salaries of 1 FTE APUC position	0.00	239,583	(239,583)	0
Adds one-time funding from Bank of North Dakota profits	0.00	0	2,000,000	2,000,000
Total	(1.00)	\$239,583	\$583,626	\$823,209

Total funding approved by the Conference Committee for APUC is \$4 million, of which \$1,760,417 is from the APUC fund and \$2 million is one-time funding 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 salaries and benefits of 1 FTE in the salaries and wages line item.

The House approved \$4 million, of which \$2 million was from the APUC fund and \$2 million was one-time funding from the profits of the Bank of North Dakota, and 1 FTE position for the program. The Senate approved total funding of \$3,176,791 from the APUC fund and 2 FTE positions.

⁶ Transfers grain warehouse license and inspection program from the Public Service Commission to the Agriculture Commissioner as follows:

3/0/21

	<u>Salaries and Wages</u>	<u>Operating Expenses</u>	<u>Total General Fund</u>
Adds 3 FTE grain warehouse inspectors	\$563,006	\$120,000	\$683,006
Adds 1 FTE accounting budget specialist	<u>165,493</u>	<u>5,000</u>	<u>170,493</u>
Total	\$728,499	\$125,000	\$853,499

These transfers were also provided for by the House.

⁷ One-time funding of \$100,000 is added from the general fund to pay the Public Service Commission to continue providing services related to grain insolvency litigation that began prior to July 1, 2019. This appropriation is provided in a separate section of the bill. The Senate and House did not provide funding for this purpose.

The House removed 1 FTE undesignated position and funding of \$157,940, of which \$123,517 was from the general fund, \$6,673 was from the Department of Agriculture operating fund, and \$27,750 was from federal funds. The Conference Committee did not remove this FTE positions.

This amendment also:

- Amends a section identifying the amount of funding from the environment and rangeland protection fund.
- Amends a section relating to the salary increase of the Agriculture Commissioner to provide a salary equity increase to the Agriculture Commissioner of \$5,889, increasing the current annual salary of \$108,656 to \$114,545 and to increase the salary to \$116,836 (2 percent) in fiscal year 2020 and to \$119,757 (2.5 percent) in fiscal year 2021.
- Adds a section related to the transfer of \$2 million from Bank of North Dakota profits to the APUC fund during the 2019-21 biennium, the same as the House version.
- Remove statutory sections related to APUC, the same as the House version. The statutory changes needed to move APUC from the Department of Commerce to the Agriculture Commissioner are included in Senate Bill No. 2328.
- Adds a section to provide a one-time appropriation of \$100,000 from the general fund for the purpose of paying the Public Service Commission to continue providing services related to grain insolvency litigation that began prior to July 1, 2019. The Senate and House did not provide funding for this purpose.
- Adds statutory sections to transfer grain, grain buyers, warehousing, deposits, and warehousemen programs from the Public Service Commission to the Agriculture Commissioner and increases annual license fees, resulting in additional general fund revenues of approximately \$83,200 during the 2019-21 biennium. The House also included this section.

**2019 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 2009 as (re) engrossed

Senate Appropriations Committee

- Action Taken** **SENATE accede to House Amendments**
 SENATE accede to House Amendments and further amend
 HOUSE recede from House amendments
 **HOUSE recede from House amendments and amend as follows
 with amendment 19.0222.02006**
 Unable to agree, recommends that the committee be discharged and a new
 committee be appointed

Motion Made by: Senator Erbele Seconded by: Representative Monson

Senators	4/17	4/22	4/26	Yes	No	Representatives	4/17	4/22	4/26	Yes	No
Senator Wanzek	x	x	x	X		Representative Monson	x	x	x	X	
Senator Erbele	x	x	x	X		Representative Schmidt	x	x	x	X	
Senator Grabinger	x	x	x	X		Representative Boe	x	x	x	X	
Total Senate Vote				3	0	Total Rep. Vote				3	0

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Senator Wanzek House Carrier Representative Boe

LC Number 19.0222 . 02006 of amendment

LC Number 19.0222 . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2009, as engrossed: Your conference committee (Sens. Wanzek, Erbele, Grabinger and Reps. Monson, Schmidt, Boe) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1539-1571, adopt amendments as follows, and place SB 2009 on the Seventh order:

That the House recede from its amendments as printed on pages 1539-1571 of the Senate Journal and pages 1674-1706 of the House Journal and that Engrossed Senate Bill No. 2009 be amended as follows:

Page 1, line 2, remove "to create and enact a new chapter to title 4.1 of the"

Page 1, line 3, replace "North Dakota Century Code, relating to the agricultural products utilization commission" with "to create and enact a new section to chapter 60-01, a new section to chapter 60-02, and a new section to chapter 60-02.1 of the North Dakota Century Code, relating to the definition of agriculture commissioner, and records confidentiality for warehousemen and grain buyers"

Page 1, line 4, replace "section" with "sections"

Page 1, line 4, after "4.1-01-02" insert "and 49-02-01, subsection 1 of section 60-02-01, sections 60-02-02, 60-02-03, 60-02-04, 60-02-05.1, 60-02-07, 60-02-07.2, 60-02-09, 60-02-09.1, 60-02-10.1, 60-02-11, 60-02-14, 60-02-17, 60-02-24, 60-02-27, 60-02-35.1, 60-02-38, 60-02-40, 60-02-41, 60-02-42, 60-02.1-01, 60-02.1-02, 60-02.1-03, 60-02.1-04, 60-02.1-06, 60-02.1-07, 60-02.1-07.1, 60-02.1-08, 60-02.1-09, 60-02.1-11, 60-02.1-16, 60-02.1-17, 60-02.1-19, 60-02.1-22, 60-02.1-26, 60-02.1-27, 60-02.1-29, 60-02.1-30, 60-02.1-32, 60-02.1-33, 60-02.1-34, 60-02.1-35, 60-02.1-36, 60-02.1-37, 60-02.1-38, and 60-02.1-39, subsection 1 of section 60-04-01, and sections 60-04-03, 60-04-03.1, 60-04-03.2, 60-04-03.3, 60-04-04, 60-04-05, 60-04-06, 60-04-07, 60-04-08, 60-04-09, 60-04-10, 60-05-01, 60-05-02, 60-05-03, 60-05-04, 60-06-05, 60-06-06.1, 60-10-01, 60-10-02, 60-10-03, 60-10-05, 60-10-07, 60-10-08, 60-10-09, 60-10-10, 60-10-11, 60-10-12, 60-10-14, and 60-10-15"

Page 1, line 5, after "commissioner" insert "and moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner"

Page 1, line 5, remove "to repeal chapter 54-60.3 of the North Dakota Century Code,"

Page 1, line 6, remove "relating to the agricultural products utilization commission;"

Page 1, line 7, after "assembly" insert "; to provide a penalty; and to provide a continuing appropriation"

Page 1, remove lines 17 through 24

Page 2, replace lines 1 through 6 with:

"Salaries and wages	\$12,372,949	\$1,859,797	\$14,232,746
Operating expenses	6,444,336	258,444	6,702,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
Board of animal health	865,718	0	865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop harmonization board	75,000	0	75,000
Pipeline restoration and reclamation oversight program	200,000	0	200,000
Agricultural products utilization	0	3,760,417	3,760,417

Insert LC: 19.0222.02006
Senate Carrier: Wanzek
House Carrier: Boe

commission			
Total all funds	\$30,196,777	\$5,936,058	\$36,132,835
Less estimated income	<u>21,087,676</u>	<u>4,234,730</u>	<u>25,322,406</u>
Total general fund	\$9,109,101	\$1,701,328	\$10,810,429
Full-time equivalent positions	73.00	5.00	78.00"

Page 2, replace lines 12 through 17 with:

"National genomics center	\$120,000	\$0
Federal environmental law impact review	1,000,000	0
Master customer database	0	110,000
Agricultural products utilization commission	<u>0</u>	<u>2,000,000</u>
Total all funds	\$1,120,000	\$2,110,000
Less estimated income	<u>1,120,000</u>	<u>2,000,000</u>
Total general fund	\$0	\$110,000"

Page 2, line 27, replace "\$6,663,678" with "\$6,725,799"

Page 3, after line 16, insert:

"SECTION 9. TRANSFER - BANK OF NORTH DAKOTA PROFITS - AGRICULTURAL PRODUCTS UTILIZATION COMMISSION. The Bank of North Dakota shall transfer the sum of \$2,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the agriculture commissioner for deposit in the agricultural products utilization commission fund during the biennium beginning July 1, 2019, and ending June 30, 2021. This funding is considered a one-time funding item."

Page 3, line 20, replace "seventeen" with "sixteen"

Page 3, line 21, replace "eighty-seven" with "eight hundred thirty-six"

Page 3, line 22, replace "twenty" with "nineteen"

Page 3, line 22, overstrike "six" and insert immediately thereafter "seven"

Page 3, line 22, after "fifty-six" insert "fifty-seven"

Page 3, remove lines 23 through 31

Page 4, remove lines 1 through 31

Page 5, replace lines 1 through 24 with:

"SECTION 11. APPROPRIATION - GRAIN INSOLVENCY LITIGATION - ONE-TIME FUNDING - APPLICATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of paying the public service commission to continue providing services related to grain insolvency litigation that began prior to July 1, 2019, for the biennium beginning July 1, 2019, and ending June 30, 2021. This funding is considered a one-time funding item. Sections 60-02.1-8 and 60-04-10 do not apply to any expenses paid from the appropriation provided in this section.

SECTION 12. AMENDMENT. Section 49-02-01 of the North Dakota Century Code is amended and reenacted as follows:

49-02-01. General jurisdiction of the public service commission over public utilities.

The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.
2. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.
3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
4. Electric utilities engaged in the generation and distribution of light, heat, or power.
5. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
6. All heating utilities engaged in the distribution of heat.
7. ~~Warehouse companies engaged in the marketing, storage, or handling of agricultural products.~~
8. All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

SECTION 13. A new section to chapter 60-01 of the North Dakota Century Code is created and enacted as follows:

Definition.

For purposes of this title, "commissioner" means the agriculture commissioner.

SECTION 14. AMENDMENT. Subsection 1 of section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~"Commissioner" means the public service commissioner.~~
"Commissioner" means the agriculture commissioner.

SECTION 15. AMENDMENT. Section 60-02-02 of the North Dakota Century Code is amended and reenacted as follows:

60-02-02. ~~Commissioner~~ - Powers and duties.

~~The commissioner has the powers and duties imposed by the provisions enumerated under this chapter and the powers conferred herein devolve upon the commission.~~

SECTION 16 AMENDMENT. Section 60-02-03 of the North Dakota Century Code is amended and reenacted as follows:

60-02-03. Duties and powers of the ~~commissioner~~.

~~The commission shall have the duty and power to~~
commissioner has the following powers and duties:

Insert LC: 19.0222.02006
Senate Carrier: Wanzek
House Carrier: Boe

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any licensed warehouse, including all books, documents, and records.
4. Require the filing of reports pertaining to the operation of the warehouse.
5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

SECTION 17. AMENDMENT. Section 60-02-04 of the North Dakota Century Code is amended and reenacted as follows:

60-02-04. Federal licensed inspector –Appointed by commission.

The ~~commission~~commissioner may employ a federal licensed inspector whose duties are hereinafter prescribed and such enumerated under this chapter and may employ other employees as ~~may be~~ necessary to carry out the provisions of this chapter.

SECTION 18. AMENDMENT. Section 60-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-05.1. Notice of procedures for resolving disputes over grain.

A public warehouse shall post a notice containing the procedures specified in section 60-02-05 for resolving disputes. The ~~commission~~commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each public warehouse. The public warehouseman shall post the notice in the grain inspection room of the warehouse. The notice must specifically mention ~~that~~ the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

SECTION 19. AMENDMENT. Section 60-02-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07. Public warehouse license - Fee - Financial statement.

A license must be obtained from the ~~commission~~commissioner for each public warehouse in operation in this state.

1. a. ~~The commission shall stagger by lot the expiration date of all licenses issued for the period beginning August 1, 2015, so that one-half of all the licenses issued expire on July 31, 2016, and one-half of all the licenses issued expire on July 31, 2017. Thereafter, all~~All licenses issued under this section must be for a period of two years and terminate on the thirty-first day of July in the year of expiration.
- b. (1) Notwithstanding the provisions of subdivision a, the ~~commission~~commissioner shall license a warehouse annually, for the first six years of the warehouse's operation.

- (2) An initial annual license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year.
 2. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described.
 3. a. The annual license fee for a public warehouse is:
 - (1) ~~Three~~Four hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) ~~Four~~Five hundred fifty dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
 - (3) ~~Five~~Six hundred fifty dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
 - b. The biennial license fee for a public warehouse is:
 - (1) ~~Six~~Seven hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) ~~Nine hundred~~One thousand dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
 - (3) One thousand ~~one~~two hundred dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
 - c. An application for an annual license renewal that is received after July fifteenth must include an additional one hundred dollar fee per warehouse. An application for a biennial license renewal that is received after July fifteenth must include an additional two hundred dollar fee per warehouse.
4. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. When two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses.
5. If required to obtain United States department of agriculture approval of the ~~commission's~~commissioner's warehouse inspection program, the ~~commission~~commissioner may require ~~that~~ the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this subsection is a confidential trade secret and is not a public record.

SECTION 20. AMENDMENT. Section 60-02-07.2 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07.2. Receiving stations.

A licensed public warehouseman may establish a receiving station without a separate warehouse license for that facility if all of the following conditions are met:

1. The station is colocated with another licensed public warehouse, the operator of which will take delivery of the grain on behalf of the warehouseman who established the receiving station.
2. The storage space used by the receiving station is used solely by the receiving station and is not licensed as part of the warehouse that is located at that site.
3. The grain taken in by the receiving station is not commingled with other grain at that site.
4. The warehouseman establishing the station requests and receives ~~commission~~ permission from the commissioner to increase licensed capacity to include the space to be used at the receiving station.
5. Grain received at the receiving station is recorded on scale tickets issued by the warehouseman who established the station and is covered by that warehouseman's bond.
6. Warehouse-receipted grain received at the receiving station is available for redelivery to the receipt holder at that location even if the station has been closed. A charge for redelivery must be stated in the warehouseman's redelivery policy.

The storage space used by a receiving station need not be physically disconnected from the facilities of the other licensed warehouse located at that site.

SECTION 21. AMENDMENT. Section 60-02-09 of the North Dakota Century Code is amended and reenacted as follows:

60-02-09. Bond filed by public warehouseman.

Before any license is effective for any public warehouseman under this chapter, the applicant for the license shall file a bond with the ~~commission~~commissioner which must:

1. Be in a sum not less than five thousand dollars for any one warehouse.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in that warehouse.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a public warehouseman.

- b. For compliance with the provisions of law and the rules of the ~~commission~~commissioner relating to the storage and purchase of grain by such warehouseman.
5. Specify the location of each public warehouse intended to be covered by such bond.
6. Be for the specific purpose of:
 - a. Protecting the holders of outstanding receipts.
 - b. Covering the costs incurred by the ~~commission~~commissioner in the administration of chapter 60-04 in the event of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.
8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The ~~commission~~commissioner shall set the amount of the bond and may require an increase in the amount of any bond, from time to time, as the ~~commission~~commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commission~~commissioner, and authorized to do business within the state. The ~~commission~~commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond ~~when~~if, in ~~its~~the commissioner's judgment, the cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. One bond only may be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and the bond must be construed to cover ~~such~~the elevators, mills, or warehouses, as a whole and not a specific amount for each.

SECTION 22. AMENDMENT. Section 60-02-09.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-09.1. Bond cancellation - Release of surety.

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commission~~commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the warehouseman files a new bond at least thirty days before liability ceases, the ~~commission~~commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commission~~commissioner. ~~When~~if a license is so suspended, the warehouseman shall give notice of such suspension to each receiptholder having grain stored in the warehouse. The warehouseman shall further notify each receiptholder having grain stored in the warehouse that the grain must be removed from the warehouse or ~~the~~the grain will be priced and redeemed in cash in accordance with section 60-02-41.

SECTION 23. AMENDMENT. Section 60-02-10.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-10.1. Revocation and suspension.

The ~~commission~~commissioner may suspend or revoke the license of any warehouseman for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license the warehouseman may, upon the ~~commission's~~commissioner's approval, operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping, or processing. Grain may be sold only with the prior approval of the ~~commission~~commissioner.

SECTION 24. AMENDMENT. Section 60-02-11 of the North Dakota Century Code is amended and reenacted as follows:

60-02-11. Scale ticket - Contents - Conversion.

1. a. Every public warehouseman, upon receiving grain into the warehouse, shall issue a uniform scale ticket for each load of grain received. The scale tickets must be numbered consecutively, and one copy of each ticket must be retained and remain as a permanent record. The original ticket must be delivered to the person from whom the grain is received, upon receipt of each load of grain.
 - b. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within forty-five days after the grain is delivered to the warehouse, unless:
 - (1) The person to whom the scale ticket is issued signs a form waiving all rights to trust benefits under section 60-04-03.1;
 - (2) The form identifies by number each scale ticket to which the waiver applies; and
 - (3) The form is signed by the warehouseman.
 - c. The ~~commission~~commissioner shall prepare the waiver form required by subdivision b and make the form available to each warehouse.
 - d. The warehouseman shall keep one copy of the signed waiver form with the records of the warehouse, provide one copy to the person who was issued the scale ticket and signed the form, and file one copy with the ~~commission~~commissioner.
2. Nothing in this chapter requires a warehouseman to receive grain for storage. A warehouseman shall publish and post, in a conspicuous place in the warehouse, a publication identifying whether storage will be available to patrons or whether grain will be accepted via cash or a credit-sale contract arrangement.

SECTION 25. AMENDMENT. Section 60-02-14 of the North Dakota Century Code is amended and reenacted as follows:

60-02-14. Warehouse receipts - Copy.

Provision ~~shall~~ must be made for a stub record or copy of each warehouse receipt issued by a warehouseman, showing:

1. The serial number and date of receipt.
2. The kind and grade of grain.
3. The dockage and net weight of the grain.

The record or copy ~~shall~~ must remain in the possession of the warehouseman for inspection by the ~~commission~~ commissioner and persons properly interested.

SECTION 26. AMENDMENT. Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.

1. A warehouse receipt must contain, either on its face or reverse side, the following warehouse and storage contract:

This grain is received, insured, and stored subject to the laws and rules of the state of North Dakota, the terms of this contract, and the charges and conditions stated herein and as filed with the North Dakota ~~public service commission~~ agriculture commissioner. Upon surrender of this receipt and payment or tender of all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. This receipt does not require the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

2. A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts. This publication must be filed with the ~~commission~~ commissioner as a part of the warehouse license process or annual renewal. The fees and termination date must be stated on the warehouse receipt issued for the grain. The fees or termination date may be changed upon filing a revised publication with the ~~commission~~ commissioner.

SECTION 27. AMENDMENT. Section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

60-02-24. Reports to be made by public warehouseman - Penalty for failure.

Each licensed and bonded public warehouseman shall:

Insert LC: 19.0222.02006
Senate Carrier: Wanzek
House Carrier: Boe

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commissioner~~ commissioner. The report must contain or be verified by a written declaration ~~that the report is~~ made under the penalties of perjury. The report may be called for more frequently if the ~~commissioner~~ commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commissioner~~ commissioner may make the information available for use by other governmental entities, but the ~~commissioner~~ commissioner may not release the information in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the ~~commissioner~~ commissioner not later than the last day of the following month, and failure to file this report promptly will be considered cause for revoking the warehouse license after due notice and hearing.
3. Keep a separate account of the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances ~~shall~~ may the grain account and other accounts be mixed.

The ~~commissioner~~ commissioner may refuse to renew a license to any public warehouseman who fails to make a required report.

SECTION 28. AMENDMENT. Section 60-02-27 of the North Dakota Century Code is amended and reenacted as follows:

60-02-27. Federal grades to control - Grades to be posted.

All public warehousemen shall purchase and store grain except dry edible beans in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law. ~~They~~ Public warehousemen shall post in a conspicuous place in ~~their~~ the public warehousemen's warehouse the official grades so established and also any change that may be made from time to time. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with ~~their~~ the policy of the warehousemen which must be filed with the ~~commissioner~~ commissioner and posted in a conspicuous place in ~~their~~ the warehouse of the public warehousemen. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards. The ~~commissioner~~ commissioner, after hearing, may prohibit the use of nonfederal grades.

SECTION 29. AMENDMENT. Section 60-02-35.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-35.1. Insurance - Cancellation - Suspension of license.

An insurance company shall give at least sixty days' notice to the ~~commissioner~~ commissioner and the insured by certified mail return receipt requested before cancellation of an insurance policy required in section 60-02-35. Unless the warehouseman files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commissioner~~ commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commissioner~~ commissioner. ~~When~~ If a license is so suspended, the warehouseman shall give notice of ~~such~~ the suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having

Insert LC: 19.0222.02006
Senate Carrier: Wanzek
House Carrier: Boe

grain stored in the warehouse ~~that~~ the grain must be removed from the warehouse or ~~if~~ the grain will be priced and redeemed in cash in accordance with section 60-02-41.

SECTION 30. AMENDMENT. Section 60-02-38 of the North Dakota Century Code is amended and reenacted as follows:

60-02-38. Refund of license fee by ~~commission~~ commissioner.

~~When~~ If requested in writing, the ~~commission~~ commissioner shall refund the license fee of a public warehouse, or so much as in ~~its~~ the commissioner's judgment is just and reasonable, ~~when~~ if satisfactory proof is furnished ~~that~~ the warehouse has been transferred to some other person, and the new owner has obtained a license for the same warehouse for the unexpired period for which the original license was issued. ~~When~~ If a warehouse is destroyed by fire or other cause, the license fee may be prorated as the ~~commission~~ commissioner may determine.

SECTION 31. AMENDMENT. Section 60-02-40 of the North Dakota Century Code is amended and reenacted as follows:

60-02-40. Transfer of warehouse - Redemption of receipts.

~~Whenever~~ If a public warehouseman desires to transfer a warehouse, either by sale or lease to any other individual, firm, or corporation, the warehouseman shall:

1. Notify the ~~commission~~ commissioner first of ~~its~~ the warehouseman's intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
2. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain, together with a statement of:
 - a. The number of bushels [cubic meters] of grain of each kind and grade in store in the warehouse;
 - b. The number and amount of receipts outstanding; and
 - c. The names and addresses of the receiptholders.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receiptholders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery. The ~~commission~~ commissioner may waive the thirty-day notice period upon receipt of written consent of all receiptholders.
4. Transfer all stored grain undelivered at the expiration of such thirty-day period to ~~its~~ the warehouseman's successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred.
5. Surrender to the ~~commission~~ ~~its~~ commissioner the warehouseman's license for cancellation ~~and at such~~, at which time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commission~~, ~~whereupon~~, ~~it~~ commissioner, at which time, ~~the commissioner~~, first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption ~~thereof~~ of all

outstanding receipts has been provided for, the ~~commissioner~~ commissioner may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any warehouse will be recognized by the ~~commissioner~~ commissioner except when made in accordance with the provisions of this section.

SECTION 32. AMENDMENT. Section 60-02-41 of the North Dakota Century Code is amended and reenacted as follows:

60-02-41. Going out of business - Redemption of receipts.

~~When~~ if a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, ~~such~~ the warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of such receipts, upon due notice, ~~must~~ shall accept this price and surrender the receipts. Any public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license or whose warehouse license is revoked shall notify the ~~commissioner~~ commissioner and all outstanding receipt holders of such closing and redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein ~~shall~~ must be settled in cash and priced on the market on the day of closing.

SECTION 33. AMENDMENT. Section 60-02-42 of the North Dakota Century Code is amended and reenacted as follows:

60-02-42. Cease and desist.

~~Whenever~~ if an entity engages in an activity or practice ~~that is~~ contrary to the provisions of this chapter or related rules, the ~~commissioner~~ commissioner, upon ~~its~~ the commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the ~~commissioner~~ commissioner. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 34. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a public warehouse license; or
 - b. An investigation after issuance or renewal of a public warehouse license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any

source any financial record the commissioner deems relevant for purposes related to:

- a. The issuance or renewal of a public warehouse license; or
 - b. An investigation after issuance or renewal of a public warehouse license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
- a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 35. AMENDMENT. Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the public service commissioner.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
6. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:
 - a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in

which at least fifty percent of the livestock is owned by the owner of the farm.

- b. A person who is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.
 - c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.
7. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
 8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.
 9. "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

SECTION 36. AMENDMENT. Section 60-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-02. Commissioner - Powers and duties.

~~The powers and duties imposed and the powers conferred by this chapter devolve upon the commission~~ of the commissioner are enumerated in this chapter.

SECTION 37. AMENDMENT. Section 60-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-03. Duties and powers of the commissioner.

The ~~commissioner~~ has the duty and power to:

1. Exercise general supervision of grain buyers of this state.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any books, documents, and records.
4. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

SECTION 38. AMENDMENT. Section 60-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-04. Federal licensed inspector - ~~Appointed by commission~~.

The ~~commissioner~~ may employ a federal licensed inspector whose duties are ~~hereinafter prescribed, and such enumerated in this chapter and may employ~~ other employees as may be necessary to carry out the provisions of this chapter.

SECTION 39. AMENDMENT. Section 60-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-06. Notice of procedures for resolving disputes over grain.

A facility-based grain buyer shall post a notice containing the procedures specified in section 60-02.1-05 for resolving disputes. The ~~commissioner~~ shall prescribe the form of the notice and shall provide a copy of the notice to each facility-based grain buyer. The facility-based grain buyer shall post the notice in the grain inspection room of the facility. The notice must specifically mention that the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

SECTION 40. AMENDMENT. Section 60-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.

Grain buyers ~~must~~ shall obtain an annual license from the ~~commissioner~~ commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~ If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. A facility-based grain buyer ~~must~~ shall obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such facilities, and scale tickets and checks of but one series are issued for the grain, purchased, only one license is required for the operation of all such facilities. The annual license fee for a facility-based grain buyer is ~~three~~ four hundred dollars and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location.

If required to obtain United States department of agriculture approval of the ~~commission's~~ commissioner's grain buyer inspection program, the ~~commissioner~~ commissioner may require that grain buyers submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

SECTION 41. AMENDMENT. Section 60-02.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07.1. Roving grain buyer license - How obtained - Fee.

Roving grain buyers that purchase, solicit, merchandise, or take possession of grain in this state ~~must~~ shall obtain an annual license from the ~~commissioner~~ commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~ If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee for a roving grain buyer is ~~two~~ three hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

SECTION 42. AMENDMENT. Section 60-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-08. Bond filed by grain buyer.

Before any license is effective for any grain buyer under this chapter, the applicant for the license shall file a bond with the ~~commission~~ commissioner which must

1. Be in a sum not less than ~~five~~ ten thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~ commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a grain buyer.
 - b. For compliance with the provisions of law and the rules of the ~~commission~~ commissioner relating to the purchase of grain by such grain buyer.
5. For facility-based grain buyers, specify the location of each facility intended to be covered by the bond.
6. Be for the specific purpose of:
 - a. Protecting the sellers of grain.
 - b. Covering the costs incurred by the ~~commission~~ commissioner in the administration of the licensee's insolvency.
7. Not accrue to the benefit of any person entering ~~into~~ a credit-sale contract with a grain buyer.
8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The ~~commission~~ commissioner may require an increase in the amount of any bond, ~~from time to time~~, as ~~it~~ the commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commission~~ commissioner, and authorized to do business within the state. The ~~commission~~ commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, ~~in the commissioner's~~ in judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts. Only one bond may be required for any series of facilities operated by a facility-based grain buyer, and the bond must be construed to cover those facilities as a whole and not a specific amount for each.

SECTION 43. AMENDMENT. Section 60-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-09. Bond cancellation - Release of surety.

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commissioner~~ commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the grain buyer files a new bond at least thirty days before liability ceases, the ~~commissioner~~ commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commissioner~~ commissioner.

SECTION 44. AMENDMENT. Section 60-02.1-11 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-11. Revocation and suspension.

The ~~commissioner~~ commissioner may suspend or revoke the license of any grain buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a grain buyer must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license a facility-based grain buyer, upon the ~~commissioner's~~ commissioner's approval, may operate its facility and purchase or redeliver grain previously received, but may not receive additional grain for purchase, shipping, or processing. Grain may be sold only with the prior approval of the ~~commissioner~~ commissioner.

SECTION 45. AMENDMENT. Section 60-02.1-16 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-16. Records required to be kept by grain buyers.

Each grain buyer shall keep such accounts, records, and memoranda concerning the buyer's dealing as such grain buyer as ~~from time to time~~ may be required by the ~~commissioner~~ commissioner and shall make such reports of purchases of grain as may be required by the rules ~~made adopted~~ by the ~~commissioner~~ commissioner. The ~~commissioner~~ commissioner at all times ~~shall~~ must have access to such accounts, records, and memoranda.

SECTION 46. AMENDMENT. Section 60-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-17. Reports to be made by grain buyers - Penalty for failure.

Each licensed and bonded grain buyer shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commissioner~~ commissioner. The report must contain or be verified by a written declaration ~~that the report is~~ made under the penalties of perjury. The report may be called for more frequently if the ~~commissioner~~ commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commissioner~~ commissioner may make this information available for use by other governmental entities, but the information may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees.

Insert LC: 19.0222.02006
Senate Carrier: Wanzek
House Carrier: Boe

2. File the report with the ~~commission~~commissioner not later than the last day of the following month. Failure to file this report promptly will be considered cause for revoking the grain buyer license after due notice and hearing.
3. Keep a separate account of the grain business, if the grain buyer is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.

The ~~commission~~commissioner may refuse to renew a license to any grain buyer who fails to make a required report.

SECTION 47. AMENDMENT. Section 60-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-19. Federal grades to control - Grades to be posted.

All grain buyers shall purchase grain, except dry edible beans, in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in applicable rules and regulations ~~applicable thereto~~ adopted by federal officials pursuant to law. A facility-based grain buyer shall post in a conspicuous place in the buyer's facility the official grades so established and also any change that may be made from time to time. A grain buyer of dry edible beans shall purchase and deliver beans in accordance with the buyer's policy, which must be filed with the ~~commission~~commissioner and, if applicable, posted in a conspicuous place in the buyer's facility. Other grading standards may be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However, the owner may demand the use of federal grading standards. After hearing, the ~~commission~~commissioner may prohibit the use of nonfederal grades.

SECTION 48. AMENDMENT. Section 60-02.1-22 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-22. Insurance - Cancellation - Suspension of license.

An insurance company shall give at least sixty days' notice to the ~~commission~~commissioner and the insured by registered mail return receipt requested before cancellation of an insurance policy required in section 60-02.1-21. Unless the grain buyer files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commission~~commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commission~~commissioner.

SECTION 49. AMENDMENT. Section 60-02.1-26 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-26. Transfer of facility - Redemption of receipts.

~~Whenever~~If a facility-based grain buyer desires to transfer a facility, either by sale or lease to any other individual, firm, or corporation, the grain buyer shall:

1. Notify the ~~commission~~commissioner first of its intention to transfer the facility, giving the name and address of the proposed lessee or purchaser.
2. Provide related information as may be required by the ~~commission~~commissioner.

Insert LC: 19.0222.02006
Senate Carrier: Wanzek
House Carrier: Boe

3. Surrender to the ~~commission~~commissioner the grain buyer's license for cancellation and at that time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commission~~commissioner, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the ~~commission~~commissioner may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any facility will be recognized by the ~~commission~~commissioner except when made in accordance with the provisions of this section.

SECTION 50. AMENDMENT. Section 60-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-27. Going out of business - Redemption of receipts.

~~When~~If a facility-based grain buyer ceases business through closure, the destruction of a facility by fire or other cause, or through insolvency, ~~such~~the grain buyer shall redeem all outstanding receipts at the price prevailing on the date the facility was closed, destroyed, or became insolvent. The holder of ~~such~~the receipts, upon due notice, ~~must~~shall accept this price and surrender the receipts. Any facility-based grain buyer who voluntarily ceases business or fails to renew an existing grain buyer license or whose grain buyer license is revoked shall notify the ~~commission~~commissioner and all receiptholders of such closing and redeem all such receipts at the price prevailing on the date the business closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein ~~shall~~must be settled in cash and priced on the market on the day of closing.

SECTION 51. AMENDMENT. Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-29. Appointment of ~~commission~~commissioner.

Upon the insolvency of any roving grain buyer, the ~~commission~~commissioner shall apply to the district court of Burleigh County for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. If the insolvency involves a facility-based grain buyer, application must be to the district court of a county in which the licensee operates a licensed facility. Upon notice to the licensee as the court prescribes, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the receiptholders that the ~~commission~~commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and the ~~commission~~commissioner shall proceed to exercise ~~its~~the commissioner's authority without further direction from the court.

Upon the filing of the ~~commission's~~commissioner's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

SECTION 52. AMENDMENT. Section 60-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-30. Trust fund established.

Upon the insolvency of any licensee, a trust fund must be established for the benefit of noncredit-sale receiptholders and to pay the costs incurred by the ~~commissioner~~ commissioner in the administration of the insolvency. The trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commissioner~~ commissioner is appointed trustee must be remitted to the ~~commissioner~~ commissioner and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.
4. The claims for relief, and proceeds ~~therefrom~~ from the claims for relief, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
5. The claim for relief, and proceeds ~~therefrom~~ from the claim for relief, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

SECTION 53. AMENDMENT. Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-32. Notice to receiptholders and credit-sale contract claimants.

Upon ~~its~~ the commissioner's appointment, the ~~commissioner~~ commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~commissioner~~ commissioner shall publish a notice of ~~its~~ the commissioner's appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, disclosed by the licensee's records. If the insolvency involves a facility-based grain buyer, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located. The notice must require outstanding receiptholders and credit-sale contract claimants to file their claims with the ~~commissioner~~ commissioner along with the receipts, contracts, or other evidence of the claims required by the ~~commissioner~~ commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the ~~commissioner~~ commissioner, the ~~commissioner~~ commissioner is relieved of further duty in the administration of the insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder may be barred from participation in the trust fund, and the credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 54. AMENDMENT. Section 60-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-33. Remedy of receiptholders.

~~No~~A receiptholder ~~has~~ does not have a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the ~~commission~~commissioner fails or refuses to apply for ~~its~~the commissioner's own appointment or unless the district court denies the application. This chapter does not prohibit any receiptholder, either individually or in conjunction with other receiptholders, from pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 55. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-34. ~~Commission~~Commissioner to marshal trust assets.

Upon ~~its~~the commissioner's appointment, the ~~commission~~commissioner shall marshal all of the trust fund assets. The ~~commission~~commissioner may maintain suits in the name of the state of North Dakota for the benefit of all receiptholders against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any person who may have received preferential treatment by being paid by the insolvent licensee after the first default.

SECTION 56. AMENDMENT. Section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-35. Power of ~~commission~~commissioner to prosecute or compromise claims.

The ~~commission~~commissioner may:

1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action ~~when~~if it will be in the best interests of the receiptholders.
4. Settle and compromise any action ~~when~~if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

SECTION 57. AMENDMENT. Section 60-02.1-36 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-36. Money received by trustee - Deposited in Bank of North Dakota.

All funds received by the ~~commission~~commissioner as trustee must be deposited in the Bank of North Dakota.

SECTION 58. AMENDMENT. Section 60-02.1-37 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-37. Report of trustee to court - Approval - Distribution.

1. Upon the receipt and evaluation of claims, the ~~commissioner~~ shall file with the court a report showing the amount and validity of each claim after recognizing:
 - a. Relevant liens or pledges.
 - b. Relevant assignments.
 - c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
 - d. In case of relevant cash claims or checks, the amount of the claim.
 - e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.
2. The report must also contain the proposed reimbursement to the ~~commissioner~~ for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receipt holders, less expenses incurred by the ~~commissioner~~ in the administration of the insolvency, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receipt holder claims in full, the report should list the funds as prorated.
3. The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commissioner's~~ report should not be approved and distribution of the trust fund be made as proposed. Copies of the report and notice of hearing must be served by the ~~commissioner~~ by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the ~~commissioner~~.
4. Any aggrieved person having an objection to the ~~commissioner's~~ report shall file the objection with the court and serve copies on the ~~commissioner~~, the licensee, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Following the hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the ~~commissioner~~ from ~~the commissioner's~~ trust.

SECTION 59. AMENDMENT. Section 60-02.1-38 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-38. Filing fees and court costs - Expenses.

The ~~commissioner~~ may not be required to pay any filing fee or other court costs or disbursements. The attorney general may appoint outside legal counsel to assist the ~~commissioner~~ in the prosecution of the action and the cost of employing outside counsel must be paid from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the ~~commissioner~~ in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission, its commissioner,~~

~~the commissioner's employees, and others engaged in carrying out the provisions of sections 60-02.1-28 through 60-02.1-38, must be reimbursed to the commissioner~~ from the trust fund and credit-sale contract indemnity funds as appropriate.

SECTION 60. AMENDMENT. Section 60-02.1-39 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-39. Cease and desist.

~~Whenever~~ If an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, ~~the commissioner~~ upon ~~its~~ the commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the ~~commissioner~~. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 61. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 62. AMENDMENT. Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Commissioner" means the public service agriculture commissioner.

SECTION 63. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03. Appointment of ~~commissioner~~ commissioner.

Upon the insolvency of any warehouseman, the ~~commissioner~~ commissioner shall apply to the district court of a county in which the warehouseman operates a licensed warehouse for authority to take all action necessary and appropriate to secure and act as trustee of the trust fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the warehouseman, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court ~~that such~~ the warehouseman is insolvent within the meaning of this chapter and ~~that~~ it would be for the best interests of the receipt holders that the ~~commissioner~~ commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon at which time the commissioner shall proceed to exercise its~~ the commissioner's authority without further direction from the court.

Upon the filing of the ~~commission's~~ commissioner's application, the court may issue ex parte such temporary order as may be necessary to preserve or protect the assets of the trust fund, or the value ~~thereof~~ of the trust fund, until the court issues ~~its~~ an order granting or denying the application.

SECTION 64. AMENDMENT. Section 60-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.1. Trust fund established.

1. Upon the insolvency of any warehouseman, a trust fund ~~shall~~ must be established:
 - a. For the benefit of noncredit-sale receipt holders of the insolvent warehouseman, other than those who have waived their rights as beneficiaries of the trust fund in accordance with section 60-02-11; and
 - b. To pay the costs incurred by the ~~commissioner~~ commissioner in the administration of this chapter.
2. The trust fund consists of the following:
 - a. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain;
 - b. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commissioner~~ commissioner is appointed trustee;
 - c. The proceeds of insurance policies upon grain destroyed in the elevator;
 - d. The claims for relief, and proceeds ~~therefrom~~ from the claims for relief, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman;
 - e. The claims for relief, and proceeds ~~therefrom~~ from the claims for relief, for the conversion of any grain stored in the warehouse;

Insert LC: 19.0222.02006
Senate Carrier: Wanzek
House Carrier: Boe

- f. Unencumbered accounts receivable for grain sold prior to ~~before~~ the filing of the claim that precipitated an insolvency;
- g. Unencumbered equity in grain hedging accounts; and
- h. Unencumbered grain product assets.

SECTION 65. AMENDMENT. Section 60-04-03.2 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.2. Possession of grain.

Upon ~~its~~the commissioner's appointment by the district court, the ~~commissioner~~ shall seek possession of the grain to be included in the trust fund. Upon ~~its~~the commissioner's possession of any grain in the warehouse, the ~~commissioner~~ shall sell such grain and apply the proceeds to the trust fund.

SECTION 66. AMENDMENT. Section 60-04-03.3 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.3. Joinder of surety - Deposit of proceeds.

The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the ~~commissioner~~ when ~~the commissioner~~ if the ~~commissioner~~ believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. ~~When~~ if it appears in the best interests of the receiptholders, the court may order the surety to deposit the penal sum of the bond, or so much ~~thereof of the sum~~ as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

SECTION 67. AMENDMENT. Section 60-04-04 of the North Dakota Century Code is amended and reenacted as follows:

60-04-04. Notice to receiptholders and credit-sale contract claimants.

Upon ~~its~~the commissioner's appointment by the district court, the ~~commissioner~~ may take possession of relevant books and records of the warehouseman. The ~~commissioner~~ shall cause a notice of ~~its~~the commissioner's appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, as shown by the warehouseman's records. The notices must require outstanding receiptholders and credit-sale contract claimants to file their claims against the warehouseman with the ~~commissioner~~ along with the receipts, contracts, or any other evidence of the claims as required by the ~~commissioner~~. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time as prescribed by the ~~commissioner~~, the ~~commissioner~~ is relieved of further duty or action under this chapter on behalf of the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 68. AMENDMENT. Section 60-04-05 of the North Dakota Century Code is amended and reenacted as follows:

60-04-05. Remedy of receiptholders.

~~No~~A receiptholder ~~has~~does not have a separate claim for relief upon the warehouseman's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the ~~commission~~commissioner fails or refuses to apply for ~~its~~the commissioner's own appointment from the district court or unless the district court denies the application for appointment. This chapter does not prohibit or prevent any receiptholder, either individually or in conjunction with other receiptholders, from pursuing concurrently such other remedy against the person or property of ~~such~~the warehouseman, for the whole, or any deficiency occurring in the redemption, of the receipts.

SECTION 69. AMENDMENT. Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

60-04-06. ~~Commission~~Commissioner to marshal trust assets.

Upon ~~its~~the commissioner's appointment by the district court, the ~~commission~~commissioner may maintain suits at law or in equity, or any special proceeding, in the name of the state of North Dakota, upon ~~its~~the commissioner's own relation, but for the benefit of all such receiptholders against:

1. The insurers of grain;
2. The warehouseman's bond;
3. Any person who may have converted any grain; or
4. Any receiptholder who ~~shall have~~ received more than ~~its~~the receiptholder's just and pro rata share of grain,

for the purpose of marshalling all of the trust fund assets and distributing the same among the receiptholders. The ~~commission~~commissioner shall seek possession of any grain in the warehouse before recourse is had against the insurers of grain, and the remedy against the insurers of grain ~~shall~~must be exhausted before recourse is had against the bond, and against the bond before recourse is had against the person honestly converting grain, unless the ~~commission shall deem~~commissioner ~~deems~~ it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

SECTION 70. AMENDMENT. Section 60-04-07 of the North Dakota Century Code is amended and reenacted as follows:

60-04-07. Power of ~~commission~~commissioner to prosecute or compromise claims.

The ~~commission~~commissioner may:

1. Prosecute any action provided in this chapter in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action ~~whenever~~if it is in the best interests of the receiptholders.
4. Settle and compromise any action ~~when~~if it is in the best interests of the credit-sale contract claimants.

5. Upon payment of the amount of the compromise or of the full amount of any insurance policy, bond, or conversion claim, exonerate the person so compromising or paying in full from further liability growing out of the action.

SECTION 71. AMENDMENT. Section 60-04-08 of the North Dakota Century Code is amended and reenacted as follows:

60-04-08. Money received by trustee - Deposited in Bank of North Dakota.

All moneys collected and received by the ~~commissioner~~ commissioner as trustee under this chapter, pending the marshalling of the fund, ~~shall~~ must be deposited in the Bank of North Dakota.

SECTION 72. AMENDMENT. Section 60-04-09 of the North Dakota Century Code is amended and reenacted as follows:

60-04-09. Report of trustee to court - Approval - Distribution.

Upon the receipt and evaluation of claims filed with ~~the commissioner~~ the commissioner, the ~~commissioner~~ commissioner shall file with the court a report showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges ~~thereon~~ on the claims.
2. Assignments ~~thereof~~ of the claims.
3. Deductions ~~therefrom~~ from the claims by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount ~~thereof~~ of the claims or checks.
5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the market price prevailing on the date the ~~commissioner~~ commissioner first received a copy of the written demand required by section 60-04-02.
6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.

The report must also contain the proposed reimbursement to the ~~commissioner~~ commissioner for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the ~~commissioner~~ commissioner in the administration of this chapter, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants as ~~their~~ the interests of the claimants are determined. If the trust fund is insufficient to redeem all receiptholder claims in full, the fund must be shown prorated in the report in the manner the ~~commissioner~~ commissioner deems fair and equitable.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commissioner's~~ commissioner's report should not be approved and credit-sale contract indemnity fund payments and distribution of the trust fund be made as proposed, and payments from the credit-sale contracts be made as proposed. Copies of the report and notice of hearing must be served by the ~~commissioner~~ commissioner by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the ~~commissioner~~ commissioner.

Any aggrieved person having an objection to the ~~commission's~~ commissioner's report shall file the objection with the court and serve copies on the ~~commission~~ commissioner, the warehouseman, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the ~~commission~~ commissioner from ~~its~~ the commissioner's trust.

SECTION 73. AMENDMENT. Section 60-04-10 of the North Dakota Century Code is amended and reenacted as follows:

60-04-10. Filing fees and court costs - Expenses.

In any action in a state court in this state, the ~~commission shall~~ commissioner may not be required to pay any filing fee or other court costs or disbursements if the fees accrue to the county or to the state. The attorney general may employ outside legal services to assist the ~~commission~~ commissioner in the prosecution of such action as in the attorney general's judgment may be necessary and the ~~commission~~ commissioner shall deduct the expenses of the same from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the ~~commission~~ commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission~~, ~~its~~ commissioner, the commissioner's employees, and others engaged in carrying out the provisions of this chapter, must be reimbursed to the ~~commission~~ commissioner from the trust fund and credit-sale indemnity funds as appropriate.

SECTION 74. AMENDMENT. Section 60-05-01 of the North Dakota Century Code is amended and reenacted as follows:

60-05-01. Public elevators and warehouses - ~~Commission~~ Commissioner may require uniform accounting system.

The ~~public service~~ ~~commission~~ commissioner may require every association, copartnership, corporation, or limited liability company conducting a public elevator or warehouse in this state to adopt a uniform accounting system established by ~~such~~ ~~commission~~ the commissioner.

SECTION 75. AMENDMENT. Section 60-05-02 of the North Dakota Century Code is amended and reenacted as follows:

60-05-02. Examination of financial accounts of elevator or warehouse by competent examiner - Request by percentage of stockholders.

The ~~commission~~ commissioner may install, and ~~whenever~~ if requested by not less than fifteen percent of the partners, stockholders, or members of any association, copartnership, corporation, or limited liability company conducting such public elevator or warehouse, shall install, the uniform system of accounting mentioned in section 60-05-01. The ~~commission~~ commissioner on ~~its~~ the commissioner's own motion may, or on request of the required percentage of partners, stockholders, or members, the ~~commission~~ commissioner shall, send a competent examiner to examine the books and financial accounts of ~~such~~ the elevator or warehouse. ~~Whenever~~ If a request for the examination of the accounts of any association, copartnership, corporation, or limited liability company has been made to the ~~commission~~ commissioner, as provided for in this section, ~~an examination thereafter shall~~ subsequent examinations must be made at least once every year until the ~~commission shall~~ ~~becommissioner~~ commissioner is requested to discontinue

Insert LC: 19.0222.02006
Senate Carrier: Wanzek
House Carrier: Boe

such examination by resolution adopted by the partners, stockholders, or members at any annual meeting. ~~When~~ if such examination has been made, the examiner shall report immediately the results ~~thereof~~ of the examination to the president and the secretary of such association, copartnership, corporation, or limited liability company and to the ~~commission~~ commissioner.

SECTION 76. AMENDMENT. Section 60-05-03 of the North Dakota Century Code is amended and reenacted as follows:

60-05-03. Certificate issued by ~~commission~~ commissioner after its examination of accounts.

If the ~~commission~~ commissioner is satisfied from ~~its~~ the commissioner's examination that the person, association, copartnership, corporation, or limited liability company examined is solvent and ~~its~~ the method of doing business is such as is likely to be beneficial to all of its members or persons interested therein, the ~~commission~~ commissioner shall issue a certificate, countersigned by the examiner, to the agent or manager. Such certificate ~~shall~~ must be kept posted conspicuously in the warehouse or elevator of such person, association, copartnership, corporation, or limited liability company and ~~shall~~ must state:

1. That said methods of doing business are sound.
2. That such person, association, copartnership, corporation, or limited liability company is solvent.
3. That its books and accounts are kept properly.

If the affairs and methods of doing business of such person, association, copartnership, corporation, or limited liability company ~~shall~~ do not seem sound or satisfactory to the ~~commission~~ commissioner, ~~it~~ the ~~commissioner~~ commissioner shall issue a certificate or statement, countersigned by the person who made the examination, stating in what particular and in what respect the business methods practiced or methods of keeping books and accounts of such person, association, copartnership, corporation, or limited liability company are not deemed safe. The ~~commission~~ commissioner shall mail a copy of ~~said~~ the statement or certificate to each of such shareholders or stockholders as may have requested the ~~commission~~ commissioner to make such examination. The ~~commission~~ commissioner also shall send a copy ~~thereof~~ to the president and the secretary of such association, copartnership, corporation, or limited liability company.

SECTION 77. AMENDMENT. Section 60-05-04 of the North Dakota Century Code is amended and reenacted as follows:

60-05-04. Fees of examiner for installing and examining accounting system.

For making installation of a uniform accounting system and examining the financial accounts of an elevator or public warehouse, an association, copartnership, corporation, or limited liability company shall pay the examiner a reasonable fee, as determined by the ~~commission~~ commissioner. In case any such association, copartnership, corporation, or limited liability company shall wrongfully refuse or neglect to pay such fees, then the ~~commission~~ commissioner may cancel the license to do business. All such fees ~~shall~~ must be paid into the state treasury. The expenses incurred by the examiner under the provisions of this chapter shall be paid out of the appropriations made by the legislative assembly for this purpose and such expenses ~~shall~~ must be audited and paid in the same manner as other expenses are audited and paid.

SECTION 78. AMENDMENT. Section 60-06-05 of the North Dakota Century Code is amended and reenacted as follows:

60-06-05. Sidetracks to be provided by railroad company on its land.

Every railroad company or corporation organized under the laws of this state or doing business ~~herein~~ in this state, upon application in writing, shall provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator without reference to its size, cost, or capacity, ~~whereif~~ whereif grain or potatoes are or may be stored. The railroad company is not required to construct or furnish any sidetracks except upon its own land or right of way. Such elevators and warehouses may not be constructed within one hundred feet [30.48 meters] of any existing structure and must be at safe fire distance from the station buildings so as not to conflict essentially with the safe and convenient operation of the road. ~~Whereif~~ whereif stations are ten miles [16.09 kilometers] or more apart the railroad company, ~~whenif~~ whenif required so to do by the ~~public service commissioner~~ commissioner, shall construct and maintain a sidetrack for the use of shippers between such stations.

SECTION 79. AMENDMENT. Section 60-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

60-06-06.1. Determination - Appropriation Expenses.

Any party may petition the ~~public service commissioner~~ commissioner to determine rights governed under this chapter. The ~~commissioner~~ commissioner shall determine the matter in accordance with chapter 28-32 and the parties' rights of appeal are as limited by chapter 28-32. The value of a leaseholder's improvements may not be considered in determining a reasonable lease rate or selling price. The parties to such a proceeding shall pay the expenses of the proceeding, as determined by the ~~commissioner~~ commissioner, directly to the entities owed. The ~~commissioner~~ commissioner may adopt rules to carry out this section.

SECTION 80. AMENDMENT. Section 60-10-01 of the North Dakota Century Code is amended and reenacted as follows:

60-10-01. Credit-sale contracts - Assessment on grain - Submission of assessment.

An assessment at the rate of two-tenths of one percent is placed on the value of all grain sold in this state under a credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14. The licensee purchasing the grain shall note the assessment on the contract required under sections 60-02-19.1 and 60-02.1-14 and shall deduct the assessment from the purchase price payable to the seller. The licensee shall submit any assessment collected under this section to the ~~public service commissioner~~ commissioner no later than thirty days after each calendar quarter. The ~~commissioner~~ commissioner shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

SECTION 81. AMENDMENT. Section 60-10-02 of the North Dakota Century Code is amended and reenacted as follows:

60-10-02. Credit-sale contract indemnity fund - Creation - Continuing appropriation.

There is created in the state treasury the credit-sale contract indemnity fund. The state treasurer shall invest available moneys in the fund in accordance with

section 21-10-07 and in cooperation with the ~~public service commissioner~~ and shall deposit any income earned through the investments into the fund. The fund and earnings of the fund are appropriated to the ~~public service commissioner~~ on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

SECTION 82. AMENDMENT. Section 60-10-03 of the North Dakota Century Code is amended and reenacted as follows:

60-10-03. Credit-sale contract indemnity fund - Suspension of assessment.

At the end of the calendar quarter in which the credit-sale contract indemnity fund reaches a level of six million dollars, the ~~public service commissioner~~ shall suspend collection of the assessment required by this chapter. If after suspension of collection the balance in the fund is less than three million dollars, the ~~public service commissioner~~ shall require collection of the assessment.

SECTION 83. AMENDMENT. Section 60-10-05 of the North Dakota Century Code is amended and reenacted as follows:

60-10-05. Credit-sale contract indemnity fund - Availability of money.

Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the ~~public service commissioner~~ serve as the trustee, the ~~public service commissioner~~ shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

SECTION 84. AMENDMENT. Section 60-10-07 of the North Dakota Century Code is amended and reenacted as follows:

60-10-07. Credit-sale contract indemnity fund - Prorated claims.

If claims for indemnity payments from the credit-sale contract indemnity fund exceed the amount in the fund, the ~~public service commissioner~~ shall prorate the claims and pay the prorated amounts. As future assessments are collected, the ~~public service commissioner~~ shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this chapter.

SECTION 85. AMENDMENT. Section 60-10-08 of the North Dakota Century Code is amended and reenacted as follows:

60-10-08. Reimbursement for later insolvencies.

The ~~public service commissioner~~ shall ensure that all persons eligible for payment from the indemnity fund as a result of an insolvency are fully compensated to the extent permitted by this chapter before any payments from the indemnity fund are initiated as a result of a later insolvency. The chronological order of insolvencies is determined by the date the ~~public service commissioner~~ is appointed trustee under section 60-02.1-29 or 60-04-03.

SECTION 86. AMENDMENT. Section 60-10-09 of the North Dakota Century Code is amended and reenacted as follows:

60-10-09. Credit-sale contract indemnity fund - Reimbursement for administrative expenses.

Any expense incurred by the ~~public service commissioner~~ commissioner in administrating the credit-sale contract indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

SECTION 87. AMENDMENT. Section 60-10-10 of the North Dakota Century Code is amended and reenacted as follows:

60-10-10. Credit-sale contract indemnity fund assessment - Failure to collect assessment - Penalty.

Any person who knowingly or intentionally refuses or fails to collect the assessment required under this chapter from producers or to submit any assessment collected from producers to the ~~public service commissioner~~ commissioner for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

SECTION 88. AMENDMENT. Section 60-10-11 of the North Dakota Century Code is amended and reenacted as follows:

60-10-11. Revocation and suspension.

The ~~commissioner~~ commissioner may suspend or revoke the license of any licensee for cause upon notice and hearing for violation of this chapter.

SECTION 89. AMENDMENT. Section 60-10-12 of the North Dakota Century Code is amended and reenacted as follows:

60-10-12. Cease and desist.

If a person engages in an activity or practice that is contrary to this chapter or rules adopted by the ~~commissioner~~ commissioner, the ~~commissioner~~ commissioner, upon ~~its~~ the commissioner's own motion without complaint and with or without a hearing, may order the person to cease and desist from the activity until further order of the ~~commissioner~~ commissioner. The order may include any corrective action up to and including license suspension. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 90. AMENDMENT. Section 60-10-14 of the North Dakota Century Code is amended and reenacted as follows:

60-10-14. Subrogation.

Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against whom the claim was made. The ~~commissioner~~ commissioner may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate ~~its~~ the interest of the claimant, if any, to the ~~commissioner~~ commissioner in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

SECTION 91. AMENDMENT. Section 60-10-15 of the North Dakota Century Code is amended and reenacted as follows:

60-10-15. Unlicensed facility-based grain buyer.

This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01, which is licensed under the United States Warehouse Act but which does not possess a state grain buyer license. The ~~commissioner~~ commissioner has the duty and power to examine and inspect, during regular business hours, all books, documents, and records related to collections and remittances pertaining to the credit-sale contract indemnity fund. In the case of insolvency, credit-sale contract payments to valid claimants must be reduced by an amount equal to the credit-sale contract indemnity payments received from payments administered by the United States department of agriculture."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2009 - Department of Agriculture - Conference Committee Action

	Base Budget	Senate Version	Conference Committee Changes	Conference Committee Version	House Version	Comparison to House
Salaries and wages	\$12,372,949	\$13,049,463	\$1,183,283	\$14,232,746	\$13,651,222	\$581,524
Operating expenses	6,444,336	6,577,780	125,000	6,702,780	6,702,780	
Capital assets	13,000	15,000		15,000	15,000	
Grants	8,817,774	8,823,774		8,823,774	8,823,774	
State Board of Animal Health	865,718	865,718		865,718	865,718	
Wildlife services	1,408,000	1,457,400		1,457,400	1,457,400	
Crop Harmonization Board	75,000	75,000		75,000	75,000	
Pipeline restoration and reclamation	200,000	200,000		200,000	200,000	
Ag. Products Utilization Commission		3,176,791	583,626	3,760,417	4,000,000	(239,583)
Grain insolvency litigation			100,000	100,000		100,000
Total all funds	\$30,196,777	\$34,240,926	\$1,991,909	\$36,232,835	\$35,790,894	\$441,941
Less estimated income	21,087,676	24,503,189	819,217	25,322,406	25,366,732	(44,326)
General fund	\$9,109,101	\$9,737,737	\$1,172,692	\$10,910,429	\$10,424,162	\$486,267
FTE	73.00	75.00	3.00	78.00	77.00	1.00

Department 602 - Department of Agriculture - Detail of Conference Committee Changes

	Adjusts Funding for Salary and Benefit Increases ¹	Adds Funding for Temporary Salaries ²	Adjusts Funding for Agriculture Commissioner Salary Equity Increase ³	Adjusts Funding for Wildlife Services Operating Fees ⁴	Adjusts Funding for APUC ⁵	Transfers Grain Warehouse Inspection Program from the PSC ⁶
Salaries and wages	\$55,476	\$159,852	(\$127)		\$239,583	\$728,499
Operating expenses						125,000
Capital assets						
Grants						
State Board of Animal Health						
Wildlife services						
Crop Harmonization Board						
Pipeline restoration and reclamation						
Ag. Products Utilization Commission					583,626	
Grain insolvency litigation						
Total all funds	\$55,476	\$159,852	(\$127)	\$0	\$823,209	\$853,499
Less estimated income	26,339	159,852	0	49,400	583,626	0
General fund	\$29,137	\$0	(\$127)	(\$49,400)	\$239,583	\$853,499
FTE	0.00	0.00	0.00	0.00	(1.00)	4.00

Insert LC: 19.0222.02006
 Senate Carrier: Wanzek
 House Carrier: Boe

	Adds Funding for Grain Insolvency Litigation ²	Total Conference Committee Changes
Salaries and wages		\$1,183,283
Operating expenses		125,000
Capital assets		
Grants		
State Board of Animal Health		
Wildlife services		
Crop Harmonization Board		
Pipeline restoration and reclamation		
Ag. Products Utilization Commission		583,626
Grain insolvency litigation	\$100,000	100,000
Total all funds	\$100,000	\$1,991,909
Less estimated income	0	819,217
General fund	\$100,000	\$1,172,692
FTE	0.00	3.00

¹ Funding of \$51,014, of which \$24,675 is from the general fund and \$26,339 is from other funds, is added for 2019-21 biennium salary increases of 2 percent with a minimum monthly increase of \$120 and a maximum monthly increase of \$200 on July 1, 2019, and 2.5 percent on July 1, 2020. The Senate provided funding for salary increases of 2 percent on July 1, 2019, and 3 percent increase on July 1, 2020. Funding of \$4,462 is also added from the general fund for increases in health insurance premiums related to the transfer of 1 FTE from the Public Service Commission.

² Funding of \$159,852 is added from the Department of Agriculture operating fund for temporary salaries. The Senate and House did not add funding for temporary salaries.

³ Funding of \$127 is reduced from the general fund to provide a salary equity increase of \$14,586, including increases for fringe benefits, for the Agriculture Commissioner. Of this amount, \$5,889 is related to a salary equity increase, the same salary equity increase provided to the State Treasurer. The Senate provided total funding for a salary equity increase for the Agriculture Commissioner of \$14,713 to align the Agriculture Commissioner's salary to the Tax Commissioner's salary. The House did not provide a salary equity increase for the Agriculture Commissioner.

⁴ The funding source for \$49,400 for wildlife services operating fees is changed to the environment and rangeland protection fund rather than the general fund to provide total funding of \$1,457,400 for wildlife services, the same amount as the Senate. The House also provided for this funding source change to provide a total of \$1,457,400 for the program.

⁵ Funding for the Agricultural Products Utilization Commission (APUC) is adjusted as follows:

	FTE	General Fund	Other Funds	Total
Reduces funding from APUC special funds	(1.00)	\$0	(\$1,176,791)	(\$1,176,791)
Adjusts funding for salaries of 1 FTE APUC position	0.00	239,583	(239,583)	0
Adds one-time funding from Bank of North Dakota profits	0.00	0	2,000,000	2,000,000
Total	(1.00)	\$239,583	\$583,626	\$823,209

Total funding approved by the Conference Committee for APUC is \$4 million, of which \$1,760,417 is from the APUC fund and \$2 million is one-time funding 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 salaries and benefits of 1 FTE in the salaries and wages line item.

The House approved \$4 million, of which \$2 million was from the APUC fund and \$2 million was one-time funding from the profits of the Bank of North Dakota, and 1 FTE position for the program. The Senate approved total funding of \$3,176,791 from the APUC fund and 2 FTE positions.

⁶ Transfers grain warehouse license and inspection program from the Public Service

Commission to the Agriculture Commissioner as follows:

	<u>Salaries and Wages</u>	<u>Operating Expenses</u>	<u>Total General Fund</u>
Adds 3 FTE grain warehouse inspectors	\$563,006	\$120,000	\$683,006
Adds 1 FTE accounting budget specialist	165,493	5,000	170,493
Total	\$728,499	\$125,000	\$853,499

These transfers were also provided for by the House.

⁷ One-time funding of \$100,000 is added from the general fund to pay the Public Service Commission to continue providing services related to grain insolvency litigation that began prior to July 1, 2019. This appropriation is provided in a separate section of the bill. The Senate and House did not provide funding for this purpose.

The House removed 1 FTE undesignated position and funding of \$157,940, of which \$123,517 was from the general fund, \$6,673 was from the Department of Agriculture operating fund, and \$27,750 was from federal funds. The Conference Committee did not remove this FTE positions.

This amendment also:

- Amends a section identifying the amount of funding from the environment and rangeland protection fund.
- Amends a section relating to the salary increase of the Agriculture Commissioner to provide a salary equity increase to the Agriculture Commissioner of \$5,889, increasing the current annual salary of \$108,656 to \$114,545 and to increase the salary to \$116,836 (2 percent) in fiscal year 2020 and to \$119,757 (2.5 percent) in fiscal year 2021.
- Adds a section related to the transfer of \$2 million from Bank of North Dakota profits to the APUC fund during the 2019-21 biennium, the same as the House version.
- Remove statutory sections related to APUC, the same as the House version. The statutory changes needed to move APUC from the Department of Commerce to the Agriculture Commissioner are included in Senate Bill No. 2328.
- Adds a section to provide a one-time appropriation of \$100,000 from the general fund for the purpose of paying the Public Service Commission to continue providing services related to grain insolvency litigation that began prior to July 1, 2019. The Senate and House did not provide funding for this purpose.
- Adds statutory sections to transfer grain, grain buyers, warehousing, deposits, and warehousemen programs from the Public Service Commission to the Agriculture Commissioner and increases annual license fees, resulting in additional general fund revenues of approximately \$83,200 during the 2019-21 biennium. The House also included this section.

Engrossed SB 2009 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

SB 2009

**Department 602 - Agriculture Commissioner
Senate Bill No. 2009**

Executive Budget Comparison to Prior Biennium Appropriations

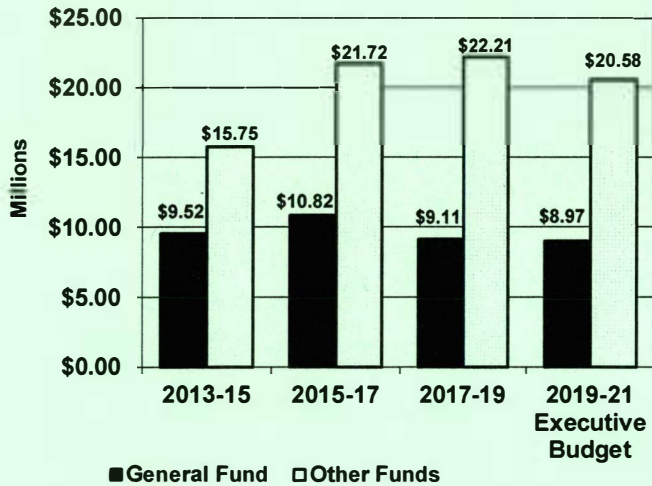
	FTE Positions	General Fund	Other Funds	Total
2019-21 Executive Budget	71.00	\$8,968,496	\$20,576,021	\$29,544,517
2017-19 Legislative Appropriations ¹	73.00	9,109,101	22,207,676	31,316,777
Increase (Decrease)	(2.00)	(\$140,605)	(\$1,631,655)	(\$1,772,260)

¹The 2017-19 biennium agency appropriation amounts have not been adjusted for additional special funds authority of \$1.5 million resulting from Emergency Commission action during the 2017-19 biennium.

Ongoing and One-Time General Fund Appropriations

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2019-21 Executive Budget	\$8,858,496	\$110,000	\$8,968,496
2017-19 Legislative Appropriations	9,109,101	0	9,109,101
Increase (Decrease)	(\$250,605)	\$110,000	(\$140,605)

Agency Funding



FTE Positions



Executive Budget Comparison to Base Level

	General Fund	Other Funds	Total
2019-21 Executive Budget	\$8,968,496	\$20,576,021	\$29,544,517
2019-21 Base Level	9,109,101	21,087,676	30,196,777
Increase (Decrease)	(\$140,605)	(\$511,655)	(\$652,260)

Attached as an appendix is a detailed comparison of the executive budget to the agency's base level appropriations.

Executive Budget Highlights

	General Fund	Other Funds	Total
1. Provides funding for state employee salary and benefit increases, of which \$490,869 is for salary increases, \$264,531 is for health insurance increases, and \$61,745 is for retirement contribution increases	\$441,645	\$375,500	\$817,145
2. Removes 1 FTE agriculture division director position and 1 FTE data processing coordinator II position	(\$247,034)	(\$68,845)	(\$315,879)
3. Adds funding for Microsoft Office 365 license expenses	\$1,849	\$377	\$2,226
4. Reduces funding for operating expenses, primarily related to travel and professional fees and services	(\$144,699)	(\$265,054)	(\$409,753)
5. Removes funding for the state waterbank program, including \$89,817 of operating expenses and \$300,000 of grants	\$0	(\$389,817)	(\$389,817)

6. Reduces funding for other grants, including apiary research grants (\$42,900), noxious weeds grants (\$20,000), and wine research and promotion grants (\$41,100)	(\$84,000)	(\$20,000)	(\$104,000)
7. Reduces funding for Board of Animal Health operating expenses, primarily related to miscellaneous supplies, to provide total funding of \$755,718, of which \$268,565 is from the general fund	(\$10,000)	(\$100,000)	(\$110,000)
8. Adds one-time funding for a master customer database	\$110,000	\$0	\$110,000

**Other Sections Recommended to be Added in the Executive Budget
(As Detailed in the Attached Appendix)**

Environment and rangeland protection fund transfer - Section 3 would require the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.

Environment and rangeland protection fund - Section 4 would identify \$6,357,407 in the estimated income line item in Section 1 is from the environment and rangeland protection fund.

Game and Fish Department operating fund - Section 5 would identify that \$615,480 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.

State Water Commission transfer - Section 6 would transfer \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.

Pipeline restoration and reclamation - Section 7 would identify that \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program.

Agriculture Commissioner salary - Section 8 would provide the statutory changes necessary to increase the Agriculture Commissioner's salary. The Agriculture Commissioner's annual salary would increase from the current level of \$108,656 to \$113,002 effective July 1, 2019, and to \$115,262 effective July 1, 2020, to reflect the 4 percent and 2 percent recommended salary increase.

Continuing Appropriations

Federal environmental law impact review fund - North Dakota Century Code Section 4.1-01-21 - All funds in the federal environmental law impact review fund are appropriated to the Agriculture Commissioner on a continuing basis.

Honey promotion fund - Chapter 4.1-08 - Commodity checkoff for market development of honey.

Turkey fund - Chapter 4.1-12 - Commodity checkoff for market development of turkeys and turkey products.

Industrial hemp - Section 4.1-18-02 - Provides for the Agriculture Commissioner to assess a fee of \$150 plus \$25 per acre to each applicant requesting to grow or process industrial hemp. Fees collected for this purpose are deposited in the Agriculture Commissioner's operating fund and appropriated to the Department of Agriculture on a continuing basis.

Minor use pesticides fund - Section 4.1-39-08 - For studies, investigations, and evaluations regarding registration and use of pesticides.

Equine processing fund - Section 36-21-19 - Provides for the Agriculture Commissioner to assess a fee of \$5 for equine processing facility assessments. The first \$50,000 of fees collected is deposited in the general fund and any additional amounts are deposited in the equine processing fund. All funds in the equine processing fund are appropriated to the Agriculture Commissioner on a continuing basis.

State waterbank fund - Section 61-31-10 - Authorizes the Agriculture Commissioner to receive funds from any private or public source including from state agencies for the state waterbank program. The state waterbank fund and interest earned are appropriated to the Agriculture Commissioner on a continuing basis.

Significant Audit Findings

The operational audit for the Department of Agriculture conducted by the State Auditor's office for the period ending June 30, 2017, identified no significant audit findings.

Major Related Legislation

House Bill No. 1349 - Allows the Agriculture Commissioner to assess a fee of \$350 to each producer and processor applying for a license to grow or process industrial hemp. The revenue collected from license fees is to be deposited in the Agriculture Commissioner's operating fund and is appropriated to the Agriculture Commissioner on a continuing basis.

Agriculture Commissioner - Budget No. 602
Senate Bill No. 2009
Base Level Funding Changes

	<u>Executive Budget Recommendation</u>			
	<u>FTE</u>	<u>General</u>	<u>Other</u>	<u>Total</u>
	<u>Position</u>	<u>Fund</u>	<u>Funds</u>	<u>Total</u>
2019-21 Biennium Base Level	73.00	\$9,109,101	\$21,087,676	\$30,196,777
2019-21 Ongoing Funding Changes				
Base payroll changes		(\$219,766)	(\$163,633)	(\$383,399)
Salary increase		260,886	229,983	490,869
Health insurance increase		146,552	117,979	264,531
Retirement contribution increase		34,207	27,538	61,745
Remove 2 FTE positions	(2.00)	(247,034)	(68,845)	(315,879)
Add funding for Microsoft Office 365 license expenses		1,849	377	2,226
Reduce funding for operating expenses		(144,699)	(175,237)	(319,936)
Remove funding for the state waterbank program			(389,817)	(389,817)
Adjust funding for capital assets		2,000		2,000
Reduce funding for other grants		(84,000)	(20,000)	(104,000)
Reduce funding for Board of Animal Health operating expenses		(10,000)	(100,000)	(110,000)
Add funding for wildlife services operating fees		9,400		9,400
Add funding for pipeline restoration operating fees			30,000	30,000
Total ongoing funding changes	(2.00)	(\$250,605)	(\$511,655)	(\$762,260)
One-time funding items				
Add funding for a master customer database		\$110,000		\$110,000
Total one-time funding changes	0.00	\$110,000	\$0	\$110,000
Total Changes to Base Level Funding	(2.00)	(\$140,605)	(\$511,655)	(\$652,260)
2019-21 Total Funding	71.00	\$8,968,496	\$20,576,021	\$29,544,517

Other Sections for Agriculture Commissioner - Budget No. 602

	<u>Executive Budget Recommendation</u>
Environment and rangeland protection fund transfer	Section 3 would require the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.
Environment and rangeland protection fund	Section 4 would identify \$6,357,407 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.
Game and Fish Department operating fund	Section 5 would identify \$615,480 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.
State Water Commission transfer	Section 6 would transfer \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.
Pipeline restoration and reclamation	Section 7 would identify \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program

Other Sections for Agriculture Commissioner - Budget No. 602

Agriculture Commissioner salary

Executive Budget Recommendation

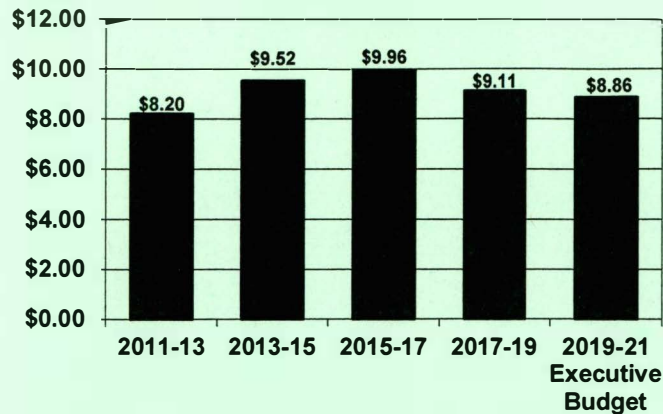
Section 8 would provide the statutory changes necessary to increase the Agriculture Commissioner's salary. The Agriculture Commissioner's annual salary would increase from the current level of \$108,656 to \$113,002 effective July 1, 2019, and to \$115,262 effective July 1, 2020, to reflect the 4 percent and 2 percent recommended salary increase.

Department 602 - Agriculture Commissioner

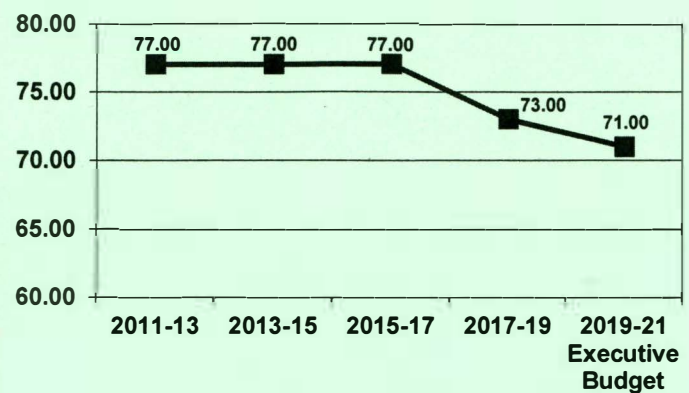
Historical Appropriations Information

Ongoing General Fund Appropriations Since 2011-13

Ongoing General Fund Appropriations (in Millions)



FTE Positions



Ongoing General Fund Appropriations					
	2011-13	2013-15	2015-17	2017-19	2019-21 Executive Budget
Ongoing general fund appropriations	\$8,196,746	\$9,519,217	\$9,961,137	\$9,109,101	\$8,858,496
Increase (decrease) from previous biennium	N/A	\$1,322,471	\$441,920	(\$852,036)	(\$250,605)
Percentage increase (decrease) from previous biennium	N/A	16.1%	4.6%	(8.6%)	(2.8%)
Cumulative percentage increase (decrease) from 2011-13 biennium	N/A	16.1%	21.5%	11.1%	8.1%

Major Increases (Decreases) in Ongoing General Fund Appropriations

2013-15 Biennium

1. Added funding to hire an emergency program specialist to fill an existing vacant FTE position \$30,000
2. Added funding for energy development mediation services \$100,000
3. Replaced a portion of funding from the Game and Fish Department operating fund with funding from the general fund \$100,000
4. Added funding for Information Technology Department desktop support services \$48,000
5. Added funding for grape and wine industry grants \$80,000

2015-17 Biennium

1. Added funding for monitoring, surveying, and inspecting for Japanese beetle, emerald ash borer, and other issues \$82,297
2. Added funding for Information Technology Department desktop support services \$352,912

2017-19 Biennium

1. Removed 4 FTE positions and related funding (\$600,304)
2. Adjusted funding for information technology operating expenses (\$296,836)

2019-21 Biennium (Executive Budget Recommendation)

1. Removes 1 FTE agriculture division director position and 1 FTE data processing coordinator II position (\$247,034)
2. Reduces funding for operating expenses (\$144,699)
3. Reduces funding for apiary research grants (\$42,900) and wine research and promotion grants (\$41,100) (\$84,000)

**GOVERNOR'S RECOMMENDATION FOR THE
AGRICULTURE COMMISSIONER AS SUBMITTED
BY THE OFFICE OF MANAGEMENT AND BUDGET**

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 agriculture commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$12,372,949	\$147,867	\$12,520,816
Operating Expenses	7,444,336	(297,527)	6,146,809
Capital Assets	13,000	2,000	15,000
Grants	10,437,774	(1,904,000)	8,413,774
Board of Animal Health	869,618	(113,900)	755,718
Wildlife Services	1,408,000	9,400	1,417,400
Pipeline reclamation	200,000	0	200,000
Crop Harmonization Board	75,000	0	75,000
Total all funds	\$32,820,677	(\$2,156,160)	\$29,544,517
Less estimated income	23,707,676	(2,011,655)	20,576,021
Total general fund	\$9,113,001	(\$144,505)	\$8,968,496
Full-time equivalent positions	73.00	(2.00)	71.00

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-sixth legislative assembly for the 2017-19 biennium and the 2019-21 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
National genomics center	\$ 120,000	\$0
Federal environmental law impact review	1,000,000	0
Master customer database	0	110,000
Total all funds	\$1,120,000	\$110,000
Total special funds	1,120,000	0
Total general fund	\$0	\$110,000

The 2019-21 one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The agriculture commissioner shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019 and ending June 30, 2021.

SECTION 3. TRANSFER - ENVIRONMENT AND RANGELAND PROTECTION FUND - MINOR USE PESTICIDE FUND. The agriculture commissioner shall transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 4. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND.

The estimated income line item in section 1 of this Act includes the sum of \$6,357,407, or so much of the sum as may be necessary, from the environment and rangeland protection fund for the purpose of defraying the expenses of various department of agriculture programs, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 5. ESTIMATED INCOME - GAME AND FISH FUND.

The estimated income line item in section 1 of this Act includes the sum of \$615,480, or so much of the sum as may be necessary, from the game and fish department operating fund for the purpose of defraying the expenses of various department of agriculture programs, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 6. ESTIMATED INCOME - STATE WATER COMMISSION - TRANSFER.

The estimated income line item in section 1 of this Act includes the sum of \$125,000 which the state water commission shall transfer to the agriculture commissioner for the wildlife services program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 7. ESTIMATED INCOME - PIPELINE RESTORATION AND RECLAMATION.

The estimated income line item in section 1 of this Act includes the sum of \$200,000 from the abandoned oil and gas well plugging and site reclamation fund for the purpose of defraying the expenses of the pipeline restoration and reclamation program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 8. AMENDMENT.

Section 4-01-21 of the North Dakota Century Code is amended and reenacted as follows:

4-01-21. Salary of agriculture commissioner.

The annual salary of the agriculture commissioner is ~~one hundred eight thousand six hundred fifty-six dollars through June 30, 2019 and one hundred thirteen thousand two dollars through June 30, 2020 and one hundred fifteen thousand two hundred sixty-two dollars thereafter.~~

/ SB 2009
1-14-2019
pg 1

North Dakota

Department of Agriculture

Doug Goehring, Commissioner



SB 2009
Senate Appropriations Committee
Chairman Ray Holmberg

Table of Contents ^{pg 2}

	Page
Purpose/Vision/Mission Statement	3
Organizational Chart	4
Administrative Services/Government Affairs	5
Plant Industries	7
Livestock Industries	8
Animal Health	9
Pesticide & Fertilizer	10
Optional Request	11
Base Level Budget Summary	12

#1 SB 2009
1-14-2019
pg 3

Purpose

“Government is instituted for the protection, security, and benefit of the people, and they have a right to alter or reform the same whenever public good may require.”

North Dakota Constitution, Article 1, Section 2

Mission

Serve, advocate, protect and promote agriculture to benefit everyone.

Vision

We support agriculture by embracing diversity, innovation, research and trade.

Core Values

Transparency, Respect, Integrity, Consistency

Agriculture Commissioner

Doug Goehring

Assistant to the Commissioner

Jody Reinke

Deputy Commissioner

Tom Bodine

Human Resources

Lindsay Borlaug

Administrative Services

Ken Junkert, Director

Government Affairs

Shaun Quissell, Director

Fiscal Management

Account Budget Specialist
Lynette Baumiller

Administrative Officer
Samantha McGrath

Grant & Procurement Specialist
Jeannie Jacobs-Kopp

Specialty Crop Block Grant Administrator
Deanna Gierszewski

Emergency Management / IT

Emergency Management Specialist
Kent Theurer

Geographic Information System Officer
Jim Hansen

Pride of Dakota

Pride of Dakota Specialist
Kara Haff

Administrative Assistant
Bonnie Sundby

Wildlife Services*

State Director
John Paulson

ND Mediation Service & Public Policy

Senior Policy & Research Analyst
Jessie Pfaff

Policy Analyst
Melanie Gaebe

Negotiators
Jim Hoffert (non-FTE) Jim Jost (non-FTE)

Administrative Officer
Betty Schneider

Livestock Development

Specialist
Jason Wirtz

Public Information

Public Information Officer
Michelle Mielke

Ag Communications Specialist
Colby Lysne

Local Foods

Local Foods Specialist
Jamie Good

Agricultural Development

Specialist
Bradley Dean

Plant Industries

Samantha Brunner, Director

Plant Protection Specialist
Wayne Prindle

Noxious Weeds Specialist
Richard Weisz

Plant Protection Specialist
Adam Pacht

Plant Industries - Fargo

Plant Protection Officer
Charles Elhard

Plant Protection Specialist
Chelsey Penuel

Animal Health

Dr. Susan Keller, State Veterinarian

Deputy State Veterinarian
Dr. Beth Carlson

Assistant State Veterinarian
Dr. Sarah Bailey

Field Investigator
Nathan Boehm

Avian Influenza Coord. / Ag Program Inspector
Jeanne David

Administrative Assistant
Tammy Celley

Office Assistant
Kimberly Norton

Pesticide & Fertilizer

Eric Delzer, Program Manager

Environmental Scientist
Jerry Sauter

Pesticide Registration Specialist
Jon Krei

Pesticide Program Specialist
Crystal Zabolotny

Pesticide Outreach Specialist
Jeremiah Lien

Fertilizer Program Specialist
Brandy Kiefel

Pesticide Inspectors
Andrew Erickson
Kevin Coufal
James Jeske

Jill Carlson
Carla Ralston
Derek Woehl

Fertilizer Inspectors
Darrell Haseleu
Brian Kramer

Administrative Assistant
Faye Wangen

Livestock Industries

Dr. Andrea Grondahl, Director

Dairy Inspection

Dairy Coordinator
Nathan Kroh

Dairy Inspectors
Ken Quanbeck

David Boschma

State Meat & Poultry Inspection

Senior Inspectors
Heather Andersen

Cody Kreft

Compliance Officer
David Slack

Inspectors
Joshua Epperly
Sherlynn Olson
Whitney Vogel

Cami Metzger
Shawn Steffen
Takara Simmons

Relief Inspector
Julie Nilges

Feed Specialist
Dave Phillips

Administrative Assistants
Becky Gietzen

Angela Rittmiller

* Wildlife Services, a division of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, operates in North Dakota under a cooperative agreement with the North Dakota Department of Agriculture, the North Dakota Game and Fish Department, and the North Dakota State Water Commission.

1
1-14-2019
SB 8004
pg 4

Administrative Services / Government Affairs

Fiscal Management

- Oversees the development and tracking of the department's budget.
- Processes payroll.
- Pays all bills and deposits all revenues.
- Reviews and approves contracts and grants.
- Ensures compliance with state and federal laws relating to the department's finances; including expenditure tracking and filing of required reports to federal agencies.
- Responsible for procurement of goods and services for the department.

Risk Management & Emergency Response

- Plan, implement and evaluate strategic emergency management plans.
- Develop and conduct training and education on risk management, loss control and general safety issues.
- Coordinate with Department of Emergency Services.

Human Resources

- Responsible for human resource activities, including recruitment and training.
- Responds to public information requests.

Information Technology

- Maintains desktop support contract with ITD.
- Maintains all desktop and wireless phones.
- Maintains department websites, email and intranet.
- Conducts GIS mapping for other department programs and works with other agencies to provide GIS mapping technology and expertise.

Pipeline & Wind Energy Restoration and Reclamation Programs

- Connects landowners and tenants experiencing pipeline reclamation issues with an ombudsman to help reach reasonable resolutions.
- Provides technical education, support and outreach on pipeline and wind energy related matters.
- Facilitating and promoting fairness on sight when resolving reclamation and restoration issues, concerns and disputes.

2017-2019	
Salaries	\$4,164,337
Operating	\$2,294,423
Capital Assets	\$13,000
Grants	\$7,069,600
Wildlife Services	\$1,408,000
Pipeline Oversight	\$200,000
Total	\$15,149,360
General	\$4,647,738
Federal	\$7,734,065
Special	\$2,767,557
Total	\$15,149,360
FTEs	24

Wildlife Services

- Reduces wildlife depredation and damage to property (conducted by USDA Wildlife Services in cooperation with NDDA, State Water Commission and ND Game and Fish Department).

Pride of Dakota

- Administers the Pride of Dakota (POD) program, including Holiday Showcases, annual meeting and other events.
- Provides trade show assistance to ND companies.
- Maintains membership of over 500 POD Companies.

Specialty Crop Block Grant

- Administers specialty crop grants.
- Administers organic certification reimbursement grants.

#1 SB 2009
1-14-2019
Pg 6

Administrative Services / Government Affairs

Policy Development

- Researches and analyzes agriculture, energy, water, infrastructure and trade policy for the agriculture commissioner.

Public Information

- Writes and edits department publications, including news releases, brochures and reports.

North Dakota Mediation Service

- Offers negotiation and mediation services to resolve differences among creditors, farmers and others.
- Offers assistance for beginning farmer loan applications and farm program paperwork.
- Provides financial counseling.
- Offers mediation to address energy-related issues.
- Offers conflict resolution services to resolve deer depredation disputes.
- Recent Farm Bill now authorizes work on lease issues, family farm transitions, farmer/neighbor conflicts, organic certification issues, and other issues designated by either the USDA Secretary of Agriculture or North Dakota Agriculture Commissioner.

Agriculture in the Classroom

- Helps K-12 teachers integrate agriculture information into science, math, social studies and language curricula.
- Supports Project Food, Land & People which provides hands-on lessons to help students better understand the relationships between the world's environment, agriculture and people.
- Publishes the Ag Mag three times a year for third-, fourth- and fifth-graders.
- Underwrites FFA Foundation mini-grants for agriculture-related projects, units and lessons used by school-age children.

Livestock Licensing

- Licenses and establishes bonds for livestock dealers and auction markets.
- Monitors financial conditions of dealers and auction markets.

Livestock Pollution Prevention

- Cost-share funding assistance for livestock producers to install manure containment systems assistance.
- Advises producers on nutrient management, project planning, regulations and manure containment.

Livestock Development

- Conducts age/source verification.
- Assists producers and processors in expanding and promoting the state's livestock industry.
- Identifies and assists livestock friendly counties in developing animal agriculture.

International Trade

- Conducts and participates in international trade events.
- Supports and coordinates with Food Export-Midwest Association and North Dakota Trade Office.
- Issues Certificate of Free Sale Agreements.
- Conducts market research for ND companies to help them expand their business domestically and internationally.

Commodity Councils

- Organizes the annual meeting of the agriculture commissioner and the commodity councils.
- Administers the Turkey Fund.
- Engaging with commodity councils to assist their industries where needed.

Local Foods/Organics

- Oversees grape and wine development and promotion.
- Administers community orchard grants.
- Administers local foods initiative.
- Organizes an annual local foods conference.
- Administers farm-to-school programs.
- Administers organics program.
- Operates the mobile food processing unit.

Plant Industries Division

Plant Industries includes the noxious weeds, plant protection, industrial hemp program, and apiary.

Noxious Weeds

- Distributes state and federal funds for noxious weed control to weed boards.
- Manages federal funds for noxious and invasive weeds.
- Coordinates statewide biological weed control and obtains and distributes biological weed agents.
- Assists county and city weed boards in field days and weed management.
- Assists the general public with weed identification and control.
- Trains and assists weed boards with GPS/GIS mapping technology.
- Administers the Weed Seed Free Forage program.

Plant Protection

- Surveys for exotic pests such as moths, nematodes and emerald ash borer that threaten North Dakota agriculture and horticulture.
- Surveys for pests, various diseases, insects and nematodes including: Japanese beetle, Karnal bunt, dwarf bunt, cereal leaf beetle, soybean cyst nematode, potato cyst nematodes and clubroot in canola to enable export of agricultural products.
- Licenses and inspects nursery dealers and growers.
- Provides export certification/phytosanitary services for export of agricultural products.
- Reviews biotechnology permits.

Industrial Hemp Program

- Licenses and inspects all hemp growers,

	2017-2019
Salaries	\$1,307,961
Operating	\$956,329
Grants	\$1,748,174
Total	\$4,012,464
General	\$983,372
Federal	\$596,233
Special	\$2,432,859
Total	\$4,012,464
FTEs	7.5

processors and finished product.

- Inspect hemp fields to ensure compliance with the state and federal law.
- Maintains import and export permits and MOUs with other states to move product across state lines, with Drug Enforcement Agency approval.

Apiary

- Licenses beekeepers.
- Register and map apiary locations.
- Inspects bees and issues health certificates for migratory movement.
- Agreement with California for inspection of bee shipments
- Investigates and responds to bee complaints.
- Visits apiaries and ensures compliance with the bee law.
- Administers the Honey Fund.
- Oversees the pollinator plan to enhance communication and emphasize best management practices for stakeholders.
- Conducts health inspections and assays with the National Agriculture Genotyping Center.

Livestock Industries Division

Livestock Industries includes dairy/poultry, state meat and poultry inspection, and feed.

Dairy/Poultry

- Inspects dairy farms for equipment, facilities, sanitation, water purity and proper drug usage and storage.
- Inspects dairy processing plants and milk transfer stations for equipment, facilities, and sanitation.
- Samples dairy products.
- Monitors financial conditions of milk buyers.
- Conducts Grade A survey work.
- Inspects manufacturing grade plants and transfer stations under agreement with USDA.
- Inspects distribution facilities, milk bulk trucks and samplers/haulers.
- Inspects licensed commercial egg producers.
- Licenses and sets bonds for hatcheries.

State Meat & Poultry Inspection

- Trains, certifies and inspects meat processing facilities.
- Inspects custom-exempt processing plants.
- Inspects retail outlets for country-of-origin labeling.
- Enforces meat and poultry processing regulations.
- Grades livestock carcasses at official state and/or federal establishments.
- Provides consultation and education to the meat and poultry industry.
- Ensures proper label use by the industry.

2017-2019	
Salaries	\$3,133,027
Operating	\$1,557,489
Total	\$4,690,516
General	\$2,118,322
Federal	\$2,179,327
Special	\$392,867
Total	\$4,690,516
FTEs	18

Feed

- Registers all pet food sold in the state.
- Maintains a label file of commercial feeds sold in the state.
- Licenses commercial feed manufactures and retailers.
- Samples feed products to ensure that nutritional content matches the label claims.
- Inspects medicated feed plants.
- Verifies manufacturer and producer compliance with federal requirements to prevent bovine spongiform encephalopathy (BSE).
- Provide producer outreach for the Veterinarian Feed Directive.

1 SB 2009
1-14-2019
pg 9

Animal Health Division

The Animal Health Division protects the health of domestic animals and non-traditional livestock, and administers all rules and orders of the State Board of Animal Health (BOAH).

- Monitors and regulates animal imports and exports.
- Traces animal movements as part of disease investigations.
- Issues and maintains records of official USDA tags and official state certificates of veterinary inspection.
- Conducts a Johne's disease control program.
- Conducts the National Scrapie Eradication program.
- Conduct investigations on suspected cases of foreign animal disease, T.B., Brucellosis, emerging diseases and other investigations.
- Responds to inhumane treatment complaints.
- Coordinates pet sheltering during disasters.
- Conducts tuberculosis, brucellosis and other disease investigations.
- Reviews testing information and granting status for tuberculosis-accredited herds, brucellosis-certified herds statuses and Brucella ovis-free flocks.
- Administers non-traditional livestock and farmed elk regulations.
- Issues permits to possess, propagate or domesticate live protected birds or animal species for North Dakota Game and Fish Department.
- Provides chronic wasting disease testing training and oversight.
- Oversees feral swine investigations.
- Works with ND Department of Health on zoonotic disease issues.
- Provides oversight on proper carcass disposal.

	2017-2019
Salaries	\$1,490,281
BOAH	\$865,718
Total	\$2,355,999
General	\$1,359,669
Federal	\$717,620
Special	\$278,710
Total	\$2,355,999
FTEs	7.5

- Inspects auction markets and approves veterinarians to provide market services.
- Monitors for novel swine enteric coronavirus diseases.
- Provides inspection services at the ND State Fair.
- Registers restricted feedlots.
- Licenses rendering facilities.
- Registers veterinary medicines used in the state.
- Licenses dealers of modified live vaccines.
- Conducts avian influenza testing through USDA Avian Health Co-op Agreement.
- Coordinates the National Poultry Improvement Plan in the state.
- Trains and coordinates a Reserve Veterinary Corps to assist in emergency situations.
- Participates in animal emergency preparedness and response on state, regional and national levels.
- Cooperates with other state and federal animal health officials regionally and nationally to guide national animal health policy.
- Monitors and reports diseases on state and national levels.
- Provides education and outreach for practicing veterinarians and the livestock industry.
- Maintains the state's animal traceability database.

1 SB 2009
1-14-2019
AG 10

Pesticide & Fertilizer Division

The Pesticide and Fertilizer Division oversees and regulates pesticides, fertilizers and anhydrous ammonia to protect human health and the environment.

Pesticides

- Conducts inspections of pesticide dealers, users and repackaging facilities to ensure compliance with state and federal laws.
- Provides outreach to inform the public of state and federal pesticide requirements.
- Prepares and submits emergency and special local needs exemption requests to ensure North Dakota producers have access to necessary pest management tools - i.e. Section 18 and 24(c) requests.
- Registers all pesticides—herbicides, fungicides, rodenticides, insecticides, avicides and disinfectants—sold in ND and approves product labeling.
- Conducts Project Safe Send; an annual, statewide collection of unusable pesticides.
- Works with EPA on national pesticide regulatory and policy issues.
- Conducts risk assessments, receives public input, and offers data and recommendations to EPA to mitigate risk of pesticides to threatened and endangered species as part of the ND Endangered Species Protection Plan.
- Investigates and responds to pesticide contamination of groundwater and surface water resources.
- Investigates complaints of pesticide misuse and other violations.
- Administers and enforces the federal Worker Protection Standard to protect workers who handle and use pesticides.

	2017-2019
Salaries	\$2,277,343
Operating	\$1,636,095
Harmonization Board	\$75,000
Total	\$3,988,438
General	\$0
Federal	\$862,091
Special	\$3,126,347
Total	\$3,988,438
FTEs	16

Fertilizer and Anhydrous Ammonia

- Licenses fertilizer distributors.
- Registers fertilizer products and approves product labeling.
- Samples fertilizer products to ensure claims match labels.
- Licenses anhydrous ammonia storage facilities.
- Conducts inspections of anhydrous ammonia storage facilities and nurse tanks to ensure compliance with federal regulations.
- Administers the Risk Management Program for agricultural anhydrous ammonia facilities and inspects facilities to ensure compliance with federal regulations.
- Provides outreach and compliance assistance to the fertilizer industry and anhydrous ammonia users.
- Audits fertilizer distributors to ensure compliance with fertilizer tonnage reporting.
- Conducts the State Waterbank program.

/ SB 2009
1-14-2019
B II

Optional Requests

#1 Wildlife Services	\$49,400
#2 Restore funding for Grape and Wine Grants	\$3,900
#3 Restore funding for Apiary Grants	\$2,100
#4 IT Master customer database	\$110,000
#5 Capital Assets for plotter	<u>\$2,000</u>
Total General Funds requested	\$167,400

Consideration of Transfer of Programs

Agriculture Products Utilization Council	\$3,152,915
North Dakota Trade Office	\$2,000,000

Consideration for the Committee

Employee Compensation Request	\$563,965
• 4% Merit Increase July 1, 2019	
• 4% Merit Increase July 1, 2020	

#1 SB 2009
1-14-2019
pg 12

Base Level Budget Summary

17-19 Biennium (Adjusted)

Sources:

General Funds	\$ 9,109,101
Federal Funds	\$ 12,089,336
Special Funds	<u>\$ 8,998,340</u>
TOTAL	\$ 30,196,777
FTEs	73

The work of the North Dakota Department of Agriculture is vital to our state's most important industry. This budget presentation was designed to provide transparency and assist the members of the Senate Appropriations Committee determine spending priorities for the 2019-2021 biennium.

My staff and I welcome the interest and questions of the Legislature and all North Dakota citizens regarding the work of the North Dakota Department of Agriculture.



Doug Goehring

Agriculture Commissioner

Agriculture Commissioner - Budget No. 602
Senate Bill No. 2009
Base Level Funding Changes

#1 SB 2009 subcom
 2-4-2019
 Ag1

	Executive Budget Recommendation				Senate Version				Senate Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	73.00	\$9,109,101	\$21,087,676	\$30,196,777	73.00	\$9,109,101	\$21,087,676	\$30,196,777	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes		(\$219,766)	(\$163,633)	(\$383,399)				\$0		\$219,766	\$163,633	\$383,399
Salary increase		260,886	229,983	490,869		181,412	149,693	331,105		(79,474)	(80,290)	(159,764)
Health insurance increase		146,552	117,979	264,531		160,411	151,934	312,345		13,859	33,955	47,814
Retirement contribution increase		34,207	27,538	61,745				0		(34,207)	(27,538)	(61,745)
Remove 2 FTE positions	(2.00)	(247,034)	(68,845)	(315,879)				0	2.00	247,034	68,845	315,879
Add funding for Microsoft Office 365 license expenses		1,849	377	2,226				0		(1,849)	(377)	(2,226)
Reduce funding for operating expenses		(144,699)	(145,237)	(289,936)				0		144,699	145,237	289,936
Remove funding for the state waterbank program			(389,817)	(389,817)				0			389,817	389,817
Adjust funding for capital assets		2,000		2,000				0		(2,000)		(2,000)
Reduce funding for other grants		(84,000)	(20,000)	(104,000)				0		84,000	20,000	104,000
Reduce funding for Board of Animal Health operating expenses		(10,000)	(100,000)	(110,000)				0		10,000	100,000	110,000
Add funding for wildlife services operating fees		9,400		9,400				0		(9,400)		(9,400)
Total ongoing funding changes	(2.00)	(\$250,605)	(\$511,655)	(\$762,260)	0.00	\$341,823	\$301,627	\$643,450	2.00	\$592,428	\$813,282	\$1,405,710
One-time funding items												
Add funding for a master customer database		\$110,000		\$110,000				\$0		(\$110,000)		(\$110,000)
Total one-time funding changes	0.00	\$110,000	\$0	\$110,000	0.00	\$0	\$0	\$0	0.00	(\$110,000)	\$0	(\$110,000)
Total Changes to Base Level Funding	(2.00)	(\$140,605)	(\$511,655)	(\$652,260)	0.00	\$341,823	\$301,627	\$643,450	2.00	\$482,428	\$813,282	\$1,295,710
2019-21 Total Funding	71.00	\$8,968,496	\$20,576,021	\$29,544,517	73.00	\$9,450,924	\$21,389,303	\$30,840,227	2.00	\$482,428	\$813,282	\$1,295,710

Other Sections for Agriculture Commissioner - Budget No. 602

	Executive Budget Recommendation	Senate Version
Environment and rangeland protection fund transfer	Section 3 would require the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.	
Environment and rangeland protection fund	Section 4 would identify \$6,357,407 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.	
Game and Fish Department operating fund	Section 5 would identify \$615,480 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.	

1 SB 2009
2-4-2019
Pg 2

Other Sections for Agriculture Commissioner - Budget No. 602

Executive Budget Recommendation

Senate Version

State Water Commission transfer

Section 6 would transfer \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.

Pipeline restoration and reclamation

Section 7 would identify \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program

Agriculture Commissioner salary

Section 8 would provide the statutory changes necessary to increase the Agriculture Commissioner's salary. The Agriculture Commissioner's annual salary would increase from the current level of \$108,656 to \$113,002 effective July 1, 2019, and to \$115,262 effective July 1, 2020, to reflect the 4 percent and 2 percent recommended salary increase.

#1 SB 2009 sub
2-13-2019
pg 1

Agriculture Commissioner - Budget No. 602
Senate Bill No. 2009
Base Level Funding Changes

	Executive Budget Recommendation				Senate Version				Senate Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	73.00	\$9,109,101	\$21,087,676	\$30,196,777	73.00	\$9,109,101	\$21,087,676	\$30,196,777	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes		(\$219,766)	(\$163,633)	(\$383,399)				\$0		\$219,766	\$163,633	\$383,399
Salary increase		260,886	229,983	490,869		181,412	149,693	331,105		(79,474)	(80,290)	(159,764)
Health insurance increase		146,552	117,979	264,531		160,411	151,934	312,345		13,859	33,955	47,814
Retirement contribution increase		34,207	27,538	61,745				0		(34,207)	(27,538)	(61,745)
Remove 2 FTE positions	(2.00)	(247,034)	(68,845)	(315,879)				0	2.00	247,034	68,845	315,879
Add funding for Microsoft Office 365 license expenses		1,849	377	2,226				0		(1,849)	(377)	(2,226)
Reduce funding for operating expenses		(144,699)	(145,237)	(289,936)				0		144,699	145,237	289,936
Remove funding for the state waterbank program			(389,817)	(389,817)				0			389,817	389,817
Adjust funding for capital assets		2,000		2,000				0		(2,000)		(2,000)
Reduce funding for other grants		(84,000)	(20,000)	(104,000)				0		84,000	20,000	104,000
Reduce funding for Board of Animal Health operating expenses		(10,000)	(100,000)	(110,000)				0		10,000	100,000	110,000
Add funding for wildlife services operating fees		9,400		9,400				0		(9,400)		(9,400)
Total ongoing funding changes	(2.00)	(\$250,605)	(\$511,655)	(\$762,260)	0.00	\$341,823	\$301,627	\$643,450	2.00	\$592,428	\$813,282	\$1,405,710
One-time funding items												
Add funding for a master customer database		\$110,000		\$110,000				\$0		(\$110,000)		(\$110,000)
Total one-time funding changes	0.00	\$110,000	\$0	\$110,000	0.00	\$0	\$0	\$0	0.00	(\$110,000)	\$0	(\$110,000)
Total Changes to Base Level Funding	(2.00)	(\$140,605)	(\$511,655)	(\$652,260)	0.00	\$341,823	\$301,627	\$643,450	2.00	\$482,428	\$813,282	\$1,295,710
2019-21 Total Funding	71.00	\$8,968,496	\$20,576,021	\$29,544,517	73.00	\$9,450,924	\$21,389,303	\$30,840,227	2.00	\$482,428	\$813,282	\$1,295,710

Other Sections for Agriculture Commissioner - Budget No. 602

	Executive Budget Recommendation	Senate Version
Environment and rangeland protection fund transfer	Section 3 would require the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.	
Environment and rangeland protection fund	Section 4 would identify \$6,357,407 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.	
Game and Fish Department operating fund	Section 5 would identify \$615,480 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.	

| SB 2009 Sub
2-13-2019

PSI

Other Sections for Agriculture Commissioner - Budget No. 602

Executive Budget Recommendation

Senate Version

State Water Commission transfer

Section 6 would transfer \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.

Pipeline restoration and reclamation

Section 7 would identify \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program

Agriculture Commissioner salary

Section 8 would provide the statutory changes necessary to increase the Agriculture Commissioner's salary. The Agriculture Commissioner's annual salary would increase from the current level of \$108,656 to \$113,002 effective July 1, 2019, and to \$115,262 effective July 1, 2020, to reflect the 4 percent and 2 percent recommended salary increase.

Agriculture Commissioner - Budget No. 602
Senate Bill No. 2009
Base Level Funding Changes

#1
 SB 2009
 2-15-2019
 pg 1

	Executive Budget Recommendation				Senate Version				Senate Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	73.00	\$9,109,101	\$21,087,676	\$30,196,777	73.00	\$9,109,101	\$21,087,676	\$30,196,777	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes		(\$219,766)	(\$163,633)	(\$383,399)				\$0		\$219,766	\$163,633	\$383,399
Salary increase		260,886	229,983	490,869		192,238	163,246	355,484		(68,648)	(66,737)	(135,385)
Health insurance increase		146,552	117,979	264,531		171,434	158,759	330,193		24,882	40,780	65,662
Retirement contribution increase		34,207	27,538	61,745				0		(34,207)	(27,538)	(61,745)
Removes 2 FTE positions	(2.00)	(247,034)	(68,845)	(315,879)				0	2.00	247,034	68,845	315,879
Adds funding for Microsoft Office 365 license expenses		1,849	377	2,226		1,849	377	2,226				0
Reduces funding for operating expenses		(144,699)	(145,237)	(289,936)				0		144,699	145,237	289,936
Removes funding for the state waterbank program			(389,817)	(389,817)				0			389,817	389,817
Adjusts funding for capital assets		2,000		2,000		2,000		2,000				0
Reduces funding for grants		(84,000)	(20,000)	(104,000)				0		84,000	20,000	104,000
Reduces funding for Board of Animal Health operating expenses		(10,000)	(100,000)	(110,000)				0		10,000	100,000	110,000
Adds funding for wildlife services operating fees		9,400		9,400		49,400		49,400		40,000		40,000
Adds funding for grape and wine grants and apiary grants				0		6,000		6,000		6,000		6,000
Adds funding for an Agriculture Commissioner salary equity increase				0		14,713		14,713		14,713		14,713
Adds funding for meat inspection operating expenses				0		81,002	(59,784)	21,218		81,002	(59,784)	21,218
Transfers the Agricultural Products Utilization Commission				0	2.00		3,152,915	3,152,915	2.00		3,152,915	3,152,915
Total ongoing funding changes	(2.00)	(\$250,605)	(\$511,655)	(\$762,260)	2.00	\$518,636	\$3,415,513	\$3,934,149	4.00	\$769,241	\$3,927,168	\$4,696,409
One-time funding items												
Adds funding for a master customer database		\$110,000		\$110,000		\$110,000		\$110,000		\$0		\$0
Total one-time funding changes	0.00	\$110,000	\$0	\$110,000	0.00	\$110,000	\$0	\$110,000	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(2.00)	(\$140,605)	(\$511,655)	(\$652,260)	2.00	\$628,636	\$3,415,513	\$4,044,149	4.00	\$769,241	\$3,927,168	\$4,696,409
2019-21 Total Funding	71.00	\$8,968,496	\$20,576,021	\$29,544,517	75.00	\$9,737,737	\$24,503,189	\$34,240,926	4.00	\$769,241	\$3,927,168	\$4,696,409

Other Sections for Agriculture Commissioner - Budget No. 602

	Executive Budget Recommendation	Senate Version
Environment and rangeland protection fund transfer	Section 3 would require the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.	Section 3 requires the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.
Environment and rangeland protection fund	Section 4 would identify \$6,357,407 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.	Section 4 identifies \$6,663,678 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.
Game and Fish Department operating fund	Section 5 would identify \$615,480 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.	Section 5 would identifies \$614,430 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.

#1 SB 2009
2-15-2019
PJ2

Other Sections for Agriculture Commissioner - Budget No. 602

Executive Budget Recommendation

Senate Version

State Water Commission transfer

Section 6 would transfer \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.

Section 6 transfers \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.

Waterbank program - Matching funds

Section 7 identifies \$50,000 in the salary and wages line item in Section 1 is from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.

Pipeline restoration and reclamation

Section 7 would identify \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program

Section 8 identifies \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program.

Agriculture Commissioner salary

Section 8 would provide the statutory changes necessary to increase the Agriculture Commissioner's salary. The Agriculture Commissioner's annual salary would increase from the current level of \$108,656 to \$113,002 effective July 1, 2019, and to \$115,262 effective July 1, 2020, to reflect the 4 percent and 2 percent recommended salary increase.

Section 9 provides the statutory changes necessary to provide an increase to the Agriculture Commissioner's salary from the current level of \$108,656 to \$117,087 effective July 1, 2019, and to \$120,600 effective July 1, 2020, to provide an equity increase for the Agriculture Commissioner and to reflect the 2 percent and 3 percent salary increase proposed by the Senate.

Agriculture Products Utilization Commission transfer

Section 10 provides the statutory changes necessary to transfer the Agriculture Products Utilization Commission from the Department of Commerce to the Agriculture Commissioner.

Agriculture Products Utilization Commission repeal

Section 11 repeals Chapter 54-60.3 of the North Dakota Century Code, which establishes the Agriculture Products Utilization Commission as an office of the Department of Commerce Division of Economic Development and Finance.

2 SB 2009 2/15/19 pg 1

ND Official State Establishments

TYPE *SELECTED PROCESSING*

COMPANY	FIRST NAME	LAST NAME	ADDRESS	CITY	ST	ZIP	PHONE	Est. No.
HICKORY HUT	KEITH/LINDA	ALBRECHT	1205 9TH STREET	LANGDON	ND	58249	256-2116	104
L & M MEAT AND SAUSAGE CORP	VERA	NOVAK	2801 S WASHINGTON ST	GRAND FORKS	ND	58201	775-2009	204
M & L CONCESSIONS	LORI	YEAGER	816 COUNTY RD 19	BEULAH	ND	58523	873-4538	215

TYPE *STATE PROCESSING*

COMPANY	FIRST NAME	LAST NAME	ADDRESS	CITY	ST	ZIP	PHONE	Est. No.
JONNY B'S LLC	JONATHAN	BEYER	8151 36TH ST SE	JAMESTOWN	ND	58401	952-2115	218
KEVIN'S PLACE	KEVIN	SASSE	908 CTY RD 19	BEULAH	ND	58523	701-873-2446	216
POWER PLATE MEALS	SETH	HOUKOM	1718 4TH AVE NW	WEST FARGO	ND	58078	361-8584	217
REISTER MEATS & CATERING	CLYDE/PENNY	REISTER	4640 52ND AVE SE	STREETER	ND	58483	424-3426	112
WURST SHOP	KEN AND KRIS	MOLITOR	205 14TH ST WEST	DICKINSON	ND	58601	483-6384	202

TYPE *STATE SLAUGHTER*

COMPANY	FIRST NAME	LAST NAME	ADDRESS	CITY	ST	ZIP	PHONE	Est. No.
BARTON MEATS INC.	JEFF	BARTON	1020 N 11TH ST	CARRINGTON	ND	58421	652-3636	102
BOWDON MEAT PROCESSING	CORY	HART	PO BOX 60	BOWDON	ND	58418	962-3539	108
BUTCHER BLOCK	RON	MAHONEY	421 S 3RD ST	OAKES	ND	58474	742-2713	106
MAPLE VALLEY LOCKERS INC.	KEVIN	HARTL	218 4TH AVE	ENDERLIN	ND	58027	437-3311	111
MYERS MEATS & SPECIALTIES, INC.	CALVIN	MYERS	1 CESSNA DR	GARRISON	ND	58540	337-5498	105
SCHWEITZER'S GOURMET MEATS	TRAVIS	SCHWEITZER	23881 MOFFIT RD	MOFFIT	ND	58560	387-4588	103
WEST RIVER BUFFALO SUPPLIERS	COLTON	JONES	1575 VALLEY DR	RAPID CITY	SD	57703	605-415-5576	107

State Slaughter - these establishments slaughter livestock and may process meat products under regulated inspection. Products contain the state mark of inspection and are eligible to be wholesaled within North Dakota.

State Processing - these establishments process only under regulated inspection. Products contain the state mark of inspection and are eligible to be wholesaled within North Dakota. These plants may slaughter under a custom exemption but do not do so under regulated inspection so carcasses are not eligible to be sold.

Selected Establishment - these establishments operate as a federally-inspected facility under the Cooperative Interstate Shipment Program. Establishments may wholesale and ship their product in interstate commerce and internationally.

/ 58 2009
2-18-2019
A91

PROPOSED AMENDMENTS TO SENATE BILL NO. 2009

Page 1, line 2, remove "and"

Page 1, line 2, after "transfers" insert "; to create and enact a new chapter to title 4.1 of the North Dakota Century Code, relating to the agricultural products utilization commission; to amend and reenact section 4.1-01-02 of the North Dakota Century Code, relating to the salary of the agriculture commissioner; and to repeal chapter 54-60.3 of the North Dakota Century Code, relating to the agricultural products utilization commission"

Page 1, replace lines 10 through 24 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$12,372,949	\$676,514	\$13,049,463
Operating expenses	6,444,336	133,444	6,577,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
Board of animal health	865,718	0	865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop harmonization board	75,000	0	75,000
Pipeline restoration and reclamation oversight program	200,000	0	200,000
Agricultural products utilization commission	0	3,176,791	3,176,791
Total all funds	\$30,196,777	\$4,044,149	\$34,240,926
Less estimated income	21,087,676	3,415,513	24,503,189
Total general fund	\$9,109,101	628,636	\$9,737,737
Full-time equivalent positions	73.00	2.00	75.00"

Page 2, line 1, after "FUNDING" insert "- EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY"

Page 2, line 2, after "biennium" insert "and the one-time funding items included in the appropriation in section 1 of this Act"

Page 2, replace lines 6 through 8 with:

"Master customer database	0	110,000
Total all funds	\$1,120,000	\$110,000
Less estimated income	1,120,000	0
Total general fund	\$0	\$110,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The agriculture commissioner shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, line 14, replace "\$6,446,503" with "\$6,663,678"

Page 3, after line 2, insert:

"SECTION 9. AMENDMENT. Section 4.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

#1 5B 2009
2-18-2019
Ag 2

4.1-01-02. Salary of agriculture commissioner.

The annual salary of the agriculture commissioner is one hundred ~~five~~seventeen thousand four hundred ~~ninety one~~eighty-seven dollars through June 30, ~~2016~~2020, and one hundred ~~eight~~twenty thousand six hundred ~~fifty six dollars after that date.~~

SECTION 10. A new chapter to title 4.1 of the North Dakota Century Code is created and enacted as follows:

Agricultural products utilization commission - Composition - Appointment

The agricultural products utilization commission shall administer the agricultural products utilization fund. The commission shall consist of nine members, five of whom must be appointed by the governor for terms of two years each, arranged so that two terms expire in odd-numbered years and three terms expire in even-numbered years. Three members appointed by the governor must be actively engaged in farming in this state and two members appointed by the governor must be actively engaged in business in this state. The agriculture commissioner shall appoint one member for a term of two years which expires in odd-numbered years. The member appointed by the commissioner must be actively engaged in farming in this state. Commission members may be reappointed. Terms of commissioners commence on the first day of July. The commissioner of commerce, the president of North Dakota state university, and the agriculture commissioner, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

Agricultural products utilization commission - Authority.

1. The North Dakota agricultural products utilization commission may apply for, accept, and expend any appropriation, grant, gift, or service made available from public or private sources.
2. The commission may administer grant programs including:
 - a. A basic and applied research grant program;
 - b. A utilization and marketing grant program;
 - c. A cooperative marketing grant program;
 - d. A nature-based tourism grant program;
 - e. A technical assistance grant program for value-added businesses;
 - f. A farm diversification grant program;
 - g. An agricultural prototype development grant program;
 - h. An agricultural technologies grant program; and
 - i. A North American marketing grant program.
3. As a condition of any grant administered by the commission, the commission may require the recipient repay some or all of the grant if the recipient does not fulfill the conditions of the grant. Repayment may be monetary or any other type or method determined by the commission.

#1 SB 2009
2-18-2019
Pg 3

Agricultural products utilization commission - Meetings - Personnel - Reports.

The agricultural products utilization commission, an office of the agriculture commissioner, shall meet as necessary and shall report to each session of the legislative assembly. The commission may secure office space, employ required personnel for the performance of its duties, hire consultants, spend any funds appropriated to the commission, and contract with public entities or private parties for services.

Agricultural products utilization commission - Reimbursement - Compensation.

Members of the agricultural products utilization commission are entitled to be reimbursed for expenses incurred in the performance of their duties, in the same manner as other state officials are reimbursed, according to sections 44-08-04 and 54-06-09. If not otherwise employed by the state of North Dakota, members of the commission are entitled to receive per diem compensation of one hundred thirty-five dollars for each day of attending meetings and performing other duties relating to official business of the commission. The commission chairman, if not otherwise employed by the state of North Dakota, may receive an additional one hundred dollars for each day of a regular meeting attended as payment for reviewing and evaluating grant proposals.

Agricultural products utilization commission - Administrative expenses.

Administrative expenses of the agricultural products utilization commission, including expenses of members of the commission, employment of required personnel, hiring of consultants, and contracting with public or private entities for services may not exceed ten percent of the funds appropriated to the commission by the legislative assembly each biennium, excluding federal funds.

Agricultural products utilization fund - Purposes.

The agricultural products utilization fund in the state treasury must be used to fund programs for agricultural research, development, processing, technology, and marketing. The fund must be used to defray the expenses of the North Dakota agricultural products utilization commission. Interest earned on moneys in the fund must be credited to the fund.

SECTION 11. REPEAL. Chapter 54-60.3 of the North Dakota Century Code is repealed."

Re-number accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2009 - Department of Agriculture - Senate Action

	Base Budget	Senate Changes	Senate Version
Salaries and wages	\$12,372,949	\$676,514	\$13,049,463
Operating expenses	6,444,336	133,444	6,577,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
State Board of Animal Health	865,718		865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop Harmonization Board	75,000		75,000

1 SB 2009
2-18-2019
A4

Pipeline restoration and reclamation	200,000		200,000
Ag. Products Utilization Commission		3,176,791	3,176,791
Total all funds	\$30,196,777	\$4,044,149	\$34,240,926
Less estimated income	21,087,676	3,415,513	24,503,189
General fund	\$9,109,101	\$628,636	\$9,737,737
FTE	73.00	2.00	75.00

Department 602 - Department of Agriculture - Detail of Senate Changes

	Adds Funding for Salary and Benefit Increases ¹	Adjusts Base Level Funding ²	Adds funding for an Agriculture Commissioner Salary Equity Increase ³	Adjusts Funding for the Meat Inspection Program ⁴	Transfers the Agricultural Products Utilization Commission ⁵	Adds One-Time Funding for a Master Customer Database ⁶
Salaries and wages	\$661,801		\$14,713			
Operating expenses		\$2,226		\$21,218		\$110,000
Capital assets		2,000				
Grants		6,000				
State Board of Animal Health						
Wildlife services		49,400				
Crop Harmonization Board						
Pipeline restoration and reclamation						
Ag. Products Utilization Commission	23,876				\$3,152,915	
Total all funds	\$685,677	\$59,626	\$14,713	\$21,218	\$3,152,915	\$110,000
Less estimated income	322,005	377	0	(59,784)	3,152,915	0
General fund	\$363,672	\$59,249	\$14,713	\$81,002	\$0	\$110,000
FTE	0.00	0.00	0.00	0.00	2.00	0.00

Total Senate Changes	
Salaries and wages	\$676,514
Operating expenses	133,444
Capital assets	2,000
Grants	6,000
State Board of Animal Health	
Wildlife services	49,400
Crop Harmonization Board	
Pipeline restoration and reclamation	
Ag. Products Utilization Commission	3,176,791
Total all funds	\$4,044,149
Less estimated income	3,415,513
General fund	\$628,636
FTE	2.00

¹ The following funding is added for 2019-21 biennium salary adjustments of 2 percent on July 1, 2019, and 3 percent on July 1, 2020, and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	General Fund	Other Funds	Total
Salary increase	\$192,238	\$163,246	\$355,484
Health insurance increase	171,434	158,759	330,193
Total	\$363,672	\$322,005	\$685,677

² Base level funding is adjusted as follows:

1 SB 2009
2-18-2019 pg 5

	<u>General Fund</u>	<u>Other Funds</u>	<u>Total</u>
Adds funding for Microsoft Office 365 license expenses	\$1,849	\$377	\$2,226
Adjusts funding for capital assets	2,000	0	2,000
Adds funding for wildlife services operating fees	49,400	0	49,400
Adds funding for grape and wine grants and apiary grants	<u>6,000</u>	<u>0</u>	<u>6,000</u>
Total	\$59,249	\$377	\$59,626

³ Funding of \$14,713 is added to increase the Agriculture Commissioner's salary to align the Agriculture Commissioner's salary with the Tax Commissioner's salary. Of the total, \$6,135 is added for each fiscal year of the biennium for salaries and \$2,443 is added for fringe benefits. The additional \$6,135 per year increases the Agriculture Commissioner's salary from the current level of \$108,656 to \$114,791, the same amount as the Tax Commissioner. After adjusting for the 2 percent and 3 percent salary increases proposed by the Senate, the Agriculture Commissioner's salary for fiscal years 2020 and 2021 will be \$117,087 and \$120,600, respectively.

⁴ Funding of \$21,218, of which \$11,033 is from the general fund and \$10,185 is from federal funds, is added for operating expenses for the meat inspection program. The funding for 1 FTE meat inspector program director position is adjusted to increase funding from the general fund by \$69,969 and to reduce other funds by \$69,969.

⁵ The Agricultural Products Utilization Commission (APUC) and related funding of \$3,152,915 from the APUC fund, including 2 FTE positions, is transferred from the Department of Commerce to the Agriculture Commissioner. Of this amount, \$434,342 is for salaries and wages, \$67,857 is for operating expenses, and \$2,650,716 is for grants.

⁶ One-time funding of \$110,000 is added from the general fund for a master customer database project.

This amendment also adds sections to:

- Provide statutory changes necessary to increase the Agriculture Commissioner's salary.
- Provide statutory changes necessary to transfer the APUC from the Department of Commerce to the Agriculture Commissioner.
- Repeal North Dakota Century Code Chapter 54-60.3, which establishes the APUC as an office of the Department of Commerce Division of Economic Development and Finance.

**Department 602 - Agriculture Commissioner
Senate Bill No. 2009**

Executive Budget Comparison to Prior Biennium Appropriations

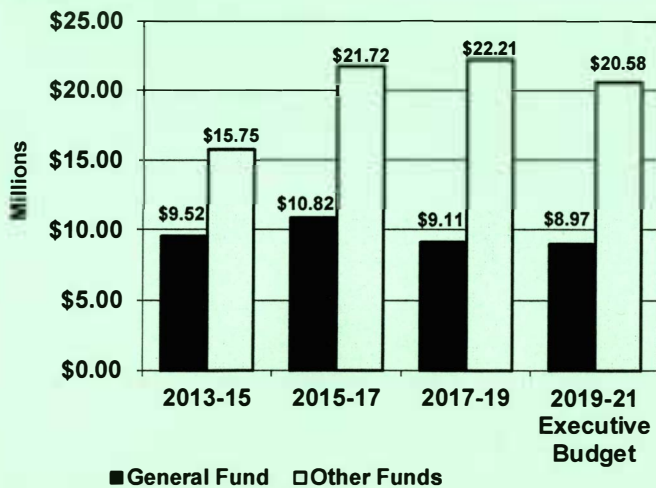
	FTE Positions	General Fund	Other Funds	Total
2019-21 Executive Budget	71.00	\$8,968,496	\$20,576,021	\$29,544,517
2017-19 Legislative Appropriations ¹	73.00	9,109,101	22,207,676	31,316,777
Increase (Decrease)	(2.00)	(\$140,605)	(\$1,631,655)	(\$1,772,260)

¹The 2017-19 biennium agency appropriation amounts have not been adjusted for additional special funds authority of \$1.5 million resulting from Emergency Commission action during the 2017-19 biennium.

Ongoing and One-Time General Fund Appropriations

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2019-21 Executive Budget	\$8,858,496	\$110,000	\$8,968,496
2017-19 Legislative Appropriations	9,109,101	0	9,109,101
Increase (Decrease)	(\$250,605)	\$110,000	(\$140,605)

Agency Funding



FTE Positions



Executive Budget Comparison to Base Level

	General Fund	Other Funds	Total
2019-21 Executive Budget	\$8,968,496	\$20,576,021	\$29,544,517
2019-21 Base Level	9,109,101	21,087,676	30,196,777
Increase (Decrease)	(\$140,605)	(\$511,655)	(\$652,260)

First House Action

Attached is a comparison worksheet detailing first house changes to base level funding and the executive budget.

**Executive Budget Highlights
(With First House Changes in Bold)**

- | | General Fund | Other Funds | Total |
|---|--------------|-------------|-----------|
| 1. Provides funding for state employee salary and benefit increases, of which \$490,869 is for salary increases, \$264,531 is for health insurance increases, and \$61,745 is for retirement contribution increases. The Senate added funding for salary adjustments of 2 percent for the 1st year of the biennium and 3 percent for the 2nd year and increases in health insurance premiums from \$1,241 to \$1,427 per month. The Senate did not add funding for retirement contribution increases. The Senate also added funding for a salary equity increase for the Agriculture Commissioner. | \$441,645 | \$375,500 | \$817,145 |

2. Removes 1 FTE agriculture division director position and 1 FTE data processing coordinator II position. The Senate did not remove these positions.	(\$247,034)	(\$68,845)	(\$315,879)
3. Adds funding for Microsoft Office 365 license expenses	\$1,849	\$377	\$2,226
4. Reduces funding for operating expenses, primarily related to travel and professional fees and services. The Senate did not reduce funding for operating expenses.	(\$144,699)	(\$265,054)	(\$409,753)
5. Removes funding for the state waterbank program, including \$89,817 of operating expenses and \$300,000 of grants. The Senate did not remove funding for the state waterbank program.	\$0	(\$389,817)	(\$389,817)
6. Reduces funding for other grants, including apiary research grants (\$42,900), noxious weeds grants (\$20,000), and wine research and promotion grants (\$41,100). The Senate added funding of \$2,100 for apiary research grants and \$3,900 for wine research and promotion grants.	(\$84,000)	(\$20,000)	(\$104,000)
7. Reduces funding for Board of Animal Health operating expenses, primarily related to miscellaneous supplies, to provide total funding of \$755,718, of which \$268,565 is from the general fund. The Senate did not reduce funding for the Board of Animal Health.	(\$10,000)	(\$100,000)	(\$110,000)
8. Adds one-time funding for a master customer database	\$110,000	\$0	\$110,000

Other Sections in Senate Bill No. 2009

Environment and rangeland protection fund transfer - Section 3 requires the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.

Environment and rangeland protection fund - Section 4 identifies \$6,663,678 in the estimated income line item in Section 1 is from the environment and rangeland protection fund.

Game and Fish Department operating fund - Section 5 identifies \$614,430 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.

State Water Commission transfer - Section 6 transfers \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.

Waterbank program - Matching funds - Section 7 identifies \$50,000 in the salary and wages line item in Section 1 as from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.

Pipeline restoration and reclamation - Section 8 identifies \$200,000 in the estimated income line item in Section 1 as from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program.

Agriculture Commissioner salary - Section 9 provides the statutory changes necessary to increase the Agriculture Commissioner's salary from the current level of \$108,656 to \$117,087 effective July 1, 2019, and to \$120,600 effective July 1, 2020, to provide a salary equity increase for the Agriculture Commissioner and to reflect the 2 percent and 3 percent salary increase proposed by the Senate.

Agricultural Products Utilization Commission transfer - Section 10 creates a new chapter to Title 4.1 of the North Dakota Century Code to transfer the Agricultural Products Utilization Commission from the Department of Commerce to the Agriculture Commissioner.

Agricultural Products Utilization Commission repeal - Section 11 repeals Chapter 54-60.3 of the North Dakota Century Code, which established the Agricultural Products Utilization Commission as an office of the Department of Commerce Division of Economic Development and Finance.

Continuing Appropriations

Federal environmental law impact review fund - North Dakota Century Code Section 4.1-01-21 - All funds in the federal environmental law impact review fund are appropriated to the Agriculture Commissioner on a continuing basis.

Honey promotion fund - Chapter 4.1-08 - Commodity checkoff for market development of honey.

Turkey fund - Chapter 4.1-12 - Commodity checkoff for market development of turkeys and turkey products.

Industrial hemp - Section 4.1-18-02 - Provides for the Agriculture Commissioner to assess a fee of \$150 plus \$25 per acre to each applicant requesting to grow or process industrial hemp. Fees collected for this purpose are deposited in the Agriculture Commissioner's operating fund and appropriated to the Department of Agriculture on a continuing basis. House Bill No. 1349 (2019) would repeal this section and create a new section allowing the Agriculture Commission to increase the fee to \$350 for each producer and processor applying for a license to grow or process hemp.

Minor use pesticides fund - Section 4.1-39-08 - For studies, investigations, and evaluations regarding registration and use of pesticides.

Equine processing fund - Section 36-21-19 - Provides for the Agriculture Commissioner to assess a fee of \$5 for equine processing facility assessments. The first \$50,000 of fees collected is deposited in the general fund and any additional amounts are deposited in the equine processing fund. All funds in the equine processing fund are appropriated to the Agriculture Commissioner on a continuing basis.

State waterbank fund - Section 61-31-10 - Authorizes the Agriculture Commissioner to receive funds from any private or public source including from state agencies for the state waterbank program. The state waterbank fund and interest earned are appropriated to the Agriculture Commissioner on a continuing basis.

Significant Audit Findings

The operational audit for the Department of Agriculture conducted by the State Auditor's office for the period ending June 30, 2017, identified no significant audit findings.

Major Related Legislation

House Bill No. 1134 - Amends chapter 4.1-41 relating to commercial feed and allows the Agriculture Commissioner to adopt rules to implement the commercial feed requirements in the chapter.

House Bill No. 1349 - This bill allows the Agriculture Commissioner to assess a fee of \$350 to each producer and processor applying for a license to grow or process hemp. The revenue collected from license fees is to be deposited in the Agriculture Commissioner's operating fund and is appropriated to the Agriculture Commissioner on a continuing basis. The bill would repeal Chapter 4.1-18 related to industrial hemp.

House Bill No. 1383 - This bill provides an appropriation of \$5 million from the environmental impact mitigation fund to the Agriculture Commissioner for the purpose of providing grants to political subdivisions for the mitigation of environmental impacts. The bill establishes an environmental impact mitigation fund and allows applicants to make payments to the Agriculture Commissioner for mitigation of environmental impacts. Funds received by the Agriculture Commissioner for this purpose must be deposited in the environmental impact mitigation fund, which the Agriculture Commissioner may distribute, as appropriated by the Legislative Assembly, to political subdivisions and landowners of agricultural land to offset impacts of energy development to agricultural land.

House Bill No. 1467 - Transfers statutory authority for grain, grain buyers, warehousing, deposits, and warehousemen from the Public Service Commission to the Agriculture Commissioner.

Senate Bill No. 2152 - Requires the Agriculture Commissioner to charge a one-time fee of \$100 for a retail anhydrous ammonia storage facility or a mobile storage container license.

Senate Bill No. 2224 - Establishes a bioscience innovation grant program, provides a continuing appropriation to the Agriculture Commissioner for the program, and requires the Office of Management and Budget to transfer \$1 million from the general fund to the bioscience innovation grant fund.

Senate Bill No. 2328 - Transfers the Agricultural Products Utilization Commission from the Department of Commerce to the Agriculture Commissioner.

Agriculture Commissioner - Budget No. 602
Senate Bill No. 2009
Base Level Funding Changes

	Executive Budget Recommendation				Senate Version			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total
2019-21 Biennium Base Level	73.00	\$9,109,101	\$21,087,676	\$30,196,777	73.00	\$9,109,101	\$21,087,676	\$30,196,777
2019-21 Ongoing Funding Changes								
Base payroll changes		(\$219,766)	(\$163,633)	(\$383,399)				\$0
Salary increase		260,886	229,983	490,869		\$192,238	\$163,246	355,484
Health insurance increase		146,552	117,979	264,531		171,434	158,759	330,193
Retirement contribution increase		34,207	27,538	61,745				0
Removes 2 FTE positions	(2.00)	(247,034)	(68,845)	(315,879)				0
Adds funding for Microsoft Office 365 license expenses		1,849	377	2,226		1,849	377	2,226
Reduces funding for operating expenses		(144,699)	(145,237)	(289,936)				0
Removes funding for the state waterbank program			(389,817)	(389,817)				0
Adjusts funding for capital assets		2,000		2,000		2,000		2,000
Reduces funding for grants		(84,000)	(20,000)	(104,000)				0
Reduces funding for Board of Animal Health operating expenses		(10,000)	(100,000)	(110,000)				0
Adds funding for wildlife services operating fees		9,400		9,400		49,400		49,400
Adds funding for wine research grants and apiary grants				0		6,000		6,000
Adds funding for an Agriculture Commissioner salary equity increase				0		14,713		14,713
Adds funding for meat inspection operating expenses				0		81,002	(59,784)	21,218
Transfers the Agricultural Products Utilization Commission				0	2.00		3,152,915	3,152,915
Total ongoing funding changes	(2.00)	(\$250,605)	(\$511,655)	(\$762,260)	2.00	\$518,636	\$3,415,513	\$3,934,149
One-time funding items								
Adds funding for a master customer database		\$110,000		\$110,000		\$110,000		\$110,000
Total one-time funding changes	0.00	\$110,000	\$0	\$110,000	0.00	\$110,000	\$0	\$110,000
Total Changes to Base Level Funding	(2.00)	(\$140,605)	(\$511,655)	(\$652,260)	2.00	\$628,636	\$3,415,513	\$4,044,149
2019-21 Total Funding	71.00	\$8,968,496	\$20,576,021	\$29,544,517	75.00	\$9,737,737	\$24,503,189	\$34,240,926

Other Sections for Agriculture Commissioner - Budget No. 602

	Executive Budget Recommendation	Senate Version
Environment and rangeland protection fund transfer	Section 3 would require the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.	Section 3 requires the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.
Environment and rangeland protection fund	Section 4 would identify \$6,357,407 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.	Section 4 identifies \$6,663,678 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.

Other Sections for Agriculture Commissioner - Budget No. 602

Executive Budget Recommendation

Game and Fish Department operating fund

Section 5 would identify \$615,480 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.

State Water Commission transfer

Section 6 would transfer \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.

Waterbank program - Matching funds

Senate Version

Section 5 identifies \$614,430 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.

Pipeline restoration and reclamation

Section 7 would identify \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program

Section 6 transfers \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.

Section 7 identifies \$50,000 in the salary and wages line item in Section 1 is from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.

Agriculture Commissioner salary

Section 8 would provide the statutory changes necessary to increase the Agriculture Commissioner's salary. The Agriculture Commissioner's annual salary would increase from the current level of \$108,656 to \$113,002 effective July 1, 2019, and to \$115,262 effective July 1, 2020, to reflect the 4 percent and 2 percent recommended salary increase.

Section 8 identifies \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program.

Section 9 provides the statutory changes necessary to increase the Agriculture Commissioner's salary from the current level of \$108,656 to \$117,087 effective July 1, 2019, and to \$120,600 effective July 1, 2020, to provide an equity increase for the Agriculture Commissioner and to reflect the 2 percent and 3 percent salary increase proposed by the Senate.

Agricultural Products Utilization Commission transfer

Section 10 provides the statutory changes necessary to transfer the Agricultural Products Utilization Commission from the Department of Commerce to the Agriculture Commissioner.

Agricultural Products Utilization Commission repeal

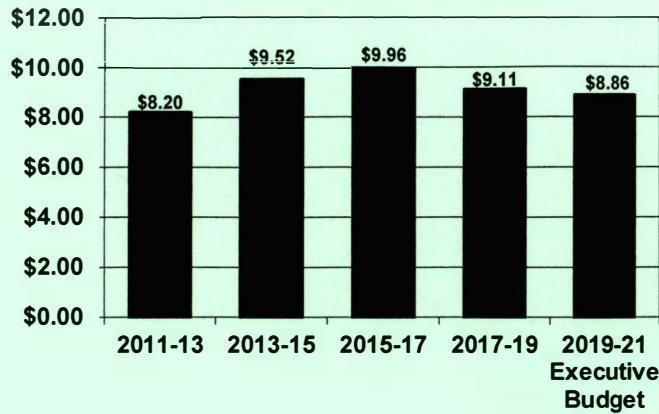
Section 11 repeals Chapter 54-60.3 of the North Dakota Century Code, which establishes the Agricultural Products Utilization Commission as an office of the Department of Commerce Division of Economic Development and Finance.

Department 602 - Agriculture Commissioner

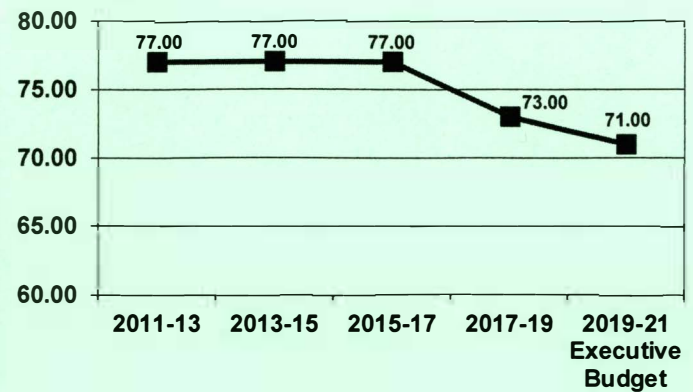
Historical Appropriations Information

Ongoing General Fund Appropriations Since 2011-13

Ongoing General Fund Appropriations (in Millions)



FTE Positions



Ongoing General Fund Appropriations					
	2011-13	2013-15	2015-17	2017-19	2019-21 Executive Budget
Ongoing general fund appropriations	\$8,196,746	\$9,519,217	\$9,961,137	\$9,109,101	\$8,858,496
Increase (decrease) from previous biennium	N/A	\$1,322,471	\$441,920	(\$852,036)	(\$250,605)
Percentage increase (decrease) from previous biennium	N/A	16.1%	4.6%	(8.6%)	(2.8%)
Cumulative percentage increase (decrease) from 2011-13 biennium	N/A	16.1%	21.5%	11.1%	8.1%

Major Increases (Decreases) in Ongoing General Fund Appropriations

2013-15 Biennium

- | | |
|--|-----------|
| 1. Added funding to hire an emergency program specialist to fill an existing vacant FTE position | \$30,000 |
| 2. Added funding for energy development mediation services | \$100,000 |
| 3. Replaced a portion of funding from the Game and Fish Department operating fund with funding from the general fund | \$100,000 |
| 4. Added funding for Information Technology Department desktop support services | \$48,000 |
| 5. Added funding for grape and wine industry grants | \$80,000 |

2015-17 Biennium

- | | |
|---|-----------|
| 1. Added funding for monitoring, surveying, and inspecting for Japanese beetle, emerald ash borer, and other issues | \$82,297 |
| 2. Added funding for Information Technology Department desktop support services | \$352,912 |

2017-19 Biennium

- | | |
|---|-------------|
| 1. Removed 4 FTE positions and related funding | (\$600,304) |
| 2. Adjusted funding for information technology operating expenses | (\$296,836) |

2019-21 Biennium (Executive Budget Recommendation)

- | | |
|---|-------------|
| 1. Removes 1 FTE agriculture division director position and 1 FTE data processing coordinator II position. The Senate did not remove these positions. | (\$247,034) |
| 2. Reduces funding for operating expenses. The Senate did not reduce funding for operating expenses. | (\$144,699) |
| 3. Reduces funding for apiary research grants (\$42,900) and wine research and promotion grants (\$41,100). The Senate added funding of \$2,100 for apiary research grants and \$3,900 for wine research and promotion grants. | (\$84,000) |

**GOVERNOR'S RECOMMENDATION FOR THE
AGRICULTURE COMMISSIONER AS SUBMITTED
BY THE OFFICE OF MANAGEMENT AND BUDGET**

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 agriculture commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$12,372,949	\$147,867	\$12,520,816
Operating Expenses	7,444,336	(297,527)	6,146,809
Capital Assets	13,000	2,000	15,000
Grants	10,437,774	(1,904,000)	8,413,774
Board of Animal Health	869,618	(113,900)	755,718
Wildlife Services	1,408,000	9,400	1,417,400
Pipeline reclamation	200,000	0	200,000
Crop Harmonization Board	75,000	0	75,000
Total all funds	\$32,820,677	(\$2,156,160)	\$29,544,517
Less estimated income	23,707,676	(2,011,655)	20,576,021
Total general fund	\$9,113,001	(\$144,505)	\$8,968,496
Full-time equivalent positions	73.00	(2.00)	71.00

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-sixth legislative assembly for the 2017-19 biennium and the 2019-21 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
National genomics center	\$ 120,000	\$0
Federal environmental law impact review	1,000,000	0
Master customer database	0	110,000
Total all funds	\$1,120,000	\$110,000
Total special funds	1,120,000	0
Total general fund	\$0	\$110,000

The 2019-21 one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The agriculture commissioner shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019 and ending June 30, 2021.

SECTION 3. TRANSFER - ENVIRONMENT AND RANGELAND PROTECTION FUND - MINOR USE PESTICIDE FUND. The agriculture commissioner shall transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 4. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND.

The estimated income line item in section 1 of this Act includes the sum of \$6,357,407, or so much of the sum as may be necessary, from the environment and rangeland protection fund for the purpose of defraying the expenses of various department of agriculture programs, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 5. ESTIMATED INCOME - GAME AND FISH FUND. The estimated income line item in section 1 of this Act includes the sum of \$615,480, or so much of the sum as may be necessary, from the game and fish department operating fund for the purpose of defraying the expenses of various department of agriculture programs, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 6. ESTIMATED INCOME - STATE WATER COMMISSION - TRANSFER. The estimated income line item in section 1 of this Act includes the sum of \$125,000 which the state water commission shall transfer to the agriculture commissioner for the wildlife services program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 7. ESTIMATED INCOME – PIPELINE RESTORATION AND RECLAMATION. The estimated income line item in section 1 of this Act includes the sum of \$200,000 from the abandoned oil and gas well plugging and site reclamation fund for the purpose of defraying the expenses of the pipeline restoration and reclamation program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 8. AMENDMENT. Section 4-01-21 of the North Dakota Century Code is amended and reenacted as follows:

4-01-21. Salary of agriculture commissioner.

The annual salary of the agriculture commissioner is ~~one hundred eight thousand six hundred fifty-six dollars through June 30, 2019 and one hundred thirteen thousand two dollars through June 30, 2020~~ and one hundred fifteen thousand two hundred sixty-two dollars thereafter.

AH1

SB 2009

2/28/2019

North Dakota Department of Agriculture Doug Goehring, Commissioner



SB 2009

House Appropriations Committee
Education and Environment Division
Chairman David Monson

Table of Contents

	Page
Purpose/Vision/Mission Statement	3
Organizational Chart	4
Administrative Services/Government Affairs	5
Plant Industries	7
Livestock Industries	8
Animal Health	9
Pesticide & Fertilizer	10
Budget Summary	11

Art 1 SB 2007 2/28/2019

Purpose

“Government is instituted for the protection, security, and benefit of the people, and they have a right to alter or reform the same whenever public good may require.”

North Dakota Constitution, Article 1, Section 2

Mission

Serve, advocate, protect and promote agriculture to benefit everyone.

Vision

Support agriculture by embracing diversity, innovation, research and trade.

Core Values

Transparency, Respect, Integrity, Consistency

Agriculture Commissioner
Doug Goehring

Assistant to the Commissioner
Jody Reinke

Human Resources
Lindsay Borlaug

Deputy Commissioner
Tom Bodine

Administrative Services
Ken Junkert, Director

Government Affairs
Shaun Quissell, Director

Fiscal Management

Account Budget Specialist
Lynette Baumiller

Administrative Officer
Samantha McGrath

Grant & Procurement Specialist
Jeannie Jacobs-Kopp

Specialty Crop Block Grant Administrator
Deanna Gierszewski

Emergency Management / IT

Emergency Management Specialist
Kent Theurer

Geographic Information System Officer
Jim Hansen

Pride of Dakota

Pride of Dakota Specialist
Kara Huff

Administrative Assistant
Bonnie Sundby

Wildlife Services*

State Director
John Paulson

ND Mediation Service & Public Policy

Senior Policy & Research Analyst
Jessie Pfaff

Policy Analyst
Melanie Gaebel

Negotiators
Jim Hoffert (non-FTE) Jim Jost (non-FTE)

Administrative Officer
Betty Schneider

Livestock Development
Specialist
Jason Wirtz

Public Information

Public Information Officer
Michelle Mielke

Ag Communications Specialist
Colby Lysne

Local Foods
Local Foods Specialist
Jamie Good

Agricultural Development
Specialist
Bradley Dean

AH-1
 SB 2009
 2/22/2019

Plant Industries
Samantha Brunner, Director

Animal Health
Dr. Susan Keller, State Veterinarian

Pesticide & Fertilizer
Eric Delzer, Program Manager

Livestock Industries
Dr. Andrea Grondahl, Director

Plant Protection Specialist
Wayne Prindle

Noxious Weeds Specialist
Richard Weisz

Plant Protection Specialist
Adam Pachi

Deputy State Veterinarian
Dr. Beth Carlson

Assistant State Veterinarian
Dr. Sarah Bailey

Field Investigator
Nathan Boehm

Avian Influenza Coord. / Ag Program Inspector
Jeanne David

Administrative Assistant
Tammy Celley

Office Assistant
Kimberly Norton
Peggy Masset

Plant Industries - Fargo

Plant Protection Officer
Charles Elhard

Plant Protection Specialist
Chelsey Penuel

Environmental Scientist
Jerry Sauter

Pesticide Inspector Supervisor
Lukas Wagner

Pesticide Registration Specialist
Jon Krei

Pesticide Program Specialist
Crystal Zabolotny

Pesticide Outreach Specialist
Jeremiah Lien

Fertilizer Program Specialist
Brandy Kiefel

Pesticide Inspectors
Andrew Erickson
Kevin Coufal
James Jeske

Fertilizer Inspectors
Darrell Haseleu

Administrative Assistant
Faye Wangen

Jill Carlson
Carla Ralston
Derek Woehl

Brian Kramer

Dairy Inspection

Dairy Coordinator
Nathan Kroh

Dairy Inspectors
Ken Quanbeck

State Meat & Poultry Inspection

Senior Inspectors
Heather Andersen

Compliance Officer
David Slack

Inspectors
Joshua Epperly
Sherlynn Olson
Whitney Vogel

Relief Inspector
Julie Nilges

Feed Specialist
Dave Phillips

Administrative Assistants
Becky Gietzen

David Boschma

Cody Kreft

Cami Metzger
Shawn Steffen
Takara Simmons

Angela Rittmiller

* Wildlife Services, a division of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, operates in North Dakota under a cooperative agreement with the North Dakota Department of Agriculture, the North Dakota Game and Fish Department, and the North Dakota State Water Commission.

Administrative Services / Government Affairs

Fiscal Management

- Oversees the development and tracking of the department's budget.
- Processes payroll.
- Pays all bills and deposits all revenues.
- Reviews and approves contracts and grants.
- Ensures compliance with state and federal laws relating to the department's finances; including expenditure tracking and filing of required reports to federal agencies.
- Responsible for procurement of goods and services for the department.

Risk Management & Emergency Response

- Plan, implement and evaluate strategic emergency management plans.
- Develop and conduct training and education on risk management, loss control and general safety issues.
- Coordinate with Department of Emergency Services.

Human Resources

- Responsible for human resource activities, including recruitment and training.
- Responds to public information requests.

Information Technology

- Maintains desktop support contract with ITD.
- Maintains all desktop and wireless phones.
- Maintains department websites, email and intranet.
- Conducts GIS mapping for other department programs and works with other agencies to provide GIS mapping technology and expertise.

Pipeline & Wind Energy Restoration and Reclamation Programs

- Connects landowners and tenants experiencing pipeline reclamation issues with an ombudsman to help reach reasonable resolutions.
- Provides technical education, support and outreach on pipeline and wind energy related matters.

Facilitating and promoting fairness on sight when resolving reclamation and restoration issues, concerns and disputes.

SB 2009	
Salaries	\$4,179,050
Salary & Health Insurance Increase	\$685,677
Operating	\$2,406,649
Capital Assets	\$15,000
Grants	\$7,073,500
Wildlife Services	\$1,457,400
Pipeline Oversight	\$200,000
APUC	\$3,152,915
Total	\$19,170,191
General	\$5,193,272
Federal	\$7,885,004
Special	\$6,091,915
Total	\$19,170,191
FTEs	26

Wildlife Services

- Reduces wildlife depredation and damage to property (conducted by USDA Wildlife Services in cooperation with NDDA, State Water Commission and ND Game and Fish Department).

Pride of Dakota

- Administers the Pride of Dakota (POD) program, including Holiday Showcases, annual meeting and other events.
- Provides trade show assistance to ND companies.
- Maintains membership of over 500 POD Companies.

Specialty Crop Block Grant

- Administers specialty crop grants.
- Administers organic certification reimbursement grants.

Administrative Services / Government Affairs

Policy Development

- Researches and analyzes agriculture, energy, water, infrastructure and trade policy for the agriculture commissioner.

Public Information

- Writes and edits department publications, including news releases, brochures and reports.

North Dakota Mediation Service

- Offers negotiation and mediation services to resolve differences among creditors, farmers and others.
- Offers assistance for beginning farmer loan applications and farm program paperwork.
- Provides financial counseling.
- Offers mediation to address energy-related issues.
- Offers conflict resolution services to resolve deer depredation disputes.
- Recent Farm Bill now authorizes work on lease issues, family farm transitions, farmer/neighbor conflicts, organic certification issues, and other issues designated by either the USDA Secretary of Agriculture or North Dakota Agriculture Commissioner.

Agriculture in the Classroom

- Helps K-12 teachers integrate agriculture information into science, math, social studies and language curricula.
- Supports Project Food, Land & People which provides hands-on lessons to help students better understand the relationships between the world's environment, agriculture and people.
- Publishes the Ag Mag three times a year for third-, fourth- and fifth-graders.
- Underwrites FFA Foundation mini-grants for agriculture-related projects, units and lessons used by school-age children.

Livestock Licensing

- Licenses and establishes bonds for livestock dealers and auction markets.
- Monitors financial conditions of dealers and auction markets.

Livestock Pollution Prevention

- Cost-share funding assistance for livestock producers to install manure containment systems assistance.
- Advises producers on nutrient management, project planning, regulations and manure containment.

Livestock Development

- Conducts age/source verification.
- Assists producers and processors in expanding and promoting the state's livestock industry.
- Identifies and assists livestock friendly counties in developing animal agriculture.

International Trade

- Conducts and participates in international trade events.
- Supports and coordinates with Food Export Midwest Association and North Dakota Trade Office.
- Issues Certificate of Free Sale Agreements.
- Conducts market research for ND companies to help them expand their business domestically and internationally.

Commodity Councils

- Organizes the annual meeting of the agriculture commissioner and the commodity councils.
- Administers the Turkey Fund.
- Engaging with commodity councils to assist their industries where needed.

Local Foods/Organics

- Oversees grape and wine development and promotion.
- Administers community orchard grants.
- Administers local foods initiative.
- Organizes an annual local foods conference.
- Administers farm-to-school programs.
- Administers organics program.
- Operates the mobile food processing unit.

A441

SB 2009 2/28/2019

Plant Industries Division

Plant Industries includes the noxious weeds, plant protection, industrial hemp program, and apiary.

Noxious Weeds

- Distributes state and federal funds for noxious weed control to weed boards.
- Manages federal funds for noxious and invasive weeds.
- Coordinates statewide biological weed control and obtains and distributes biological weed agents.
- Assists county and city weed boards in field days and weed management.
- Assists the general public with weed identification and control.
- Trains and assists weed boards with GPS/GIS mapping technology.
- Administers the Weed Seed Free Forage program.

Plant Protection

- Surveys for exotic pests such as moths, nematodes and emerald ash borer that threaten North Dakota agriculture and horticulture.
- Surveys for pests, various diseases, insects and nematodes including: Japanese beetle, Karnal bunt, dwarf bunt, cereal leaf beetle, soybean cyst nematode, potato cyst nematodes and clubroot in canola to enable export of agricultural products.
- Licenses and inspects nursery dealers and growers.
- Provides export certification/ phytosanitary services for export of agricultural products.
- Reviews biotechnology permits.

Industrial Hemp Program

- Licenses and inspects all hemp growers, processors and finished product.
- Inspect hemp fields to ensure compliance with the state and federal law.

	SB 2009
Salaries	\$1,307,961
Operating	\$956,329
Grants	\$1,750,274
Total	\$4,014,564
General	\$985,472
Federal	\$596,233
Special	\$2,432,859
Total	\$4,014,564
FTEs	7.5

- Maintains import and export permits and MOUs with other states to move product across state lines, with Drug Enforcement Agency approval.

Apiary

- Licenses beekeepers.
- Register and map apiary locations.
- Inspects bees and issues health certificates for migratory movement.
- Agreement with California for inspection of bee shipments.
- Investigates and responds to bee complaints.
- Visits apiaries and ensures compliance with the bee law.
- Administers the Honey Fund.
- Oversees the pollinator plan to enhance communication and emphasize best management practices for stakeholders.
- Conducts health inspections and assays with the National Agriculture Genotyping Center.

Att 1

2/28/2019

SB 2009

Livestock Industries Division

Livestock Industries includes dairy/poultry, state meat and poultry inspection, and feed.

Dairy/Poultry

- Inspects dairy farms for equipment, facilities, sanitation, water purity and proper drug usage and storage.
- Inspects dairy processing plants and milk transfer stations for equipment, facilities, and sanitation.
- Samples dairy products.
- Monitors financial conditions of milk buyers.
- Conducts Grade A survey work.
- Inspects manufacturing grade plants and transfer stations under agreement with USDA.
- Inspects distribution facilities, milk bulk trucks and samplers/haulers.
- Inspects licensed commercial egg producers.
- Licenses and sets bonds for hatcheries.

State Meat & Poultry Inspection

- Trains, certifies and inspects meat processing facilities.
- Inspects custom-exempt processing plants.
- Inspects retail outlets for country-of-origin labeling.
- Enforces meat and poultry processing regulations.
- Grades livestock carcasses at official state and/or federal establishments.
- Provides consultation and education to the meat and poultry industry.
- Ensures proper label use by the industry.

	SB 2009
Salaries	\$3,133,027
Operating	\$1,578,707
Total	\$4,711,734
General	\$2,199,324
Federal	\$2,132,999
Special	\$379,411
Total	\$4,711,734
FTEs	18

Feed

- Registers all pet food sold in the state.
- Maintains a label file of commercial feeds sold in the state.
- Licenses commercial feed manufactures and retailers.
- Samples feed products to ensure that nutritional content matches the label claims.
- Inspects medicated feed plants.
- Verifies manufacturer and producer compliance with federal requirements to prevent bovine spongiform encephalopathy (BSE).
- Provide producer outreach for the Veterinarian Feed Directive.

Att 1

SB 2009

2/28/2019

Animal Health Division

The Animal Health Division protects the health of domestic animals and non-traditional livestock, and administers all rules and orders of the State Board of Animal Health (BOAH).

- Monitors and regulates animal imports and exports.
- Traces animal movements as part of disease investigations.
- Issues and maintains records of official USDA tags and official state certificates of veterinary inspection.
- Conducts a Johne's disease control program.
- Conducts the National Scrapie Eradication program.
- Conduct investigations on suspected cases of foreign animal disease, T.B., Brucellosis, emerging diseases and other investigations.
- Responds to inhumane treatment complaints.
- Coordinates pet sheltering during disasters.
- Conducts tuberculosis, brucellosis and other disease investigations.
- Reviews testing information and granting status for tuberculosis-accredited herds, brucellosis certified herds statuses and Brucella ovis-free flocks.
- Administers non-traditional livestock and farmed elk regulations.
- Issues permits to possess, propagate or domesticate live protected birds or animal species for North Dakota Game and Fish Department.
- Provides chronic wasting disease testing training and oversight.
- Oversees feral swine investigations.
- Works with ND Department of Health on zoonotic disease issues.
- Provides oversight on proper carcass disposal.
- Inspects auction markets and approves veterinarians to provide market services.
- Monitors for novel swine enteric coronavirus diseases.
- Provides inspection services at the ND State Fair.
- Registers restricted feedlots.
- Licenses rendering facilities.

	SB 2009
Salaries	\$1,490,281
BOAH	\$865,718
Total	\$2,355,999
General	\$1,359,669
Federal	\$717,620
Special	\$278,710
Total	\$2,355,999
FTEs	7.5

- Registers veterinary medicines used in the state.
- Licenses dealers of modified live vaccines.
- Conducts avian influenza testing through USDA Avian Health Co-op Agreement.
- Coordinates the National Poultry Improvement Plan in the state.
- Trains and coordinates a Reserve Veterinary Corps to assist in emergency situations.
- Participates in animal emergency preparedness and response on state, regional and national levels.
- Cooperates with other state and federal animal health officials regionally and nationally to guide national animal health policy.
- Monitors and reports diseases on state and national levels.
- Provides education and outreach for practicing veterinarians and the livestock industry.
- Maintains the state's animal traceability database.

Att 1

SB 2009

2/28/2019

Pesticide & Fertilizer Division

The Pesticide and Fertilizer Division

oversees and regulates pesticides, fertilizers and anhydrous ammonia to protect human health and the environment.

Pesticides

- Conducts inspections of pesticide dealers, users and repackaging facilities to ensure compliance with state and federal laws.
- Provides outreach to inform the public of state and federal pesticide requirements.
- Prepares and submits emergency and special local needs exemption requests to ensure North Dakota producers have access to necessary pest management tools i.e. Section 18 and 24(c) requests.
- Registers all pesticides: herbicides, fungicides, rodenticides, insecticides, avicides and disinfectants that are sold in ND and approves product labeling.
- Conducts Project Safe Send; an annual, statewide collection of unusable pesticides.
- Works with EPA on national pesticide regulatory and policy issues.
- Conducts risk assessments, receives public input, and offers data and recommendations to EPA to mitigate risk of pesticides to threatened and endangered species as part of the ND Endangered Species Protection Plan.
- Investigates and responds to pesticide contamination of groundwater and surface water resources.
- Investigates complaints of pesticide misuse and other violations.
- Administers and enforces the federal Worker Protection Standard to protect workers who handle and use pesticides.

	SB 2009
Salaries	\$2,277,343
Operating	\$1,636,095
Harmonization Board	\$75,000
Total	\$3,988,438
General	\$0
Federal	\$862,091
Special	\$3,126,347
Total	\$3,988,438
FTEs	16

Fertilizer and Anhydrous Ammonia

- Licenses fertilizer distributors.
- Registers fertilizer products and approves product labeling.
- Samples fertilizer products to ensure claims match labels.
- Licenses anhydrous ammonia storage facilities.
- Conducts inspections of anhydrous ammonia storage facilities and nurse tanks to ensure compliance with federal regulations.
- Administers the Risk Management Program for agricultural anhydrous ammonia facilities and inspects facilities to ensure compliance with federal regulations.
- Provides outreach and compliance assistance to the fertilizer industry and anhydrous ammonia users.
- Audits fertilizer distributors to ensure compliance with fertilizer tonnage reporting.
- Conducts the State Waterbank program.

AMI
SB 2009 8/28/2019

Budget Summary

Engrossed SB 2009

Sources:

General Funds	\$ 9,737,737
Federal Funds	\$ 12,193,947
Special Funds	\$ <u>12,309,242</u>
Total	\$ 34,240,926
FTEs	75

The work of the North Dakota Department of Agriculture is vital to our state's most important industry. This budget presentation was designed to provide transparency and assist the members of the House Appropriations Committee determine spending priorities for the 2019-2021 biennium.

My staff and I welcome the interest and questions of the Legislature and all North Dakota citizens regarding the work of the North Dakota Department of Agriculture.

Doug Goehring
Agriculture Commissioner

AM SB 2009 2/28/2019

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2009

Page 2, line 2, after "0", replace "3,176,791" with "7,176,791"

Page 2, line 3, replace "\$4,044,149" with "\$8,044,149"

Page 2, line 4, replace "3,415,513" with "7,415,513"

Page 5, after line 24, insert:

**SECTION 12: TRANSFER BANK OF NORTH DAKOTA PROFITS TO AGRICULTURE
PRODUCT UTILIZATION COMMISSION.** The Bank of North Dakota shall transfer \$4,000,000
of its undivided profits to the Agriculture Products Utilization Commission established under title
4.1 during the biennium beginning July 1, 2019 and ending June 30, 2021.

Renumber accordingly



ATT 3
SB 2009
2/28/2019

North Dakota Soybean Growers Association
4852 Rocking Horse Circle South, Fargo, ND 58104
(701) 566-9300 | www.ndsoygrowers.com

SB 2009 Testimony

Good afternoon - Chairman Munson and Committee members.

My name is Scott Rising and I'm representing the ND Soybean Growers Association.

The North Dakota Soybean Growers Association is urging you to give SB2009 a DO PASS recommendation.

Mr. Chairman, for all of the obvious reasons, the Ag Departments budget is critical to our industry. Unfortunately, it is all too easy to take the effective Ag Industry advocacy by the leaders and members of the department for granted. We are grateful for they have chosen to expend their time and talent on our behalf. The same is true for the broad spectrum of regulatory services they provide.

We support the movement of the Agricultural Products Utilization Commission to the Ag Department as well.

Thank You,
Scott Rising,

NDSGA Legislative Director
C 710.527.1073
scott.rising@ndsga.com

Agriculture Commissioner - Budget No. 602
Senate Bill No. 2009
Base Level Funding Changes

HH4
 SB 2009 2/28/2019

	Executive Budget Recommendation				Senate Version				Senate Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	73.00	\$9,109,101	\$21,087,676	\$30,196,777	73.00	\$9,109,101	\$21,087,676	\$30,196,777	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes		(\$219,766)	(\$163,633)	(\$383,399)				\$0		\$219,766	\$163,633	\$383,399
Salary increase		260,886	229,983	490,869		\$192,238	\$163,246	355,484		(68,648)	(66,737)	(135,385)
Health insurance increase		146,552	117,979	264,531		171,434	158,759	330,193		24,882	40,780	65,662
Retirement contribution increase		34,207	27,538	61,745				0		(34,207)	(27,538)	(61,745)
Removes 2 FTE positions	(2.00)	(247,034)	(68,845)	(315,879)				0	2.00	247,034	68,845	315,879
Adds funding for Microsoft Office 365 license expenses		1,849	377	2,226		1,849	377	2,226				0
Reduces funding for operating expenses		(144,699)	(145,237)	(289,936)				0		144,699	145,237	289,936
Removes funding for the state waterbank program			(389,817)	(389,817)				0			389,817	389,817
Adjusts funding for capital assets		2,000		2,000		2,000		2,000				0
Reduces funding for grants		(84,000)	(20,000)	(104,000)				0		84,000	20,000	104,000
Reduces funding for Board of Animal Health operating expenses		(10,000)	(100,000)	(110,000)				0		10,000	100,000	110,000
Adds funding for wildlife services operating fees		9,400		9,400		49,400		49,400		40,000		40,000
Adds funding for wine research grants and apiary grants				0		6,000		6,000		6,000		6,000
Adds funding for an Agriculture Commissioner salary equity increase				0		14,713		14,713		14,713		14,713
Adds funding for meat inspection operating expenses				0		81,002	(59,784)	21,218		81,002	(59,784)	21,218
Transfers the Agricultural Products Utilization Commission				0	2.00		3,152,915	3,152,915	2.00		3,152,915	3,152,915
Total ongoing funding changes	(2.00)	(\$250,605)	(\$511,655)	(\$762,260)	2.00	\$518,636	\$3,415,513	\$3,934,149	4.00	\$769,241	\$3,927,168	\$4,696,409
One-time funding items												
Adds funding for a master customer database		\$110,000		\$110,000		\$110,000		\$110,000		\$0		\$0
Total one-time funding changes	0.00	\$110,000	\$0	\$110,000	0.00	\$110,000	\$0	\$110,000	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(2.00)	(\$140,605)	(\$511,655)	(\$652,260)	2.00	\$628,636	\$3,415,513	\$4,044,149	4.00	\$769,241	\$3,927,168	\$4,696,409
2019-21 Total Funding	71.00	\$8,968,496	\$20,576,021	\$29,544,517	75.00	\$9,737,737	\$24,503,189	\$34,240,926	4.00	\$769,241	\$3,927,168	\$4,696,409

Other Sections for Agriculture Commissioner - Budget No. 602

	Executive Budget Recommendation	Senate Version
Environment and rangeland protection fund transfer	Section 3 would require the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.	Section 3 requires the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.
Environment and rangeland protection fund	Section 4 would identify \$6,357,407 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.	Section 4 identifies \$6,663,678 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.
Game and Fish Department operating fund	Section 5 would identify \$615,480 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.	Section 5 identifies \$614,430 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.

Att 4 SB 2009 2/28/2019

Other Sections for Agriculture Commissioner - Budget No. 602

	<u>Executive Budget Recommendation</u>	<u>Senate Version</u>
State Water Commission transfer	Section 6 would transfer \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.	Section 6 transfers \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.
Waterbank program - Matching funds		Section 7 identifies \$50,000 in the salary and wages line item in Section 1 is from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.
Pipeline restoration and reclamation	Section 7 would identify \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program	Section 8 identifies \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program.
Agriculture Commissioner salary	Section 8 would provide the statutory changes necessary to increase the Agriculture Commissioner's salary. The Agriculture Commissioner's annual salary would increase from the current level of \$108,656 to \$113,002 effective July 1, 2019, and to \$115,262 effective July 1, 2020, to reflect the 4 percent and 2 percent recommended salary increase.	Section 9 provides the statutory changes necessary to increase the Agriculture Commissioner's salary from the current level of \$108,656 to \$117,087 effective July 1, 2019, and to \$120,600 effective July 1, 2020, to provide an equity increase for the Agriculture Commissioner and to reflect the 2 percent and 3 percent salary increase proposed by the Senate.
Agricultural Products Utilization Commission transfer		Section 10 provides the statutory changes necessary to transfer the Agricultural Products Utilization Commission from the Department of Commerce to the Agriculture Commissioner.
Agricultural Products Utilization Commission repeal		Section 11 repeals Chapter 54-60.3 of the North Dakota Century Code, which establishes the Agricultural Products Utilization Commission as an office of the Department of Commerce Division of Economic Development and Finance.

Emergency Hay Transportation Assistance Program

ATT 1

SB 2009

3/11/2019

493 applications

- One applicant denied

Personal

Transportation miles - 536,002

Bales hauled - 138,475

Eligible Expense - \$750,403 @ \$1.40 mile

Commercial

Transportation miles - 738,315

Bales hauled - 151,287

Eligible Expenses - \$3,136,414

\$4.24/mile average

Livestock Hauled

Total Miles - 43,562

Eligible expense -\$175,521

\$4.02/mile average

Program Totals

Total Miles - 1,317,879

Total Bales - 289,762

Total Eligible Expense - \$4,060,338

Animal Units - 126,122

Att 2

SB 2009

3/1/2019

WILDLIFE SERVICES HISTORIC FUNDING					
Biennium	Game and Fish Funds	EARP Funds	Water Comm Funds	General Funds	Total State Funds
1997-1999				\$ 779,694	\$ 779,694
1999-2001	\$ 100,000			\$ 779,694	\$ 879,694
2001-2003	\$ 400,000			\$ 375,707	\$ 775,707
2003-2005	\$ 550,000			\$ 250,000	\$ 800,000
2005-2007	\$ 680,000			\$ 250,000	\$ 930,000
2007-2009	\$ 680,000			\$ 240,000	\$ 920,000
2009-2011	\$ 968,800			\$ 298,600	\$ 1,267,400
2011-2013	\$ 868,800	²	\$ 250,000	\$ 298,600	\$ 1,417,400
2013-2015	\$ 384,400	\$ 384,400	\$ 250,000	\$ 398,600	\$ 1,417,400
2015-2017	\$ 384,400	\$ 384,400	\$ 250,000	\$ 398,600	\$ 1,417,400
2017-2019	\$ 500,000	\$ 384,400	\$ 125,000	\$ 398,600	\$ 1,408,000
2019-2021	\$ 500,000	\$ 384,400	\$ 125,000	\$ 448,000	\$ 1,457,400
¹ Does not include \$159,000 (EARP & Sunflower Council funds) appropriated for blackbird research.					
² Legislature transferred \$300,000 general funds to Game and Fish to replace Game and Fish funds going to the BOAH (\$199,461) and Wildlife Services (\$100,539).					
³ Senate amendment (adds \$49,400 general funds)					

Agriculture Commissioner - Budget No. 602
Senate Bill No. 2009
Base Level Funding Changes

A+L SB 2009 3/6/2019

	Executive Budget Recommendation				Senate Version				Senate Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	73.00	\$9,109,101	\$21,087,676	\$30,196,777	73.00	\$9,109,101	\$21,087,676	\$30,196,777	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes		(\$219,766)	(\$163,633)	(\$383,399)				\$0		\$219,766	\$163,633	\$383,399
Salary increase		260,886	229,983	490,869		\$192,238	\$163,246	355,484		(68,648)	(66,737)	(135,385)
Health insurance increase		146,552	117,979	264,531		171,434	158,759	330,193		24,882	40,780	65,662
Retirement contribution increase		34,207	27,538	61,745				0		(34,207)	(27,538)	(61,745)
Removes 2 FTE positions	(2.00)	(247,034)	(68,845)	(315,879)				0	2.00	247,034	68,845	315,879
Adds funding for Microsoft Office 365 license expenses		1,849	377	2,226		1,849	377	2,226				0
Reduces funding for operating expenses		(144,699)	(145,237)	(289,936)				0		144,699	145,237	289,936
Removes funding for the state waterbank program			(389,817)	(389,817)				0			389,817	389,817
Adjusts funding for capital assets		2,000		2,000		2,000		2,000				0
Reduces funding for grants		(84,000)	(20,000)	(104,000)				0		84,000	20,000	104,000
Reduces funding for Board of Animal Health operating expenses		(10,000)	(100,000)	(110,000)				0		10,000	100,000	110,000
Adds funding for wildlife services operating fees		9,400		9,400		49,400		49,400		40,000		40,000
Adds funding for wine research grants and apiary grants				0		6,000		6,000		6,000		6,000
Adds funding for an Agriculture Commissioner salary equity increase				0		14,713		14,713		14,713		14,713
Adds funding for meat inspection operating expenses				0		81,002	(59,784)	21,218		81,002	(59,784)	21,218
Transfers the Agricultural Products Utilization Commission				0	2.00		3,152,915	3,152,915	2.00		3,152,915	3,152,915
Total ongoing funding changes	(2.00)	(\$250,605)	(\$511,655)	(\$762,260)	2.00	\$518,636	\$3,415,513	\$3,934,149	4.00	\$769,241	\$3,927,168	\$4,696,409
One-time funding items												
Adds funding for a master customer database		\$110,000		\$110,000		\$110,000		\$110,000		\$0		\$0
Total one-time funding changes	0.00	\$110,000	\$0	\$110,000	0.00	\$110,000	\$0	\$110,000	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(2.00)	(\$140,605)	(\$511,655)	(\$652,260)	2.00	\$628,636	\$3,415,513	\$4,044,149	4.00	\$769,241	\$3,927,168	\$4,696,409
2019-21 Total Funding	71.00	\$8,968,496	\$20,576,021	\$29,544,517	75.00	\$9,737,737	\$24,503,189	\$34,240,926	4.00	\$769,241	\$3,927,168	\$4,696,409

Other Sections for Agriculture Commissioner - Budget No. 602

	Executive Budget Recommendation	Senate Version
Environment and rangeland protection fund transfer	Section 3 would require the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.	Section 3 requires the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.
Environment and rangeland protection fund	Section 4 would identify \$6,357,407 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.	Section 4 identifies \$6,663,678 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.
Game and Fish Department operating fund	Section 5 would identify \$615,480 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.	Section 5 identifies \$614,430 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.

Other Sections for Agriculture Commissioner - Budget No. 602

AH 1 JB 2013 3/6/2019

Executive Budget Recommendation

Senate Version

State Water Commission transfer

Section 6 would transfer \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.

Section 6 transfers \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.

Waterbank program - Matching funds

Section 7 identifies \$50,000 in the salary and wages line item in Section 1 is from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.

Pipeline restoration and reclamation

Section 7 would identify \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program

Section 8 identifies \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program.

Agriculture Commissioner salary

Section 8 would provide the statutory changes necessary to increase the Agriculture Commissioner's salary. The Agriculture Commissioner's annual salary would increase from the current level of \$108,656 to \$113,002 effective July 1, 2019, and to \$115,262 effective July 1, 2020, to reflect the 4 percent and 2 percent recommended salary increase.

Section 9 provides the statutory changes necessary to increase the Agriculture Commissioner's salary from the current level of \$108,656 to \$117,087 effective July 1, 2019, and to \$120,600 effective July 1, 2020, to provide an equity increase for the Agriculture Commissioner and to reflect the 2 percent and 3 percent salary increase proposed by the Senate.

Agricultural Products Utilization Commission transfer

Section 10 provides the statutory changes necessary to transfer the Agricultural Products Utilization Commission from the Department of Commerce to the Agriculture Commissioner.

Agricultural Products Utilization Commission repeal

Section 11 repeals Chapter 54-60.3 of the North Dakota Century Code, which establishes the Agricultural Products Utilization Commission as an office of the Department of Commerce Division of Economic Development and Finance.

ANALYSIS OF ELECTED OFFICIALS' SALARIES

Att 2 3/6/2019
SB 2013

The executive budget recommendation for the 2019-21 biennium includes funding to provide salary increases of 4 percent effective July 1, 2019, and 2 percent effective July 1, 2020, for executive branch elected officials. The statutory changes necessary to adjust elected officials' salaries are recommended to be included in the appropriation bills for the respective elected officials. The schedule below shows for each elected official the salary authorized by the 2017 Legislative Assembly and the salary being proposed in the executive budget.

State Official	Statutory Annual Salary Authorized by the 2017 Legislative Assembly		Proposed Annual Salary Included in the 2019-21 Executive Budget Recommendation	
	Effective July 1, 2017	Effective July 1, 2018	Effective July 1, 2019	Effective July 1, 2020
Governor	\$132,964 ¹	\$132,964 ¹	\$138,282	\$141,048
Lieutenant Governor	\$103,221	\$103,221	\$107,350	\$109,497
Secretary of State	\$105,770	\$105,770	\$110,001	\$112,201
Attorney General	\$157,009	\$157,009	\$163,289	\$166,555
Superintendent of Public Instruction	\$120,410	\$120,410	\$125,226	\$127,731
Tax Commissioner	\$114,791	\$114,791	\$119,383	\$121,770
Insurance Commissioner	\$105,770	\$105,770	\$110,001	\$112,201
Public Service Commissioners (3)	\$108,656	\$108,656	\$113,002	\$115,262
Agriculture Commissioner	\$108,656	\$108,656	\$113,002	\$115,262
State Auditor	\$105,770	\$105,770	\$110,001	\$112,201
State Treasurer	\$99,881	\$99,881	\$103,876	\$105,954

¹Section 5 of House Bill No. 1001 (2017) includes legislative intent that the Governor accept the Governor's salary, but allows the Governor, if the Governor chooses, to decline the salary. The Governor has declined the 2017-19 biennium salary appropriated by the Legislative Assembly.

The judicial branch included funding in its request for a 2 percent annual increase in judges salaries. The following schedule shows the current salary and the salary being proposed for each judge in the judicial branch budget request:

	Statutory Annual Salary Authorized by the 2017 Legislative Assembly		Proposed Annual Salary Included in the 2019-21 Judicial Branch Budget Request	
	Effective July 1, 2017	Effective July 1, 2018	Effective July 1, 2019	Effective July 1, 2020
Supreme Court Chief Justice	\$161,517	\$161,517	\$164,747	\$168,042
Other Supreme Court justices	\$157,009	\$157,009	\$160,149	\$163,352
District court presiding judges	\$148,025	\$148,025	\$150,986	\$154,005
Other district court judges	\$143,869	\$143,869	\$146,746	\$149,681

Agriculture Commissioner - Budget No. 602
Senate Bill No. 2009
Base Level Funding Changes

AH | SB 2009

3/14/2019

	Executive Budget Recommendation				Senate Version				Senate Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	73.00	\$9,109,101	\$21,087,676	\$30,196,777	73.00	\$9,109,101	\$21,087,676	\$30,196,777	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes		(\$219,766)	(\$163,633)	(\$383,399)				\$0		\$219,766	\$163,633	\$383,399
Salary increase		260,886	229,983	490,869		\$192,238	\$163,246	355,484		(68,648)	(66,737)	(135,385)
Health insurance increase		146,552	117,979	264,531		171,434	158,759	330,193		24,882	40,780	65,662
Retirement contribution increase		34,207	27,538	61,745				0		(34,207)	(27,538)	(61,745)
Removes 2 FTE positions	(2.00)	(247,034)	(68,845)	(315,879)				0	2.00	247,034	68,845	315,879
Adds funding for Microsoft Office 365 license expenses		1,849	377	2,226		1,849	377	2,226				0
Reduces funding for operating expenses		(144,699)	(145,237)	(289,936)				0		144,699	145,237	289,936
Removes funding for the state waterbank program			(389,817)	(389,817)				0			389,817	389,817
Adjusts funding for capital assets		2,000		2,000		2,000		2,000				0
Reduces funding for grants		(84,000)	(20,000)	(104,000)				0		84,000	20,000	104,000
Reduces funding for Board of Animal Health operating expenses		(10,000)	(100,000)	(110,000)				0		10,000	100,000	110,000
Adds funding for wildlife services operating fees		9,400		9,400		49,400		49,400		40,000		40,000
Adds funding for wine research grants and apiary grants				0		6,000		6,000		6,000		6,000
Adds funding for an Agriculture Commissioner salary equity increase				0		14,713		14,713		14,713		14,713
Adds funding for meat inspection operating expenses				0		81,002	(59,784)	21,218		81,002	(59,784)	21,218
Transfers the Agricultural Products Utilization Commission				0	2.00		3,152,915	3,152,915	2.00		3,152,915	3,152,915
Total ongoing funding changes	(2.00)	(\$250,605)	(\$511,655)	(\$762,260)	2.00	\$518,636	\$3,415,513	\$3,934,149	4.00	\$769,241	\$3,927,168	\$4,696,409
One-time funding items												
Adds funding for a master customer database		\$110,000		\$110,000		\$110,000		\$110,000		\$0		\$0
Total one-time funding changes	0.00	\$110,000	\$0	\$110,000	0.00	\$110,000	\$0	\$110,000	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(2.00)	(\$140,605)	(\$511,655)	(\$652,260)	2.00	\$628,636	\$3,415,513	\$4,044,149	4.00	\$769,241	\$3,927,168	\$4,696,409
2019-21 Total Funding	71.00	\$8,968,496	\$20,576,021	\$29,544,517	75.00	\$9,737,737	\$24,503,189	\$34,240,926	4.00	\$769,241	\$3,927,168	\$4,696,409

Other Sections for Agriculture Commissioner - Budget No. 602

	Executive Budget Recommendation	Senate Version
Environment and rangeland protection fund transfer	Section 3 would require the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.	Section 3 requires the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.
Environment and rangeland protection fund	Section 4 would identify \$6,357,407 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.	Section 4 identifies \$6,663,678 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.
Game and Fish Department operating fund	Section 5 would identify \$615,480 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.	Section 5 identifies \$614,430 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.

A+H SB 2009 3/14/2019

Other Sections for Agriculture Commissioner - Budget No. 602

	<u>Executive Budget Recommendation</u>	<u>Senate Version</u>
State Water Commission transfer	Section 6 would transfer \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.	Section 6 transfers \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.
Waterbank program - Matching funds		Section 7 identifies \$50,000 in the salary and wages line item in Section 1 is from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.
Pipeline restoration and reclamation	Section 7 would identify \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program	Section 8 identifies \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program.
Agriculture Commissioner salary	Section 8 would provide the statutory changes necessary to increase the Agriculture Commissioner's salary. The Agriculture Commissioner's annual salary would increase from the current level of \$108,656 to \$113,002 effective July 1, 2019, and to \$115,262 effective July 1, 2020, to reflect the 4 percent and 2 percent recommended salary increase.	Section 9 provides the statutory changes necessary to increase the Agriculture Commissioner's salary from the current level of \$108,656 to \$117,087 effective July 1, 2019, and to \$120,600 effective July 1, 2020, to provide an equity increase for the Agriculture Commissioner and to reflect the 2 percent and 3 percent salary increase proposed by the Senate.
Agricultural Products Utilization Commission transfer		Section 10 provides the statutory changes necessary to transfer the Agricultural Products Utilization Commission from the Department of Commerce to the Agriculture Commissioner.
Agricultural Products Utilization Commission repeal		Section 11 repeals Chapter 54-60.3 of the North Dakota Century Code, which establishes the Agricultural Products Utilization Commission as an office of the Department of Commerce Division of Economic Development and Finance.

CHAPTER 04.1-26
MILK MARKETING BOARD

A44 1
SB 2009

3/18/2019

4.1-26-01. Definitions.

Unless the context otherwise requires, the definitions in this section apply to this chapter.

1. "Bulk milk" means milk that is purchased by a processor from a person other than a dairy farmer and which is purchased in a container other than the one in which the milk will be resold to a retailer or to a consumer.
2. "Dairy farmer" means any person who produces grade A raw milk for sale to a processor.
3. "Dairy farmer-processor" means a person who is both a dairy farmer and a processor and who does not purchase raw milk from other dairy farmers, provided:
 - a. A dairy farmer-processor is a dairy farmer with respect to the sale of raw milk produced by that person to a processor; and
 - b. A dairy farmer-processor is a processor with respect to any processing, manufacturing, or sale of milk products or frozen dairy products or with respect to the receipt of bulk milk from a source other than that person's own production.
4. "Dealer" means any processor or distributor.
5. "Distributor" means a person, other than a processor, that sells to consumers on one or more home delivery routes, that sells to retailers, or that sells to both.
6. "Distributor price" means the price at which any milk product or frozen dairy product, not intended for resale at a fixed location owned by a distributor, is purchased by a distributor.
7. "Frozen dairy product" means:
 - a. Ice cream;
 - b. Ice milk;
 - c. Frozen custard;
 - d. Fruit sherbet;
 - e. The mix from which any such product listed in subdivisions a through d is made; and
 - f. Any frozen product that contains milk solids not fat, or butterfat, and which is commonly referred to in the dairy industry as a novelty.
8. "Marketing area" means a geographical portion of this state, within which minimum or maximum prices established by the board must be uniform.
9. "Milk" means the lacteal secretion of a cow, including when the secretion is raw, cooled, pasteurized, standardized, homogenized, recombined, or concentrated, provided the secretion meets applicable grade A requirements.
10. "Milk product" means:
 - a. (1) Buttermilk, including plain and creamed;
 - (2) Concentrated milk;
 - (3) Creamline milk;
 - (4) Flavored milk;
 - (5) Flavored skim milk;
 - (6) Fortified milk;
 - (7) Homogenized milk;
 - (8) Low fat milk;
 - (9) Raw milk;
 - (10) Regular milk;
 - (11) Skim milk;
 - (12) Special milk;
 - (13) Standardized milk; and
 - (14) Whole pasteurized milk;
 - b. (1) Cottage cheese; and
 - (2) Creamed cottage cheese;
 - c. Eggnog;
 - d. (1) Fluid cream;

- A+T+I
SIB 2009
3/18/2019
- (2) Half and half;
 - (3) Sour cream;
 - (4) Whipped cream; and
 - (5) Whipping cream; and
- e. Yogurt.
11. a. "Processor" means a person who:
 - (1) Processes or manufactures milk products or frozen dairy products;
 - (2) Purchases raw milk from a grade A dairy farmer for resale to a person who processes or manufactures milk products or frozen dairy products; or
 - (3) Purchases bulk milk from anyone for resale to a person who processes or manufactures milk products or frozen dairy products.
 - b. The term "processor" does not include a person who purchases ice cream mix, ice milk mix, or other frozen dairy products, provided:
 - (1) The person's processing activities are limited to converting the mix into a frozen dairy product; and
 - (2) More than half the sales of which are then made by the person to consumers at retail on the premises where the processing activities take place.
12. "Retail price" means the price at which any milk product or frozen dairy product is purchased by any person who makes such purchase for purposes other than resale.
 13. "Retailer" means any person who is engaged in transferring title to milk products or frozen dairy products to consumers at one or more retail establishments located in this state.
 14. "Stabilization plan" means a plan that contains minimum prices, maximum prices, or both, and enforcement mechanisms.
 15. "Wholesale price" means the price at which any milk product or frozen dairy product is purchased by a retailer.

4.1-26-02. Milk marketing board - Membership.

1. The milk marketing board consists of:
 - a. A dairy farmer appointed by the governor from a list of two names submitted by the milk producers association of North Dakota;
 - b. A processor appointed by the governor from a list of two names submitted by the North Dakota dairy industries association;
 - c. A retailer appointed by the governor from a list of two names submitted by the North Dakota grocers association; and
 - d. Two consumer representatives appointed by the governor, provided that neither consumer representative may have a financial interest in a dairy farm nor in an entity that processes, distributes, or sells milk products.
2. An individual is not qualified to serve on the board if the individual held any other public office, in an elected or an appointed capacity, during the two-year period preceding appointment to the board.
3. A member of the board may not hold any other public office, in an elected or an appointed capacity, during the member's term of office.
4. In considering individuals for appointment to the board, the governor shall ensure that a geographic balance is maintained.

4.1-26-03. Terms of office.

1. The term of office for each member is five years and begins on July first.
2. Terms of office must be staggered so that no more than one term expires each year.
3. If at any time during a member's term the member ceases to possess any of the qualifications required by this chapter, the member's office is deemed vacant and the governor shall appoint another individual for the remainder of the term.

4.1-26-04. Compensation.

Each member of the board is entitled to receive compensation in the amount established by the board, but not exceeding one hundred thirty-five dollars per day, plus reimbursement for expenses as provided by law for state officers, if the member is attending meetings or performing duties directed by the board.

4.1-26-05. Chairman - Meetings.

1. Annually, the board shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the board and shall call a special meeting of the board within seven days when petitioned to do so by three board members.

4.1-26-06. Board powers.

The board may:

1. Do all things necessary and proper to enforce and administer this chapter;
2. Employ and compensate necessary personnel;
3. Employ an attorney licensed in this state;
4. Serve as a mediator or an arbitrator in any dispute among or between dairy farmers, processors, distributors, retailers, or consumers, provided:
 - a. All parties to the dispute request the board to provide such services; and
 - b. The dispute pertains to the production, transportation, processing, storage, distribution, or sale of milk products or frozen dairy products; and
5. Contract with any person for any purpose related to this chapter.

4.1-26-07. Director.

The board shall employ and compensate a director and annually review the appointment of the director. The director serves at the pleasure of the board.

4.1-26-08. Authority of governmental entities.

1. This chapter does not limit, decrease, or amend the authority of the agriculture commissioner, any public board of health, or any public health official, with respect to matters of health and sanitation.
2. This chapter does not authorize the milk marketing board to regulate the sale of raw milk that is not grade A.

4.1-26-09. Milk marketing areas - Boundaries.

1. The milk marketing board shall divide the state into milk marketing areas.
2. All real property in the state must belong to a milk marketing area.
3. The board may increase the number of marketing areas in the state, decrease the number of marketing areas in the state, or alter the boundaries of marketing areas, provided the board holds a hearing in accordance with chapter 28-32 and considers:
 - a. Testimony and documentary evidence regarding the production, distribution, and sale of milk products and frozen dairy products in the areas; ✓ ✓
 - b. The regulation of prices paid by processors for raw milk in accordance with federal milk marketing orders; and
 - c. Any other factors affecting implementation of this chapter.

4.1-26-10. Milk stabilization plans - Required provisions.

The milk marketing board shall establish a milk stabilization plan for each milk marketing area.

1. a. Each milk stabilization plan must include the minimum price that processors located within the particular milk marketing area must pay to dairy farmers for raw milk.
- b. In establishing the minimum price, as required by this subsection, the board shall consider various factors pertinent to the milk marketing area, including:
 - ✓(1) Supplies of raw milk;

- ✓(2) Reserve supplies of raw milk;
- ✓(3) Production and retail sales data;
- ✓(4) Feed prices; and
- ✓(5) Wage rates.

Att 1

SB 2009 3/18/2019

2. a. Each milk stabilization plan must include the minimum price that a processor must charge a retailer for milk products, provided the minimum price for each item is applicable, regardless of the location at which the retailer accepts delivery.
- b. Each milk stabilization plan must include the minimum price that a distributor must charge a retailer for milk products, provided the minimum price for each item is applicable, regardless of the location at which the retailer accepts delivery.
- c. Each milk stabilization plan must include the minimum price that any person must charge a consumer for milk products.
- d. In establishing the minimum price, as required by this subsection, the board shall consider various factors pertinent to the milk marketing area, including:
 - (1) Raw milk prices;
 - (2) Processing and distribution costs;
 - (3) Returns upon investment; and
 - (4) Retail sales volumes.

4.1-26-11. Milk stabilization plans - Optional provisions.

1. a. A milk stabilization plan established in accordance with section 4.1-26-10 may include the minimum price that must be charged for milk products and frozen dairy products by any person other than those referenced in subsection 2 of section 4.1-26-10.
- b. (1) Nothing in this subsection requires the establishment of minimum prices for all items in a category.
- (2) Nothing in this subsection requires the establishment of both minimum wholesale and retail prices for a particular item.
2. A milk stabilization plan established in accordance with section 4.1-26-10 may provide for a classified pricing system predicated upon utilization and may provide for a marketwide pooling arrangement or a handler pooling arrangement, as defined in the Agricultural Marketing Agreement Act of 1937 [7 U.S.C. 601 et seq.], as amended.
3. If some portion of a milk marketing area falls under the jurisdiction of a federal milk marketing order, a milk stabilization plan established in accordance with section 4.1-26-10 for the marketing area may require that licensed processors subject to both the milk stabilization plan and the federal milk marketing order:
 - a. Pay minimum raw milk class prices that exceed the minimum raw milk class prices established by the federal milk marketing order; and
 - b. Pay the difference between the federal and state minimums directly to dairy farmers, on a handler pool basis.
4. A milk stabilization plan established in accordance with section 4.1-26-10 may contain a formula that automatically changes the minimum price payable to dairy farmers, provided the formula is based on changes in the factors set forth in subdivision b of subsection 1 of section 4.1-26-10.
5. A milk stabilization plan established in accordance with section 4.1-26-10 may:
 - a. Establish the prices payable by a processor for raw milk purchased from sources other than dairy farmers; and
 - b. Contain provisions necessary to ensure that the prices paid for butterfat and milk solids not fat, whether in the form of raw milk or otherwise, are uniform for all processors whose raw milk purchases are regulated under the plan.
6. If a milk stabilization plan established in accordance with section 4.1-26-10 contains a marketwide pooling arrangement, the plan may require that raw milk produced by dairy farmer-processors be included in the pooling arrangement.
7. A milk stabilization plan established in accordance with section 4.1-26-10 may provide for price adjustments based upon:
 - a. The butterfat content of the raw milk;

- b. The location at which the raw milk is received;
- c. The location of a plant receiving raw milk that the processor purchased and thereafter transferred or diverted from the plant at which such raw milk is normally utilized; and
- d. Any other factors for which price adjustments are permitted in the Agricultural Marketing Agreement Act of 1937 [7 U.S.C. 601 et seq.], as amended.

4.1-26-12. Milk stabilization plans - Optional provisions - Maximum prices.

1. A milk stabilization plan established in accordance with section 4.1-26-10 may include maximum prices for sales of milk products by a:
 - a. Processor;
 - b. Distributor; or
 - c. Retailer.
2. In establishing the maximum prices as permitted by this section, the board must consider various factors pertinent to the milk marketing area, including:
 - a. Supplies of raw milk;
 - b. Reserve supplies of raw milk;
 - c. Production and retail sales data;
 - d. Feed prices; and
 - e. Wage rates.

4.1-26-13. Milk stabilization plans - Optional provisions - Quantity discounts to retailers.

A milk stabilization plan established in accordance with section 4.1-26-10 may permit processors and distributors to provide quantity discounts to retailers, in connection with the sales of milk products and frozen dairy products.

1. If quantity discounts are permitted, the milk stabilization plan must include for each retailer:
 - a. A quantity discount rate for purchases of milk products that is based upon the retailer's total purchases of milk products from all suppliers, during an established base period of one, three, six, or twelve months; and
 - b. A quantity discount rate for purchases of frozen dairy products that is based upon the retailer's total purchases of frozen dairy products from all suppliers, during an established base period of one, three, six, or twelve months.
2. Any processor or distributor delivering milk products or frozen dairy products to an eligible retailer may provide the quantity discounts regardless of the product quantities actually purchased by the eligible retailer from a processor or distributor.
3. If a retailer operates two or more separate places of business, the quantity discount rate must be applied to each place of business and based upon the quantity of milk products or frozen dairy products that the retailer purchased for resale at each place of business.

4.1-26-14. Milk stabilization plans - Optional provisions - Frozen dairy products - Wholesale price - Filing.

1. A milk stabilization plan established in accordance with this chapter may require that processors and distributors file with the board the uniform wholesale price at which a frozen dairy product will be sold within the marketing area.
2. If price filings are required, as permitted by this section, the board:
 - a. (1) Shall prescribe the time at which and the manner in which the initial price filings must be submitted; and
 - (2) Shall permit a processor or distributor desiring to meet the lower prices of a competitor to do so in such portions of the marketing area as specified in the amended price filing;
 - b. May not prohibit a processor or distributor from meeting lawful competition without delay in connection with the sale of a frozen dairy product; and

- c. May establish other requirements as necessary to implement this section.

4.1-26-15. Cost variances - Recognition.

1. Minimum and maximum prices established in accordance with this chapter for products other than raw milk may reflect packaging cost differences.
2. Minimum and maximum prices established in accordance with this chapter for home-delivered products may vary from the prices established for products sold to consumers by retailers.

4.1-26-16. Minimum prices payable to dairy farmers - Effect of change.

Whenever a milk stabilization plan is changed with respect to the minimum price that processors located within a particular milk marketing area must pay to dairy farmers for raw milk, the milk marketing board shall ensure that simultaneous changes occur in all other minimum and maximum prices established in accordance with this chapter.

4.1-26-17. Licenses.

1.
 - a. A person must be licensed by the milk marketing board as a dairy farmer if the person sells grade A raw milk that the person has produced to a processor that:
 - (1) Must be licensed in accordance with this chapter; and
 - (2) Processes the milk at a plant located in this state.
 - b. This subsection is applicable regardless of whether the person's dairy farm is located within or outside of this state.
2. A person must be licensed as a processor by the milk marketing board if the person:
 - a. Operates a processing plant located in this state;
 - b. Sells milk products or frozen dairy products to a retailer for resale at a retail establishment in this state, regardless of whether:
 - (1) The processor's plant is located in this state or outside of this state; or
 - (2) The retailer takes title to or possession of the products in this state or outside of this state; or
 - c. Sells milk products or frozen dairy products to a distributor for resale to:
 - (1) North Dakota consumers on home delivery; or
 - (2) A retailer.
3. A person must be licensed as a distributor by the milk marketing board if the person sells milk products or frozen dairy products to:
 - a. North Dakota consumers on one or more home delivery routes; or
 - b. A retailer.
4.
 - a. A person must be licensed as a retailer by the milk marketing board if the person:
 - (1) Purchases milk products or frozen dairy products for purposes of resale to consumers; or
 - (2) Sells milk products or frozen dairy products to consumers.
 - b.
 - (1) A person licensed as a dairy farmer, a processor, or a distributor shall also be licensed as a retailer, if the person sells milk products or frozen dairy products to consumers at a fixed place of business located in this state.
 - (2) Each fixed place of business referenced in this subdivision requires separate licensure.
5. In order to effectuate the purchase of milk products and frozen dairy products at wholesale prices, the following entities may be licensed as retailers:
 - a. School districts;
 - b. Nonpublic schools;
 - c. Hospitals;
 - d. State institutions; and
 - e. Not-for-profit entities.
6. This section requires separate licensure for each place of business.

4.1-26-18. Vending machine suppliers - Authorization to license.

Att 1 SB 2009

The milk marketing board, by rule, may provide for the licensing of persons engaged in supplying milk products or frozen dairy products to consumers through the use of vending machines.

3/18/2019

4.1-26-19. License - Application.

To obtain a license required by this chapter, a person must complete an application form and submit it to the milk marketing board.

4.1-26-20. Licenses - Additional requirements.

1. Before a processor may be licensed by the milk marketing board, as required by this chapter, the processor shall obtain a license from the agriculture commissioner, in accordance with chapter 4.1-25.
2. Before a distributor may be licensed by the board, as required by this chapter, the distributor shall obtain a license from the agriculture commissioner, in accordance with chapter 4.1-25.
3. Before a dairy farmer may be licensed by the board, as required by this chapter, the dairy farmer shall provide proof of inspection by the agriculture commissioner or the state department of health, as provided for in accordance with section 23-01-16.
4. A person who is a dairy farmer-processor shall obtain both a dairy farmer's license and a processor's license.

4.1-26-21. License application - Hearing.

1. Within thirty days after receiving an application for a license under this chapter, the milk marketing board shall:
 - a. Issue the license; or
 - b. Notify the applicant of the date on which a hearing will be held to receive evidence relative to the application.
2. A hearing under this section may not be held less than twenty days after the date on which notice is given, unless the board and the applicant agree to an earlier date.
3. Within thirty days after the hearing is closed, or as soon thereafter as practicable, the board shall notify the applicant of its decision in the matter.

4.1-26-22. Refusal to license.

The milk marketing board may refuse to license any person, except a dairy farmer.

4.1-26-23. Processor's license - Distributor's license - Grounds for denial.

The milk marketing board may deny an application for a processor's license or a distributor's license if the board determines that:

1. Persons currently licensed by the board in that capacity are supplying an adequate variety and quantity of high-quality milk products and frozen dairy products to retailers and consumers in this state;
2. Deliveries are being made with sufficient regularity and frequency; and
3. The issuance of additional licenses of the type sought will:
 - a. Result in an excess of processing plant capacity;
 - b. Tend to increase to unsatisfactory levels the average unit processing or average unit distribution costs for persons already licensed by the board; or
 - c. Otherwise tend to prevent achievement of the objectives of this chapter.

4.1-26-24. License application - Required declaration.

1. As a condition of licensure, an applicant for a processor's license shall declare in the application that the applicant:
 - a. Will not sell milk products or frozen dairy products to any person who is not properly licensed in accordance with this chapter;

- b. Will sell such milk products or frozen dairy products as are customarily handled by a processor to any retailer who:
 - (1) Desires to purchase such products from the processor; and
 - (2) Has a place of business in any community in which the processor processes, distributes, or sells milk products or frozen dairy products; and
- c. Will offer to any retailer the same frequency of delivery and the same in-store services as are customary in the community.
2. As a condition of licensure, an applicant for a distributor's license shall declare in the application that the applicant:
 - a. Will not sell milk products or frozen dairy products to any person who is not licensed in accordance with this chapter;
 - b. Will not purchase milk products or frozen dairy products from any person who is not licensed in accordance with this chapter;
 - c. Will sell such milk products or frozen dairy products as are customarily handled by a distributor to any retailer who:
 - (1) Desires to purchase such products from the distributor; and
 - (2) Has a place of business in any community in which the distributor distributes or sells milk products or frozen dairy products; and
 - d. Will offer to any retailer the same frequency of delivery and the same in-store services as are customary in the community.
3. As a condition of licensure, an applicant for a retailer's license shall declare in the application that the applicant will not purchase milk products or frozen dairy products from any person who is not licensed in accordance with this chapter.
4. For purposes of this section, "community" means a city, together with any commonly recognized residential or business area adjacent to the city.

4.1-26-25. License - Expiration.

A license issued under this chapter is effective until:

1. There is a change of ownership or of location;
2. The license is suspended or revoked; or
3. The business that is licensed is discontinued or is inactive for more than thirty days.

4.1-26-26. License - Fees prohibited.

The milk marketing board may not charge a fee for the issuance or maintenance of any license required by this chapter.

4.1-26-27. Assessments - Continuing appropriation.

1. a. Each licensed processor shall pay to the milk marketing board an amount determined by the board but not exceeding eighteen cents per hundredweight [45.36 kilograms], on all milk and milk equivalents used by the processor in manufacturing milk products and frozen dairy products.
 - b. The assessment required in accordance with this section is not imposed on milk products or frozen dairy products sold outside this state.
2. The assessment required by this section must be calculated quarterly and paid within fourteen days after the end of each calendar quarter.
3. The board shall forward all moneys received under this chapter to the state treasurer for deposit in the milk marketing fund. All moneys in the milk marketing fund are appropriated on a continuing basis to the board to carry out this chapter.

4.1-26-28. Records - Retention.

1. The milk marketing board shall specify by rule all records that each licensee must maintain.
2. Each licensee shall retain the records required in accordance with this section for a period of three years.

4.1-26-29. Records - Confidential - Penalty.

1. Any information created, collected, or maintained by the milk marketing board under this chapter is confidential and not subject to the open records requirements of section 44-04-18, except that the board may:
 - a. Utilize the information in the administration of this chapter;
 - b. Provide testimony regarding the information in a judicial proceeding or an administrative proceeding conducted in accordance with chapter 28-32;
 - c. Provide the information to the agriculture commissioner for the purpose of determining a licensee's financial condition, as required by chapter 4.1-25; and
 - d. Utilize the information in compiling and disseminating general statistical data.
2. Any person divulging confidential information in violation of this section is guilty of a class A misdemeanor.

4.1-26-30. Prohibitions.

1. A licensee may not buy or sell any milk product or any frozen dairy product at a price that is less than the minimum price nor more than the maximum price set forth in the applicable milk stabilization plan.
2. If price filings are required, as permitted by section 4.1-26-14:
 - a. A dealer may not sell a frozen dairy product at a price that varies from the filed price in effect on the date of the sale; and
 - b. A retailer may not purchase a frozen dairy product at a price that varies from the filed price in effect on the date of the sale.
3. A licensee may not engage in any act or omission that is contrary to a declaration made in the person's application for a license, as submitted to the milk marketing board.
4. a. A licensee may not use or attempt to use any method, device, or transaction that:
 - (1) Is intended to accomplish or has the effect of accomplishing, the sale or attempted sale of milk products or frozen dairy products at less than the minimum prices set forth in the applicable milk stabilization plan;
 - (2) Is intended to accomplish or has the effect of accomplishing the purchase or attempted purchase of milk products or frozen dairy products at less than the minimum prices set forth in the applicable milk stabilization plan;
 - (3) Is designed to circumvent any price requirements provided for in this chapter; or
 - (4) Has the effect of substantially undermining the effectiveness of any price requirements provided for in this chapter.b. The provisions of subdivision a are applicable regardless of whether the method, device, or transaction:
 - (1) Is applied directly to the milk product or frozen dairy product sold or purchased; or
 - (2) Is used in connection with the sale or handling of any other product, commodity, article, or service.
5. a. A distributor may not purchase milk products or frozen dairy products at prices that are less than minimum wholesale prices if the products are resold to consumers at a fixed place of business owned by the distributor.
 - b. This subdivision does not prohibit a distributor from purchasing at wholesale prices those milk products or frozen dairy products that are to be resold at a fixed place of business owned by the distributor, provided the distributor purchases at distributor prices all other milk products and frozen dairy products that are to be resold by the distributor.
6. A retailer may not sell or offer to sell milk products or frozen dairy products of a particular brand at a price that is different from that charged by the retailer for the same quantity, type, quality, or grade of a different brand, unless the price differential equals the difference in the price paid by the retailer for the referenced products.

4.1-26-31. Disruptive trade practices.

1. A person may not provide discounts, rebates, or allowances in connection with the sale of milk products or frozen dairy products, unless the discounts, rebates, or allowances are permitted in accordance with section 4.1-26-13.
- ✓ 2. A dealer may not provide free equipment or services to a retailer. This subsection does not prohibit a dealer from:
 - a. Stocking the dairy case or frozen products cabinet of a retailer; or
 - b. Stamping on each milk product or frozen dairy product the retail price at which the retailer desires to sell the product.
- ✓ 3. A person may not provide advertising or display allowances.
4.
 - a. A person may not give a free milk product or a free frozen dairy product to a customer.
 - b. This subsection does not prohibit a person from:
 - ✓ (1) Providing tasting samples to an individual; or
 - ✓ (2) Donating products for charitable purposes.
5. A dealer may not make loans to a retailer, renew loans to a retailer, or provide financial assistance in any other form to a retailer.
6. A dealer may not furnish signs to a retailer.
7. A person may not sell, offer to sell, or advertise any milk product or frozen dairy product in combination with any other product or service.
8. A person may not sell, offer to sell, or advertise any product or service at a price that is available only to purchasers of a milk product or a frozen dairy product.
9. A dealer may not provide a gift to a retailer.
10.
 - a. A dealer may not lease, lend, or rent equipment to a retailer.
 - b. If a dealer sells equipment to a retailer, the board shall prescribe the minimum markup, based upon the seller's invoice cost or the depreciated value in the case of used equipment.
11.
 - a.
 - (1) Except as otherwise provided in this subdivision, a person may not require a deposit if milk products or frozen dairy products are purchased in returnable containers.
 - (2) A person may require a deposit on a milk case, provided the deposit does not exceed the replacement value of the milk case.
 - b. A person may not provide an allowance or a credit in connection with the return of a container.
12.
 - ✓ a. Except as otherwise provided, a dealer may not provide payment to a franchisor, a wholesale grocer, or any other person closely connected with a retailer for central billing, customer solicitation, or other services, if the purpose or effect of the payment is to induce the recipient to influence or attempt to influence a retailer's decision regarding:
 - (1) The brand of milk products or frozen dairy products to be purchased and resold by the retailer; or
 - (2) The amount of space to be allocated to any brand of milk products or frozen dairy products.
 - b. If a wholesale grocer establishes a central billing service to guarantee the collection of dealer accounts:
 - (1) All dealers that supply member or corporate stores must be afforded the same service; and
 - (2) The central billing service fee may not exceed two percent of the invoice cost.

4.1-26-32. Inspections and investigations.

1. A representative of the milk marketing board may enter upon real property and access any structure and personal property, at any time, for the purpose of:
 - a. Inspecting or pursuing an investigation pertaining to the production, storage, processing, manufacturing, or sale of raw milk, milk products, or frozen dairy products; or

- AMI
SB2009
3/18/2019
- b. Inspecting records to determine statutory and regulatory compliance.
 2. The milk marketing board may subpoena records, copy records, and audit records of any person doing business with an individual licensed under this chapter.

4.1-26-33. License - Suspension and revocation.

1. The board may suspend or revoke a license granted to any person under this chapter if the person violates:
 - a. This chapter;
 - b. A milk stabilization plan issued in accordance with this chapter; or
 - c. Any rule that implements this chapter.
2. The provisions of this subsection do not apply to a dairy farmer.

4.1-26-34. Violation of chapter - Civil penalty.

A person violating this chapter, a milk stabilization plan issued in accordance with this chapter, or any rule that implements this chapter, is subject to a civil penalty in an amount not exceeding five hundred dollars per day for each violation. The civil penalty may be adjudicated by a court or by the milk marketing board through an administrative hearing.

4.1-26-35. Administrative and regulatory functions.

All administrative and regulatory functions of the board must be exercised in accordance with chapter 28-32.

4.1-26-36. Legal actions.

All legal actions may be brought by or against the board in the name of the North Dakota milk marketing board.

Below is an outline of the Milk Marketing Board's involvement with the producer, processor and distributor.

- Processor is required to pay a minimum price for the raw milk to the producer
- The distributor is required to pay a minimum price, minus the quantity discount, for the finished milk products
- Distributor must charge a minimum wholesale price for milk products to the retailer
- Retailer must charge a minimum retail price to consumer

This establishes the minimum price for raw, processed, distributor, retailer, and finally the consumer.

All of this is done to support a minimum milk price for dairy farmers.

The law says that whoever is licensed as a processor or distributor must deliver to everyone who wants dairy products in a region of the state.

- If Sysco, GFG, or Food Services, etc. wants to provide dairy products they have two options:
 - **Option 1:** Be licensed as a distributor with the Milk Marketing Board. This means they must deliver to everyone who wishes to purchase dairy products in the region they service. Under this option they can purchase milk products from in-state processors or bring in milk from out-of-state processors.
 - Businesses have pursued obtaining a license and owning the milk; however, they have stated during License hearings with Milk Marketing board they do not wish to deliver to all areas, only to existing customer base. Milk Marketing board by law denies license based on this matter.
 - **Option 2:** Be a third-party hauler. Under this method they are not licensed by the Milk marketing board. However, they are not allowed to purchase or resell dairy products. Retailer must purchase directly from processor. Sysco, GFG, or Food service etc. will only be able charge for delivery of the product.
- The perceived issue is that they can not resell or mark up products and that is where companies make extra revenue when delivering.

Regional Agriculture Commissioner and Director Salaries

State	Annual Salary as of April 2018	Method of Selection
Iowa	\$ 103,212	Elected
North Dakota	108,656	Elected
Kansas	110,000	Appointed by Governor
Montana	110,787	Appointed by Governor
Nebraska	115,001	Appointed by Governor
South Dakota	118,000	Appointed by Governor
Wisconsin	121,950	Appointed by Governor
Wyoming	124,378	Appointed by Governor
Minnesota	144,991	Appointed by Governor
Colorado	162,012	Appointed by Governor

Att 2
SB 2009
3/18/2019

Agriculture Commissioner - Budget No. 602
Senate Bill No. 2009
Base Level Funding Changes

AH 3
 SB 2009
 3/18/2019

	Executive Budget Recommendation				Senate Version				Senate Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	73.00	\$9,109,101	\$21,087,676	\$30,196,777	73.00	\$9,109,101	\$21,087,676	\$30,196,777	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes		(\$219,766)	(\$163,633)	(\$383,399)				\$0		\$219,766	\$163,633	\$383,399
Salary increase		260,886	229,983	490,869		\$192,238	\$163,246	355,484		(68,648)	(66,737)	(135,385)
Health insurance increase		146,552	117,979	264,531		171,434	158,759	330,193		24,882	40,780	65,662
Retirement contribution increase		34,207	27,538	61,745				0		(34,207)	(27,538)	(61,745)
Removes 2 FTE positions	(2.00)	(247,034)	(68,845)	(315,879)				0	2.00	247,034	68,845	315,879
Adds funding for Microsoft Office 365 license expenses		1,849	377	2,226		1,849	377	2,226				0
Reduces funding for operating expenses		(144,699)	(145,237)	(289,936)				0		144,699	145,237	289,936
Removes funding for the state waterbank program			(389,817)	(389,817)				0			389,817	389,817
Adjusts funding for capital assets		2,000		2,000		2,000		2,000				0
Reduces funding for grants		(84,000)	(20,000)	(104,000)				0		84,000	20,000	104,000
Reduces funding for Board of Animal Health operating expenses		(10,000)	(100,000)	(110,000)				0		10,000	100,000	110,000
Adds funding for wildlife services operating fees		9,400		9,400		49,400		49,400		40,000		40,000
Adds funding for wine research grants and apiary grants				0		6,000		6,000		6,000		6,000
Adds funding for an Agriculture Commissioner salary equity increase				0		14,713		14,713		14,713		14,713
Adds funding for meat inspection operating expenses				0		81,002	(59,784)	21,218		81,002	(59,784)	21,218
Transfers the Agricultural Products Utilization Commission				0	2.00		3,152,915	3,152,915	2.00		3,152,915	3,152,915
Total ongoing funding changes	(2.00)	(\$250,605)	(\$511,655)	(\$762,260)	2.00	\$518,636	\$3,415,513	\$3,934,149	4.00	\$769,241	\$3,927,168	\$4,696,409
One-time funding items												
Adds funding for a master customer database		\$110,000		\$110,000		\$110,000		\$110,000		\$0		\$0
Total one-time funding changes	0.00	\$110,000	\$0	\$110,000	0.00	\$110,000	\$0	\$110,000	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(2.00)	(\$140,605)	(\$511,655)	(\$652,260)	2.00	\$628,636	\$3,415,513	\$4,044,149	4.00	\$769,241	\$3,927,168	\$4,696,409
2019-21 Total Funding	71.00	\$8,968,496	\$20,576,021	\$29,544,517	75.00	\$9,737,737	\$24,503,189	\$34,240,926	4.00	\$769,241	\$3,927,168	\$4,696,409

Other Sections for Agriculture Commissioner - Budget No. 602

	Executive Budget Recommendation	Senate Version
Environment and rangeland protection fund transfer	Section 3 would require the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.	Section 3 requires the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.
Environment and rangeland protection fund	Section 4 would identify \$6,357,407 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.	Section 4 identifies \$6,663,678 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.
Game and Fish Department operating fund	Section 5 would identify \$615,480 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.	Section 5 identifies \$614,430 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.

AM 3 SB 2009 3/18/2019

Other Sections for Agriculture Commissioner - Budget No. 602

	<u>Executive Budget Recommendation</u>	<u>Senate Version</u>
State Water Commission transfer	Section 6 would transfer \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.	Section 6 transfers \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.
Waterbank program - Matching funds		Section 7 identifies \$50,000 in the salary and wages line item in Section 1 is from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.
Pipeline restoration and reclamation	Section 7 would identify \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program	Section 8 identifies \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program.
Agriculture Commissioner salary	Section 8 would provide the statutory changes necessary to increase the Agriculture Commissioner's salary. The Agriculture Commissioner's annual salary would increase from the current level of \$108,656 to \$113,002 effective July 1, 2019, and to \$115,262 effective July 1, 2020, to reflect the 4 percent and 2 percent recommended salary increase.	Section 9 provides the statutory changes necessary to increase the Agriculture Commissioner's salary from the current level of \$108,656 to \$117,087 effective July 1, 2019, and to \$120,600 effective July 1, 2020, to provide an equity increase for the Agriculture Commissioner and to reflect the 2 percent and 3 percent salary increase proposed by the Senate.
Agricultural Products Utilization Commission transfer		Section 10 provides the statutory changes necessary to transfer the Agricultural Products Utilization Commission from the Department of Commerce to the Agriculture Commissioner.
Agricultural Products Utilization Commission repeal		Section 11 repeals Chapter 54-60.3 of the North Dakota Century Code, which establishes the Agricultural Products Utilization Commission as an office of the Department of Commerce Division of Economic Development and Finance.

Agriculture Commissioner - Budget No. 602
Senate Bill No. 2009
Base Level Funding Changes

/ SB 2009
 4-17-19
 Pg 1

	Senate Version				House Version				House Changes to Senate Version Increase (Decrease) - Senate Version			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	73.00	\$9,109,101	\$21,087,676	\$30,196,777	73.00	\$9,109,101	\$21,087,676	\$30,196,777	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes				\$0				\$0				\$0
Salary increase		\$192,238	\$163,246	355,484		211,812	189,585	401,397		19,574	26,339	45,913
Health insurance increase		171,434	158,759	330,193		172,416	157,777	330,193		982	(982)	0
Removes FTE positions				0	(1.00)	(123,517)	(34,423)	(157,940)	(1.00)	(123,517)	(34,423)	(157,940)
Adds funding for Microsoft Office 365 license expenses		1,849	377	2,226		1,849	377	2,226				0
Adjusts funding for capital assets		2,000		2,000		2,000		2,000				0
Adds funding for wildlife services operating fees		49,400		49,400		0	49,400	49,400		(49,400)	49,400	0
Adds funding for wine research grants and apiary grants		6,000		6,000		6,000		6,000				0
Adds funding for an Agriculture Commissioner salary equity increase		14,713		14,713		0		0		(14,713)		(14,713)
Adds funding for meat inspection operating expenses		81,002	(59,784)	21,218		81,002	(59,784)	21,218				0
Transfers the Agricultural Products Utilization Commission (APUC)	2.00		3,152,915	3,152,915	1.00		1,976,124	1,976,124	(1.00)		(1,176,791)	(1,176,791)
Adds funding for APUC from Bank of North Dakota profits				0			2,000,000	2,000,000			2,000,000	2,000,000
Adds 2 FTE grain warehouse inspectors				0	2.00	388,725		388,725	2.00	388,725		388,725
Adds 1 FTE grain warehouse insepctor and funding for existing inspector				0	1.00	294,281		294,281	1.00	294,281		294,281
Adds 1 FTE accounting budget specialist				0	1.00	170,493		170,493	1.00	170,493		170,493
Total ongoing funding changes	2.00	\$518,636	\$3,415,513	\$3,934,149	4.00	\$1,205,061	\$4,279,056	\$5,484,117	2.00	\$686,425	\$863,543	\$1,549,968
One-time funding items												
Adds funding for a master customer database		\$110,000		\$110,000		\$110,000		\$110,000				\$0
Total one-time funding changes	0.00	\$110,000	\$0	\$110,000	0.00	\$110,000	\$0	\$110,000	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	2.00	\$628,636	\$3,415,513	\$4,044,149	4.00	\$1,315,061	\$4,279,056	\$5,594,117	2.00	\$686,425	\$863,543	\$1,549,968
2019-21 Total Funding	75.00	\$9,737,737	\$24,503,189	\$34,240,926	77.00	\$10,424,162	\$25,366,732	\$35,790,894	2.00	\$686,425	\$863,543	\$1,549,968

Other Sections for Agriculture Commissioner - Budget No. 602

	Senate Version	House Version
Environment and rangeland protection fund transfer	Section 3 requires the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.	Section 3 requires the Agriculture Commissioner to transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the 2019-21 biennium.
Environment and rangeland protection fund	Section 4 identifies \$6,663,678 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.	Section 4 identifies \$6,725,799 in the estimated income line item in Section 1 is from the environment and rangeland protection fund during the 2019-21 biennium.
Game and Fish Department operating fund	Section 5 identifies \$614,430 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.	Section 5 identifies \$614,430 in the estimated income line item in Section 1 is from the Game and Fish Department operating fund for various Department of Agriculture programs.
State Water Commission transfer	Section 6 transfers \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.	Section 6 transfers \$125,000 from the State Water Commission to the Agriculture Commissioner for the Wildlife Services program during the 2019-21 biennium.

1 SB 2009
4-17-19
p92

Other Sections for Agriculture Commissioner - Budget No. 602

Senate Version

House Version

Waterbank program - Matching funds

Section 7 identifies \$50,000 in the salary and wages line item in Section 1 is from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.

Section 7 identifies \$50,000 in the salary and wages line item in Section 1 is from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.

Pipeline restoration and reclamation

Section 8 identifies \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program.

Section 8 identifies \$200,000 in the estimated income line item in Section 1 is from the abandoned oil and gas well plugging and site reclamation fund for the pipeline restoration and reclamation program.

Transfer - Bank of North Dakota profits - Agricultural Products Utilization Commission

Section 9 identifies \$2 million in the estimated income line item in Section 1 is from the Agricultural Products Utilization Commission fund. The Industrial Commission is required to transfer \$2 million from the current earnings and undivided profits of the Bank of North Dakota to the Agriculture Commissioner for deposit in the Agricultural Products Utilization Commission fund during the 2019-21 biennium.

Agriculture Commissioner salary

Section 9 provides the statutory changes necessary to increase the Agriculture Commissioner's salary from the current level of \$108,656 to \$117,087 effective July 1, 2019, and to \$120,600 effective July 1, 2020.

Section 10 provides the statutory changes necessary to increase the Agriculture Commissioner's salary from the current level of \$108,656 to \$110,829 effective July 1, 2019, and to \$113,600 effective July 1, 2020.

Agricultural Products Utilization Commission transfer

Section 10 provides the statutory changes necessary to transfer the Agricultural Products Utilization Commission from the Department of Commerce to the Agriculture Commissioner.

Agricultural Products Utilization Commission repeal

Section 11 repeals Chapter 54-60.3 of the North Dakota Century Code, which establishes the Agricultural Products Utilization Commission as an office of the Department of Commerce Division of Economic Development and Finance.

Grain programs

Sections 11 through 92 transfer grain, grain buyers, warehousing, deposits, and warehousemen programs from the Public Service Commission to the Agriculture Commissioner and increases annual licensing fees.

p2

2 SB 2009
4-17-19
Pg 1

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2009 - Funding Summary

	Base Budget	Senate Version	House Changes	House Version
Department of Agriculture				
Salaries and wages	\$12,372,949	\$13,049,463	\$601,759	\$13,651,222
Operating expenses	6,444,336	6,577,780	125,000	6,702,780
Capital assets	13,000	15,000		15,000
Grants	8,817,774	8,823,774		8,823,774
State Board of Animal Health	865,718	865,718		865,718
Wildlife services	1,408,000	1,457,400		1,457,400
Crop Harmonization Board	75,000	75,000		75,000
Pipeline restoration and reclamation	200,000	200,000		200,000
Ag. Products Utilization Commission		3,176,791	823,209	4,000,000
Total all funds	\$30,196,777	\$34,240,926	\$1,549,968	\$35,790,894
Less estimated income	21,087,676	24,503,189	863,543	25,366,732
General fund	\$9,109,101	\$9,737,737	\$686,425	\$10,424,162
FTE	73.00	75.00	2.00	77.00
Bill total				
Total all funds	\$30,196,777	\$34,240,926	\$1,549,968	\$35,790,894
Less estimated income	21,087,676	24,503,189	863,543	25,366,732
General fund	\$9,109,101	\$9,737,737	\$686,425	\$10,424,162
FTE	73.00	75.00	2.00	77.00

Senate Bill No. 2009 - Department of Agriculture - Senate Action

	Base Budget	Senate Changes	Senate Version
Salaries and wages	\$12,372,949	\$676,514	\$13,049,463
Operating expenses	6,444,336	133,444	6,577,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
State Board of Animal Health	865,718		865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop Harmonization Board	75,000		75,000
Pipeline restoration and reclamation	200,000		200,000
Ag. Products Utilization Commission		3,176,791	3,176,791
Total all funds	\$30,196,777	\$4,044,149	\$34,240,926
Less estimated income	21,087,676	3,415,513	24,503,189
General fund	\$9,109,101	\$628,636	\$9,737,737
FTE	73.00	2.00	75.00

#2 SB 2009
4-17-19
pg 2

Department 602 - Department of Agriculture - Detail of Senate Changes

	Adds Funding for Salary and Benefit Increases ¹	Adjusts Base Level Funding ²	Adds Funding for an Agriculture Commissioner Salary Equity Increase ³	Adjusts Funding for the Meat Inspection Program ⁴	Transfers the Agricultural Products Utilization Commission ⁵	Adds One-Time Funding for a Master Customer Database ⁶
Salaries and wages	\$661,801		\$14,713			
Operating expenses		\$2,226		\$21,218		\$110,000
Capital assets		2,000				
Grants		6,000				
State Board of Animal Health						
Wildlife services		49,400				
Crop Harmonization Board						
Pipeline restoration and reclamation						
Ag. Products Utilization Commission	23,876				\$3,152,915	
Total all funds	\$685,677	\$59,626	\$14,713	\$21,218	\$3,152,915	\$110,000
Less estimated income	322,005	377	0	(59,784)	3,152,915	0
General fund	\$363,672	\$59,249	\$14,713	\$81,002	\$0	\$110,000
FTE	0.00	0.00	0.00	0.00	2.00	0.00

	Total Senate Changes
Salaries and wages	\$676,514
Operating expenses	133,444
Capital assets	2,000
Grants	6,000
State Board of Animal Health	
Wildlife services	49,400
Crop Harmonization Board	
Pipeline restoration and reclamation	
Ag. Products Utilization Commission	3,176,791
Total all funds	\$4,044,149
Less estimated income	3,415,513
General fund	\$628,636
FTE	2.00

¹ The following funding is added for 2019-21 biennium salary adjustments of 2 percent on July 1, 2019, and 3 percent on July 1, 2020, and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	General Fund	Other Funds	Total
Salary increase	\$192,238	\$163,246	\$355,484
Health insurance increase	171,434	158,759	330,193
Total	\$363,672	\$322,005	\$685,677

² Base level funding is adjusted as follows:

	General Fund	Other Funds	Total
Adds funding for Microsoft Office 365 license expenses	\$1,849	\$377	\$2,226
Adjusts funding for capital assets	2,000	0	2,000
Adds funding for wildlife services operating fees	49,400	0	49,400
Adds funding for grape and wine grants and apiary grants	6,000	0	6,000
Total	\$59,249	\$377	\$59,626

³ Funding of \$14,713 is added to increase the Agriculture Commissioner's salary to align the Agriculture Commissioner's salary with the Tax Commissioner's salary. Of the total, \$6,135 is added for each fiscal year of the biennium for salaries and \$2,443 is added for fringe benefits. The additional \$6,135 per year increases the Agriculture Commissioner's salary from the current level of \$108,656 to \$114,791, the same amount as the Tax Commissioner. After adjusting for the 2 percent and 3 percent salary increases proposed by the Senate, the

2 SB 2009
4-17-19
pg 3

Agriculture Commissioner's salary for fiscal years 2020 and 2021 will be \$117,087 and \$120,600, respectively.

⁴ Funding of \$21,218, of which \$11,033 is from the general fund and \$10,185 is from federal funds, is added for operating expenses for the meat inspection program. The funding for 1 FTE meat inspector program director position is adjusted to increase funding from the general fund by \$69,969 and to reduce other funds by \$69,969.

⁵ The Agricultural Products Utilization Commission (APUC) and related funding of \$3,152,915 from the APUC fund, including 2 FTE positions, is transferred from the Department of Commerce to the Agriculture Commissioner. Of this amount, \$434,342 is for salaries and wages, \$67,857 is for operating expenses, and \$2,650,716 is for grants.

⁶ One-time funding of \$110,000 is added from the general fund for a master customer database project.

This amendment also adds sections to:

- Provide statutory changes necessary to increase the Agriculture Commissioner's salary.
- Provide statutory changes necessary to transfer APUC from the Department of Commerce to the Agriculture Commissioner.
- Repeal North Dakota Century Code Chapter 54-60.3, which establishes APUC as an office of the Department of Commerce Division of Economic Development and Finance.

Senate Bill No. 2009 - Department of Agriculture - House Action

	Base Budget	Senate Version	House Changes	House Version
Salaries and wages	\$12,372,949	\$13,049,463	\$601,759	\$13,651,222
Operating expenses	6,444,336	6,577,780	125,000	6,702,780
Capital assets	13,000	15,000		15,000
Grants	8,817,774	8,823,774		8,823,774
State Board of Animal Health	865,718	865,718		865,718
Wildlife services	1,408,000	1,457,400		1,457,400
Crop Harmonization Board	75,000	75,000		75,000
Pipeline restoration and reclamation	200,000	200,000		200,000
Ag. Products Utilization Commission		3,176,791	823,209	4,000,000
Total all funds	\$30,196,777	\$34,240,926	\$1,549,968	\$35,790,894
Less estimated income	21,087,676	24,503,189	863,543	25,366,732
General fund	\$9,109,101	\$9,737,737	\$686,425	\$10,424,162
FTE	73.00	75.00	2.00	77.00

Department 602 - Department of Agriculture - Detail of House Changes

	Adjusts Funding for Salary and Benefit Increases ¹	Removes 1 FTE Position ²	Removes Funding for Agriculture Commissioner Salary Equity Increase ³	Adjusts Funding for Wildlife Services Operating Fees ⁴	Adjusts Funding for APUC ⁵	Transfers Grain Warehouse Inspection Program from the PSC ⁶
Salaries and wages	\$45,913	(\$157,940)	(\$14,713)			\$728,499
Operating expenses						125,000
Capital assets						
Grants						
State Board of Animal Health						
Wildlife services						
Crop Harmonization Board						
Pipeline restoration and reclamation						
Ag. Products Utilization Commission					\$823,209	
Total all funds	\$45,913	(\$157,940)	(\$14,713)	\$0	\$823,209	\$853,499
Less estimated income	25,357	(34,423)	0	49,400	823,209	0
General fund	\$20,556	(\$123,517)	(\$14,713)	(\$49,400)	\$0	\$853,499
FTE	0.00	(1.00)	0.00	0.00	(1.00)	4.00

2 SB 2009
4-17-19
Pg 4

	Total House Changes
Salaries and wages	\$601,759
Operating expenses	125,000
Capital assets	
Grants	
State Board of Animal Health	
Wildlife services	
Crop Harmonization Board	
Pipeline restoration and reclamation	
Ag. Products Utilization Commission	823,209
<hr/>	
Total all funds	\$1,549,968
Less estimated income	863,543
General fund	\$686,425
<hr/>	
FTE	2.00

¹ Funding of \$45,913, of which \$20,556 is from the general fund and \$25,357 is from other funds, is added for 2019-21 biennium salary increases of 2 percent with a minimum monthly increase of \$120 and a maximum monthly increase of \$200 on July 1, 2019, and 2.5 percent on July 1, 2020. The Senate provided funding for a salary increase of 2 percent on July 1, 2019, and a 3 percent increase on July 1, 2020.

² One FTE undesignated position and funding of \$157,940 is removed, of which \$123,517 is from the general fund, \$6,673 is from the Department of Agriculture operating fund, and \$27,750 is from federal funds. The Senate did not remove any FTE positions.

³ Funding of \$14,713 provided by the Senate to increase the Agriculture Commissioner's salary to align with the Tax Commissioner's salary is removed.

⁴ The funding source for \$49,400 for wildlife services operating fees is changed to the environment and rangeland protection fund rather than the general fund to provide total funding of \$1,457,400 for wildlife services, the same amount as the Senate.

⁵ Funding for the Agricultural Products Utilization Commission (APUC) is adjusted as follows:

	FTE	Other Funds
Reduces funding from the APUC special funds	(1.00)	(\$1,176,791)
Adds funding from Bank of North Dakota profits	0.00	2,000,000
Total	(1.00)	\$823,209

Total funding approved by the House for APUC is \$4 million, of which \$2 million is from the APUC fund and \$2 million is from the profits of the Bank of North Dakota. The House approved 1 FTE APUC position for the program. The Senate approved total funding of \$3,176,791 from the APUC fund and 2 FTE positions.

⁶ Transfers grain warehouse license and inspection program from the Public Service Commission to the Agriculture Commissioner as follows:

	Salaries and Wages	Operating Expenses	Total General Fund
Adds 3 FTE grain warehouse inspectors	\$563,006	\$120,000	\$683,006
Adds 1 FTE accounting budget specialist	165,493	5,000	170,493
Total	\$728,499	\$125,000	\$853,499

This amendment also:

- Amends a section identifying the amount of funding from the environment and rangeland protection fund.
- Amends a section relating to the salary of the Agriculture Commissioner.
- Adds a section related to the transfer of \$2 million of the current earnings and undivided profits of the Bank of North Dakota to the Agriculture Commissioner for deposit in the APUC fund during the 2019-21 biennium.
- Removes statutory sections related to APUC. The statutory changes needed to move APUC to the Agriculture Commissioner are included in Senate Bill No. 2328.
- Adds statutory sections to transfer grain, grain buyers, warehousing, deposits, and warehousemen programs from the Public Service Commission to the Agriculture Commissioner and increases annual license fees, resulting in additional general fund revenues of approximately \$83,200 during the 2019-21 biennium.

4-26-19
SB 2009
#1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2009

That the House recede from its amendments as printed on pages 1539-1571 of the Senate Journal and pages 1674-1706 of the House Journal and that Engrossed Senate Bill No. 2009 be amended as follows:

P1
cont
corr.

Page 1, line 2, remove "to create and enact a new chapter to title 4.1 of the"

Page 1, line 3, replace "North Dakota Century Code, relating to the agricultural products utilization commission" with "to create and enact a new section to chapter 60-01, a new section to chapter 60-02, and a new section to chapter 60-02.1 of the North Dakota Century Code, relating to the definition of agriculture commissioner, and records confidentiality for warehousemen and grain buyers"

Page 1, line 4, replace "section" with "sections"

Page 1, line 4, after "4.1-01-02" insert "and 49-02-01, subsection 1 of section 60-02-01, sections 60-02-02, 60-02-03, 60-02-04, 60-02-05.1, 60-02-07, 60-02-07.2, 60-02-09, 60-02-09.1, 60-02-10.1, 60-02-11, 60-02-14, 60-02-17, 60-02-24, 60-02-27, 60-02-35.1, 60-02-38, 60-02-40, 60-02-41, 60-02-42, 60-02.1-01, 60-02.1-02, 60-02.1-03, 60-02.1-04, 60-02.1-06, 60-02.1-07, 60-02.1-07.1, 60-02.1-08, 60-02.1-09, 60-02.1-11, 60-02.1-16, 60-02.1-17, 60-02.1-19, 60-02.1-22, 60-02.1-26, 60-02.1-27, 60-02.1-29, 60-02.1-30, 60-02.1-32, 60-02.1-33, 60-02.1-34, 60-02.1-35, 60-02.1-36, 60-02.1-37, 60-02.1-38, and 60-02.1-39, subsection 1 of section 60-04-01, and sections 60-04-03, 60-04-03.1, 60-04-03.2, 60-04-03.3, 60-04-04, 60-04-05, 60-04-06, 60-04-07, 60-04-08, 60-04-09, 60-04-10, 60-05-01, 60-05-02, 60-05-03, 60-05-04, 60-06-05, 60-06-06.1, 60-10-01, 60-10-02, 60-10-03, 60-10-05, 60-10-07, 60-10-08, 60-10-09, 60-10-10, 60-10-11, 60-10-12, 60-10-14, and 60-10-15"

Page 1, line 5, after "commissioner" insert ", and moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner"

Page 1, line 5, remove "to repeal chapter 54-60.3 of the North Dakota Century Code,"

Page 1, line 6, remove "relating to the agricultural products utilization commission;"

Page 1, line 7, after "assembly" insert "; to provide a penalty; and to provide a continuing appropriation"

Page 1, remove lines 17 through 24

Page 2, replace lines 1 through 6 with:

"Salaries and wages	\$12,372,949	\$1,859,797	\$14,232,746
Operating expenses	6,444,336	258,444	6,702,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
Board of animal health	865,718	0	865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop harmonization board	75,000	0	75,000
Pipeline restoration and reclamation oversight program	200,000	0	200,000

4.26-19
SB2009

Agricultural products utilization commission	<u>0</u>	<u>3,760,417</u>	<u>3,760,417</u>
Total all funds	\$30,196,777	\$5,936,058	\$36,132,835
Less estimated income	<u>21,087,676</u>	<u>4,234,730</u>	<u>25,322,406</u>
Total general fund	\$9,109,101	\$1,701,328	\$10,810,429
Full-time equivalent positions	73.00	5.00	78.00"

Page 2, replace lines 12 through 17 with:

National genomics center	\$120,000	\$0
Federal environmental law impact review	1,000,000	0
Master customer database	0	110,000
Agricultural products utilization commission	<u>0</u>	<u>2,000,000</u>
Total all funds	\$1,120,000	\$2,110,000
Less estimated income	<u>1,120,000</u>	<u>2,000,000</u>
Total general fund	\$0	\$110,000

#1
p2
Conf
Comm

Page 2, line 27, replace "\$6,663,678" with "\$6,725,799"

Page 3, after line 16, insert:

"SECTION 9. TRANSFER - BANK OF NORTH DAKOTA PROFITS - AGRICULTURAL PRODUCTS UTILIZATION COMMISSION. The Bank of North Dakota shall transfer the sum of \$2,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the agriculture commissioner for deposit in the agricultural products utilization commission fund during the biennium beginning July 1, 2019, and ending June 30, 2021. This funding is considered a one-time funding item."

Page 3, line 20, overstrike "five"

Page 3, line 20, replace "seventeen" with "sixteen"

Page 3, line 21, replace "eighty-seven" with "eight hundred thirty-six"

Page 3, line 22, overstrike "eight"

Page 3, line 22, replace "twenty" with "nineteen"

Page 3, line 22, overstrike "six" and insert immediately thereafter "seven"

Page 3, line 22, after "fifty-six" insert "fifty-seven"

Page 3, remove lines 23 through 31

Page 4, remove lines 1 through 31

Page 5, replace lines 1 through 24 with:

"SECTION 11. APPROPRIATION - GRAIN INSOLVENCY LITIGATION - ONE-TIME FUNDING - APPLICATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of paying the public service commission to continue providing services related to grain insolvency litigation that began prior to July 1, 2019, for the biennium beginning July 1, 2019, and ending June 30, 2021. This funding is considered a one-time funding item. Sections 60-02.1-8 and 60-04-10 do not apply to any expenses paid from the appropriation provided in this section.

SECTION 12. AMENDMENT. Section 49-02-01 of the North Dakota Century Code is amended and reenacted as follows:

SB 2009
4-26-19

49-02-01. General jurisdiction of the public service commission over public utilities.

#1
P 3
cont
comm

The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.
2. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.
3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
4. Electric utilities engaged in the generation and distribution of light, heat, or power.
5. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
6. All heating utilities engaged in the distribution of heat.
7. ~~Warehouse companies engaged in the marketing, storage, or handling of agricultural products.~~
8. All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

SECTION 13. A new section to chapter 60-01 of the North Dakota Century Code is created and enacted as follows:

Definition.

For purposes of this title, "commissioner" means the agriculture commissioner.

SECTION 14. AMENDMENT. Subsection 1 of section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~"Commissioner" means the public service commissioner.~~
"Commissioner" means the agriculture commissioner.

SECTION 15. AMENDMENT. Section 60-02-02 of the North Dakota Century Code is amended and reenacted as follows:

60-02-02. Commissioner - Powers and duties.

The commissioner has the powers and duties imposed by the provisions enumerated under this chapter and the powers conferred herein devolve upon the commissioner.

SECTION 16 AMENDMENT. Section 60-02-03 of the North Dakota Century Code is amended and reenacted as follows:

60-02-03. Duties and powers of the ~~commission~~ commissioner.

SB2009
4-26-19

The ~~commission~~ commissioner shall have the duty and power ~~to~~ commissioner has the following powers and duties:

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any licensed warehouse, including all books, documents, and records.
4. Require the filing of reports pertaining to the operation of the warehouse.
5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

1
p 4
conf
corr.

SECTION 17. AMENDMENT. Section 60-02-04 of the North Dakota Century Code is amended and reenacted as follows:

60-02-04. Federal licensed inspector - Appointed by commission.

The ~~commission~~ commissioner may employ a federal licensed inspector whose duties are ~~hereinafter prescribed and such~~ enumerated under this chapter and may employ other employees as may be necessary to carry out the provisions of this chapter.

SECTION 18. AMENDMENT. Section 60-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-05.1. Notice of procedures for resolving disputes over grain.

A public warehouse shall post a notice containing the procedures specified in section 60-02-05 for resolving disputes. The ~~commission~~ commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each public warehouse. The public warehouseman shall post the notice in the grain inspection room of the warehouse. The notice must specifically mention ~~that~~ the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

SECTION 19. AMENDMENT. Section 60-02-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07. Public warehouse license - Fee - Financial statement.

A license must be obtained from the ~~commission~~ commissioner for each public warehouse in operation in this state.

1. a. ~~The commission shall stagger by lot the expiration date of all licenses issued for the period beginning August 1, 2015, so that one half of all the licenses issued expire on July 31, 2016, and one half of all the~~

4-26-19

SB 2009

#1

PS

cont
com

licenses issued expire on July 31, 2017. Thereafter, all licenses issued under this section must be for a period of two years and terminate on the thirty-first day of July in the year of expiration.

- b. (1) Notwithstanding the provisions of subdivision a, the ~~commission~~ commissioner shall license a warehouse annually, for the first six years of the warehouse's operation.
 - (2) An initial annual license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year.
2. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described.
3. a. The annual license fee for a public warehouse is:
- (1) ~~Three~~ Four hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) ~~Four~~ Five hundred fifty dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
 - (3) ~~Five~~ Six hundred fifty dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- b. The biennial license fee for a public warehouse is:
- (1) ~~Six~~ Seven hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) ~~Nine hundred~~ One thousand dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
 - (3) One thousand ~~one~~ two hundred dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- c. An application for an annual license renewal that is received after July fifteenth must include an additional one hundred dollar fee per warehouse. An application for a biennial license renewal that is received after July fifteenth must include an additional two hundred dollar fee per warehouse.
4. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. When two or

4-26-19
SB 2009

more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses.

- 5. If required to obtain United States department of agriculture approval of the ~~commission's~~ commissioner's warehouse inspection program, the ~~commission~~ commissioner may require that the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this subsection is a confidential trade secret and is not a public record.

#1
p6
cont
Comm

SECTION 20. AMENDMENT. Section 60-02-07.2 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07.2. Receiving stations.

A licensed public warehouseman may establish a receiving station without a separate warehouse license for that facility if all of the following conditions are met:

- 1. The station is colocated with another licensed public warehouse, the operator of which will take delivery of the grain on behalf of the warehouseman who established the receiving station.
- 2. The storage space used by the receiving station is used solely by the receiving station and is not licensed as part of the warehouse that is located at that site.
- 3. The grain taken in by the receiving station is not commingled with other grain at that site.
- 4. The warehouseman establishing the station requests and receives ~~commission~~ permission from the commissioner to increase licensed capacity to include the space to be used at the receiving station.
- 5. Grain received at the receiving station is recorded on scale tickets issued by the warehouseman who established the station and is covered by that warehouseman's bond.
- 6. Warehouse-receipted grain received at the receiving station is available for redelivery to the receipt holder at that location even if the station has been closed. A charge for redelivery must be stated in the warehouseman's redelivery policy.

The storage space used by a receiving station need not be physically disconnected from the facilities of the other licensed warehouse located at that site.

SECTION 21. AMENDMENT. Section 60-02-09 of the North Dakota Century Code is amended and reenacted as follows:

60-02-09. Bond filed by public warehouseman.

Before any license is effective for any public warehouseman under this chapter, the applicant for the license shall file a bond with the ~~commission~~ commissioner which must:

- 1. Be in a sum not less than five thousand dollars for any one warehouse.

2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~ commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in that warehouse.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a public warehouseman.
 - b. For compliance with the provisions of law and the rules of the ~~commission~~ commissioner relating to the storage and purchase of grain by such warehouseman.
5. Specify the location of each public warehouse intended to be covered by such bond.
6. Be for the specific purpose of:
 - a. Protecting the holders of outstanding receipts.
 - b. Covering the costs incurred by the ~~commission~~ commissioner in the administration of chapter 60-04 in the event of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.
8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

4-26-19
 SB 2009
 #1
 PM
 cont
 corn

The ~~commission~~ commissioner shall set the amount of the bond and may require an increase in the amount of any bond, from time to time, as the ~~commission~~ commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commission~~ commissioner, and authorized to do business within the state. The ~~commission~~ commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond ~~when~~ if, in ~~its~~ the commissioner's judgment, the cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. One bond only may be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and the bond must be construed to cover ~~such~~ the elevators, mills, or warehouses, as a whole and not a specific amount for each.

SECTION 22. AMENDMENT. Section 60-02-09.1 of the North Dakota Century Code is amended and reenacted as follows:

4-26-19
SB 2009

60-02-09.1. Bond cancellation - Release of surety.

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commissioner~~ commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the warehouseman files a new bond at least thirty days before liability ceases, the ~~commissioner~~ commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commissioner~~ commissioner. ~~When~~ if a license is so suspended, the warehouseman shall give notice of such suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse that the grain must be removed from the warehouse or ~~the~~ the grain will be priced and redeemed in cash in accordance with section 60-02-41.

1
p 8
Cent
Com

SECTION 23. AMENDMENT. Section 60-02-10.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-10.1. Revocation and suspension.

The ~~commissioner~~ commissioner may suspend or revoke the license of any warehouseman for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license the warehouseman may, upon the ~~commissioner's~~ commissioner's approval, operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping, or processing. Grain may be sold only with the prior approval of the ~~commissioner~~ commissioner.

SECTION 24. AMENDMENT. Section 60-02-11 of the North Dakota Century Code is amended and reenacted as follows:

60-02-11. Scale ticket - Contents - Conversion.

1. a. Every public warehouseman, upon receiving grain into the warehouse, shall issue a uniform scale ticket for each load of grain received. The scale tickets must be numbered consecutively, and one copy of each ticket must be retained and remain as a permanent record. The original ticket must be delivered to the person from whom the grain is received, upon receipt of each load of grain.
- b. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within forty-five days after the grain is delivered to the warehouse, unless:
 - (1) The person to whom the scale ticket is issued signs a form waiving all rights to trust benefits under section 60-04-03.1;
 - (2) The form identifies by number each scale ticket to which the waiver applies; and
 - (3) The form is signed by the warehouseman.

4-26-19
SB 2009
#1
P 9
comb
corn

- c. The ~~commissioner~~ commissioner shall prepare the waiver form required by subdivision b and make the form available to each warehouse.
 - d. The warehouseman shall keep one copy of the signed waiver form with the records of the warehouse, provide one copy to the person who was issued the scale ticket and signed the form, and file one copy with the ~~commissioner~~ commissioner.
2. Nothing in this chapter requires a warehouseman to receive grain for storage. A warehouseman shall publish and post, in a conspicuous place in the warehouse, a publication identifying whether storage will be available to patrons or whether grain will be accepted via cash or a credit-sale contract arrangement.

SECTION 25. AMENDMENT. Section 60-02-14 of the North Dakota Century Code is amended and reenacted as follows:

60-02-14. Warehouse receipts - Copy.

Provision ~~shall~~ must be made for a stub record or copy of each warehouse receipt issued by a warehouseman, showing:

- 1. The serial number and date of receipt.
- 2. The kind and grade of grain.
- 3. The dockage and net weight of the grain.

The record or copy ~~shall~~ must remain in the possession of the warehouseman for inspection by the ~~commissioner~~ commissioner and persons properly interested.

SECTION 26. AMENDMENT. Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.

- 1. A warehouse receipt must contain, either on its face or reverse side, the following warehouse and storage contract:

This grain is received, insured, and stored subject to the laws and rules of the state of North Dakota, the terms of this contract, and the charges and conditions stated herein and as filed with the North Dakota ~~public service~~ agriculture commissioner. Upon surrender of this receipt and payment or tender of all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal

4-26-19
SB 2009

point. This receipt does not require the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

- 2. A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts. This publication must be filed with the ~~commissioner~~ commissioner as a part of the warehouse license process or annual renewal. The fees and termination date must be stated on the warehouse receipt issued for the grain. The fees or termination date may be changed upon filing a revised publication with the ~~commissioner~~ commissioner.

#1
P10
Cert
Comm

SECTION 27. AMENDMENT. Section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

60-02-24. Reports to be made by public warehouseman - Penalty for failure.

Each licensed and bonded public warehouseman shall:

- 1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commissioner~~ commissioner. The report must contain or be verified by a written declaration ~~that the report is made~~ under the penalties of perjury. The report may be called for more frequently if the ~~commissioner~~ commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commissioner~~ commissioner may make the information available for use by other governmental entities, but the ~~commissioner~~ commissioner may not release the information in a manner that jeopardizes the confidentiality of individual licensees.
- 2. File the report with the ~~commissioner~~ commissioner not later than the last day of the following month, and failure to file this report promptly will be considered cause for revoking the warehouse license after due notice and hearing.
- 3. Keep a separate account of the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances ~~shall~~ may the grain account and other accounts be mixed.

The ~~commissioner~~ commissioner may refuse to renew a license to any public warehouseman who fails to make a required report.

SECTION 28. AMENDMENT. Section 60-02-27 of the North Dakota Century Code is amended and reenacted as follows:

60-02-27. Federal grades to control - Grades to be posted.

All public warehousemen shall purchase and store grain except dry edible beans in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law. ~~They~~ Public warehousemen shall post in a conspicuous place in ~~their~~ the public warehousemen's warehouse the official grades so established and also any change that may be made

SB 2009
4-26-14
1
P 11
cont
corn

from time to time. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with ~~their~~the policy of the warehousemen which must be filed with the ~~commission~~commissioner and posted in a conspicuous place in ~~their~~the warehouse of the public warehousemen. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards. The ~~commission~~commissioner, after hearing, may prohibit the use of nonfederal grades.

SECTION 29. AMENDMENT. Section 60-02-35.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-35.1. Insurance - Cancellation - Suspension of license.

An insurance company shall give at least sixty days' notice to the ~~commission~~commissioner and the insured by certified mail return receipt requested before cancellation of an insurance policy required in section 60-02-35. Unless the warehouseman files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commission~~commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commission~~commissioner. ~~When~~if a license is so suspended, the warehouseman shall give notice of ~~such~~the suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse ~~that~~ the grain must be removed from the warehouse or ~~it~~the grain will be priced and redeemed in cash in accordance with section 60-02-41.

SECTION 30. AMENDMENT. Section 60-02-38 of the North Dakota Century Code is amended and reenacted as follows:

60-02-38. Refund of license fee by ~~commission~~commissioner.

~~When~~if requested in writing, the ~~commission~~commissioner shall refund the license fee of a public warehouse, or so much as in ~~its~~the commissioner's judgment is just and reasonable, ~~when~~if satisfactory proof is furnished ~~that~~ the warehouse has been transferred to some other person, and the new owner has obtained a license for the same warehouse for the unexpired period for which the original license was issued. ~~When~~if a warehouse is destroyed by fire or other cause, the license fee may be prorated as the ~~commission~~commissioner may determine.

SECTION 31. AMENDMENT. Section 60-02-40 of the North Dakota Century Code is amended and reenacted as follows:

60-02-40. Transfer of warehouse - Redemption of receipts.

~~Whenever~~if a public warehouseman desires to transfer a warehouse, either by sale or lease to any other individual, firm, or corporation, the warehouseman shall:

1. Notify the ~~commission~~commissioner first of ~~its~~the warehouseman's intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
2. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain, together with a statement of:

4-26-19
SB 2009

- a. The number of bushels [cubic meters] of grain of each kind and grade in store in the warehouse;
 - b. The number and amount of receipts outstanding; and
 - c. The names and addresses of the receiptholders.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receiptholders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery. The ~~commission~~ commissioner may waive the thirty-day notice period upon receipt of written consent of all receiptholders.
 4. Transfer all stored grain undelivered at the expiration of such thirty-day period to ~~the~~ the warehouseman's successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred.
 5. Surrender to the ~~commission~~ its commissioner the warehouseman's license for cancellation ~~and at such, at which~~ time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commission, whereupon, its commissioner, at which time, the commissioner,~~ first being duly satisfied ~~that~~ all the outstanding receipts have been redeemed, or that the redemption ~~thereof~~ of all outstanding receipts has been provided for, the ~~commission~~ commissioner may permit a new license to become effective for the lessee or purchaser.

1
P 12
Conf
Comm

No sale, lease, or transfer of any warehouse will be recognized by the ~~commission~~ commissioner except when made in accordance with the provisions of this section.

SECTION 32. AMENDMENT. Section 60-02-41 of the North Dakota Century Code is amended and reenacted as follows:

60-02-41. Going out of business - Redemption of receipts.

~~When~~ If a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, ~~such~~ the warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of such receipts, upon due notice, ~~must~~ shall accept this price and surrender the receipts. Any public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license or whose warehouse license is revoked shall notify the ~~commission~~ commissioner and all outstanding receiptholders of such closing and redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein ~~shall~~ must be settled in cash and priced on the market on the day of closing.

SECTION 33. AMENDMENT. Section 60-02-42 of the North Dakota Century Code is amended and reenacted as follows:

60-02-42. Cease and desist.

Whenever ~~if~~ an entity engages in an activity or practice ~~that is~~ contrary to the provisions of this chapter or related rules, the ~~commission~~ commissioner, upon ~~its~~ the commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the ~~commission~~ commissioner. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SB 2009
4-26-19

1
P13
Cont
Comm

SECTION 34. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a public warehouse license; or
 - b. An investigation after issuance or renewal of a public warehouse license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a public warehouse license; or
 - b. An investigation after issuance or renewal of a public warehouse license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 35. AMENDMENT. Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "~~Commission~~ Commissioner" means the ~~public service~~ agriculture commissioner.

2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
6. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:
 - a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
 - b. A person who is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.
 - c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.
7. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.
9. "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

SECTION 36. AMENDMENT. Section 60-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-02. ~~Commission~~Commissioner - Powers and duties.

The ~~powers and~~ duties imposed and the powers conferred by this chapter ~~devolve upon the commission~~of the commissioner are enumerated in this chapter.

SECTION 37. AMENDMENT. Section 60-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-03. Duties and powers of the ~~commission~~commissioner.

The ~~commission~~commissioner has the duty and power to:

1. Exercise general supervision of grain buyers of this state.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any books, documents, and records.
4. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

SECTION 38. AMENDMENT. Section 60-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-04. Federal licensed inspector - ~~Appointed by commission.~~

The ~~commission~~commissioner may employ a federal licensed inspector whose duties are ~~hereinafter prescribed, and such~~ enumerated in this chapter and may employ other employees as ~~may be~~ necessary to carry out the provisions of this chapter.

SECTION 39. AMENDMENT. Section 60-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-06. Notice of procedures for resolving disputes over grain.

A facility-based grain buyer shall post a notice containing the procedures specified in section 60-02.1-05 for resolving disputes. The ~~commission~~commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each facility-based grain buyer. The facility-based grain buyer shall post the notice in the grain inspection room of the facility. The notice must specifically mention ~~that~~ the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

SECTION 40. AMENDMENT. Section 60-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.

Grain buyers ~~must~~shall obtain an annual license from the ~~commission~~commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. A

SB 2009
4-26-19
1
P15
conf
corn

H-26-19
SB 2009

facility-based grain buyer ~~must~~ shall obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such facilities, and scale tickets and checks of but one series are issued for the grain, purchased, only one license is required for the operation of all such facilities. The annual license fee for a facility-based grain buyer is ~~three~~four hundred dollars and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location.

#1
P16
Conf
Comm

If required to obtain United States department of agriculture approval of the ~~commission's~~ commissioner's grain buyer inspection program, the ~~commission~~ commissioner may require that grain buyers submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

SECTION 41. AMENDMENT. Section 60-02.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07.1. Roving grain buyer license - How obtained - Fee.

Roving grain buyers that purchase, solicit, merchandise, or take possession of grain in this state ~~must~~ shall obtain an annual license from the ~~commission~~ commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~ If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee for a roving grain buyer is ~~two~~three hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

SECTION 42. AMENDMENT. Section 60-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-08. Bond filed by grain buyer.

Before any license is effective for any grain buyer under this chapter, the applicant for the license shall file a bond with the ~~commission~~ commissioner which must:

1. Be in a sum not less than ~~five~~ten thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~ commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a grain buyer.

4-26-19

SB 2009

#1
P17
cont
comm

- b. For compliance with the provisions of law and the rules of the commissioner relating to the purchase of grain by such grain buyer.
- 5. For facility-based grain buyers, specify the location of each facility intended to be covered by the bond.
- 6. Be for the specific purpose of:
 - a. Protecting the sellers of grain.
 - b. Covering the costs incurred by the commissioner in the administration of the licensee's insolvency.
- 7. Not accrue to the benefit of any person entering ~~into~~ a credit-sale contract with a grain buyer.
- 8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The commissioner may require an increase in the amount of any bond, ~~from time to time~~, as ~~it~~ the commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the commissioner, and authorized to do business within the state. The commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, ~~in its~~ the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts. Only one bond may be required for any series of facilities operated by a facility-based grain buyer, and the bond must be construed to cover those facilities as a whole and not a specific amount for each.

SECTION 43. AMENDMENT. Section 60-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-09. Bond cancellation - Release of surety.

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the grain buyer files a new bond at least thirty days before liability ceases, the commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new bond has been filed and approved by the commissioner.

SECTION 44. AMENDMENT. Section 60-02.1-11 of the North Dakota Century Code is amended and reenacted as follows:

4-26-19
SB 2009
#1
P18
conf
com

60-02.1-11. Revocation and suspension.

The ~~commission~~ commissioner may suspend or revoke the license of any grain buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a grain buyer must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license a facility-based grain buyer, upon the ~~commission's~~ commissioner's approval, may operate its facility and purchase or redeliver grain previously received, but may not receive additional grain for purchase, shipping, or processing. Grain may be sold only with the prior approval of the ~~commission~~ commissioner.

SECTION 45. AMENDMENT. Section 60-02.1-16 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-16. Records required to be kept by grain buyers.

Each grain buyer shall keep such accounts, records, and memoranda concerning the buyer's dealing as such grain buyer as from time to time may be required by the ~~commission~~ commissioner and shall make such reports of purchases of grain as may be required by the rules ~~made~~ adopted by the ~~commission~~ commissioner. The ~~commission~~ commissioner at all times ~~shall~~ must have access to such accounts, records, and memoranda.

SECTION 46. AMENDMENT. Section 60-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-17. Reports to be made by grain buyers - Penalty for failure.

Each licensed and bonded grain buyer shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commission~~ commissioner. The report must contain or be verified by a written declaration ~~that the report~~ is made under the penalties of perjury. The report may be called for more frequently if the ~~commission~~ commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commission~~ commissioner may make this information available for use by other governmental entities, but the information may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the ~~commission~~ commissioner not later than the last day of the following month. Failure to file this report promptly will be considered cause for revoking the grain buyer license after due notice and hearing.
3. Keep a separate account of the grain business, if the grain buyer is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.

The ~~commission~~ commissioner may refuse to renew a license to any grain buyer who fails to make a required report.

SECTION 47. AMENDMENT. Section 60-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-19. Federal grades to control - Grades to be posted.

All grain buyers shall purchase grain, except dry edible beans, in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in applicable rules and regulations ~~applicable thereto~~ adopted by federal officials pursuant to law. A facility-based grain buyer shall post in a conspicuous place in the buyer's facility the official grades so established and also any change that may be made from time to time. A grain buyer of dry edible beans shall purchase and deliver beans in accordance with the buyer's policy, which must be filed with the commissioner and, if applicable, posted in a conspicuous place in the buyer's facility. Other grading standards may be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However, the owner may demand the use of federal grading standards. After hearing, the commissioner may prohibit the use of nonfederal grades.

SB 2009
4-26-19

1
P 19
Conf
Comm.

SECTION 48. AMENDMENT. Section 60-02.1-22 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-22. Insurance - Cancellation - Suspension of license.

An insurance company shall give at least sixty days' notice to the commissioner and the insured by registered mail return receipt requested before cancellation of an insurance policy required in section 60-02.1-21. Unless the grain buyer files proof of new or renewed insurance at least thirty days before the existing policy ceases, the commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new policy has been filed and approved by the commissioner.

SECTION 49. AMENDMENT. Section 60-02.1-26 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-26. Transfer of facility - Redemption of receipts.

~~Whenever~~ If a facility-based grain buyer desires to transfer a facility, either by sale or lease to any other individual, firm, or corporation, the grain buyer shall:

1. Notify the commissioner first of its intention to transfer the facility, giving the name and address of the proposed lessee or purchaser.
2. Provide related information as may be required by the commissioner.
3. Surrender to the commissioner the grain buyer's license for cancellation and at that time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the commissioner, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the commissioner may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any facility will be recognized by the commissioner except when made in accordance with the provisions of this section.

SB 2009
H-2619

SECTION 50. AMENDMENT. Section 60-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-27. Going out of business - Redemption of receipts.

~~When~~ If a facility-based grain buyer ceases business through closure, the destruction of a facility by fire or other cause, or through insolvency, ~~such~~ the grain buyer shall redeem all outstanding receipts at the price prevailing on the date the facility was closed, destroyed, or became insolvent. The holder of ~~such~~ the receipts, upon due notice, ~~must~~ shall accept this price and surrender the receipts. Any facility-based grain buyer who voluntarily ceases business or fails to renew an existing grain buyer license or whose grain buyer license is revoked shall notify the ~~commissioner~~ commissioner and all receiptholders of such closing and redeem all such receipts at the price prevailing on the date the business closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein ~~shall~~ must be settled in cash and priced on the market on the day of closing.

#1
P20
Comm
Comm

SECTION 51. AMENDMENT. Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-29. Appointment of ~~commissioner~~ commissioner.

Upon the insolvency of any roving grain buyer, the ~~commissioner~~ commissioner shall apply to the district court of Burleigh County for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. If the insolvency involves a facility-based grain buyer, application must be to the district court of a county in which the licensee operates a licensed facility. Upon notice to the licensee as the court prescribes, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the receiptholders that the ~~commissioner~~ commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and the ~~commissioner~~ commissioner shall proceed to exercise ~~the commissioner's~~ authority without further direction from the court.

Upon the filing of the ~~commissioner's~~ commissioner's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

SECTION 52. AMENDMENT. Section 60-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-30. Trust fund established.

Upon the insolvency of any licensee, a trust fund must be established for the benefit of noncredit-sale receiptholders and to pay the costs incurred by the ~~commissioner~~ commissioner in the administration of the insolvency. The trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.

SB 2009
4-26-19

2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commissioner~~ commissioner is appointed trustee must be remitted to the ~~commissioner~~ commissioner and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.
4. The claims for relief, and proceeds ~~therefrom~~ from the claims for relief, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
5. The claim for relief, and proceeds ~~therefrom~~ from the claim for relief, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

1
p 21
Conf
com

SECTION 53. AMENDMENT. Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-32. Notice to receiptholders and credit-sale contract claimants.

Upon ~~its~~ the commissioner's appointment, the ~~commissioner~~ commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~commissioner~~ commissioner shall publish a notice of ~~its~~ the commissioner's appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, disclosed by the licensee's records. If the insolvency involves a facility-based grain buyer, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located. The notice must require outstanding receiptholders and credit-sale contract claimants to file their claims with the ~~commissioner~~ commissioner along with the receipts, contracts, or other evidence of the claims required by the ~~commissioner~~ commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the ~~commissioner~~ commissioner, the ~~commissioner~~ commissioner is relieved of further duty in the administration of the insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder may be barred from participation in the trust fund, and the credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 54. AMENDMENT. Section 60-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-33. Remedy of receiptholders.

~~No~~ A receiptholder ~~has~~ does not have a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand

SB 2009
4-26-19

of five or more receipt holders, the ~~commissioner~~ fails or refuses to apply for ~~its~~ the commissioner's own appointment or unless the district court denies the application. This chapter does not prohibit any receipt holder, either individually or in conjunction with other receipt holders, from pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 55. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-34. ~~Commission~~ Commissioner to marshal trust assets.

Upon ~~its~~ the commissioner's appointment, the ~~commissioner~~ shall marshal all of the trust fund assets. The ~~commissioner~~ may maintain suits in the name of the state of North Dakota for the benefit of all receipt holders against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any person who may have received preferential treatment by being paid by the insolvent licensee after the first default.

SECTION 56. AMENDMENT. Section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-35. Power of ~~commissioner~~ to prosecute or compromise claims.

The ~~commissioner~~ may:

1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action ~~when~~ if it will be in the best interests of the receipt holders.
4. Settle and compromise any action ~~when~~ if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

SECTION 57. AMENDMENT. Section 60-02.1-36 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-36. Money received by trustee - Deposited in Bank of North Dakota.

All funds received by the ~~commissioner~~ as trustee must be deposited in the Bank of North Dakota.

SECTION 58. AMENDMENT. Section 60-02.1-37 of the North Dakota Century Code is amended and reenacted as follows:

#1
P22
Conf
Comp.

H-26-19

60-02.1-37. Report of trustee to court - Approval - Distribution.

SB 2009

1. Upon the receipt and evaluation of claims, the ~~commissioner~~ commissioner shall file with the court a report showing the amount and validity of each claim after recognizing:
 - a. Relevant liens or pledges.
 - b. Relevant assignments.
 - c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
 - d. In case of relevant cash claims or checks, the amount of the claim.
 - e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.
2. The report must also contain the proposed reimbursement to the ~~commissioner~~ commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the ~~commissioner~~ commissioner in the administration of the insolvency, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receiptholder claims in full, the report should list the funds as prorated.
3. The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commission's~~ commissioner's report should not be approved and distribution of the trust fund be made as proposed. Copies of the report and notice of hearing must be served by the ~~commissioner~~ commissioner by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the ~~commissioner~~ commissioner.
4. Any aggrieved person having an objection to the ~~commission's~~ commissioner's report shall file the objection with the court and serve copies on the ~~commissioner~~ commissioner, the licensee, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Following the hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the ~~commissioner~~ commissioner from ~~the~~ the ~~commissioner's~~ commissioner's trust.

1
p 23
conf
com

SECTION 59. AMENDMENT. Section 60-02.1-38 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-38. Filing fees and court costs - Expenses.

The ~~commissioner~~ commissioner may not be required to pay any filing fee or other court costs or disbursements. The attorney general may appoint outside legal counsel to assist the ~~commissioner~~ commissioner in the prosecution of the action and the cost of employing outside counsel must be paid from the trust fund and the credit-sale contract

4.26-19
SB 2009

indemnity fund as appropriate. All other necessary expenses incurred by the ~~commissioner~~ in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission, its commissioner, the commissioner's~~ employees, and others engaged in carrying out the provisions of sections 60-02.1-28 through 60-02.1-38, must be reimbursed to the ~~commissioner~~ from the trust fund and credit-sale contract indemnity funds as appropriate.

SECTION 60. AMENDMENT. Section 60-02.1-39 of the North Dakota Century Code is amended and reenacted as follows:

1
P 24
Cont
Comm

60-02.1-39. Cease and desist.

~~Whenever~~ If an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the ~~commissioner~~, upon ~~the~~ commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the ~~commissioner~~. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 61. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 62. AMENDMENT. Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

SB 2009
4-26-19

1. "~~Commission~~Commissioner" means the ~~public service~~ agriculture commissioner.

SECTION 63. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03. Appointment of commissioner.

Upon the insolvency of any warehouseman, the ~~commissioner~~ shall apply to the district court of a county in which the warehouseman operates a licensed warehouse for authority to take all action necessary and appropriate to secure and act as trustee of the trust fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the warehouseman, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court ~~that~~ such the warehouseman is insolvent within the meaning of this chapter and ~~that~~ it would be for the best interests of the receipt holders that the ~~commissioner~~ secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon~~ at which time the ~~commissioner~~ shall proceed to exercise ~~its~~ the commissioner's authority without further direction from the court.

1
p25
Cord
CORN

Upon the filing of the ~~commissioner's~~ application, the court may issue ex parte such temporary order as may be necessary to preserve or protect the assets of the trust fund, or the value ~~thereof of the trust fund~~, until the court issues ~~its~~ an order granting or denying the application.

SECTION 64. AMENDMENT. Section 60-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.1. Trust fund established.

1. Upon the insolvency of any warehouseman, a trust fund ~~shall~~ must be established:
 - a. For the benefit of noncredit-sale receipt holders of the insolvent warehouseman, other than those who have waived their rights as beneficiaries of the trust fund in accordance with section 60-02-11; and
 - b. To pay the costs incurred by the ~~commissioner~~ in the administration of this chapter.
2. The trust fund consists of the following:
 - a. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain;
 - b. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commissioner~~ is appointed trustee;
 - c. The proceeds of insurance policies upon grain destroyed in the elevator;

4-26-19
SB 2009

- d. The claims for relief, and proceeds ~~therefrom~~ from the claims for relief, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman;
- e. The claims for relief, and proceeds ~~therefrom~~ from the claims for relief, for the conversion of any grain stored in the warehouse;
- f. Unencumbered accounts receivable for grain sold ~~prior to~~ before the filing of the claim that precipitated an insolvency;
- g. Unencumbered equity in grain hedging accounts; and
- h. Unencumbered grain product assets.

#1
26
Conf
Com

SECTION 65. AMENDMENT. Section 60-04-03.2 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.2. Possession of grain.

Upon ~~its~~ the commissioner's appointment by the district court, the ~~commissioner~~ commissioner shall seek possession of the grain to be included in the trust fund. Upon ~~its~~ the commissioner's possession of any grain in the warehouse, the ~~commissioner~~ commissioner shall sell such grain and apply the proceeds to the trust fund.

SECTION 66. AMENDMENT. Section 60-04-03.3 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.3. Joinder of surety - Deposit of proceeds.

The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the ~~commissioner~~ when commissioner if the ~~commissioner~~ commissioner believes ~~that~~ proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. When it appears in the best interests of the receiptholders, the court may order the surety to deposit the penal sum of the bond, or so much ~~thereof~~ of the sum as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

SECTION 67. AMENDMENT. Section 60-04-04 of the North Dakota Century Code is amended and reenacted as follows:

60-04-04. Notice to receiptholders and credit-sale contract claimants.

Upon ~~its~~ the commissioner's appointment by the district court, the ~~commissioner~~ commissioner may take possession of relevant books and records of the warehouseman. The ~~commissioner~~ commissioner shall cause a notice of ~~its~~ the commissioner's appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, as shown by the warehouseman's records. The notices must require outstanding receiptholders and credit-sale contract claimants to file their claims against the warehouseman with the ~~commissioner~~ commissioner along with the receipts, contracts, or any other evidence of the claims as required by the ~~commissioner~~ commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the

notice or a longer time as prescribed by the ~~commissioner~~ commissioner, the ~~commissioner~~ commissioner is relieved of further duty or action under this chapter on behalf of the receipt holder or credit-sale contract claimant and the receipt holder or credit-sale contract claimant may be barred from payment for any amount due. Outstanding receipt holders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

4-26-19
SB2009

SECTION 68. AMENDMENT. Section 60-04-05 of the North Dakota Century Code is amended and reenacted as follows:

60-04-05. Remedy of receipt holders.

~~No~~ receipt holder ~~has~~ does not have a separate claim for relief upon the warehouseman's bond, nor for insurance, nor against any person converting grain, nor against any other receipt holder, except through the trustee, unless, upon demand of five or more receipt holders, the ~~commissioner~~ commissioner fails or refuses to apply for ~~its~~ the commissioner's own appointment from the district court or unless the district court denies the application for appointment. This chapter does not prohibit or prevent any receipt holder, either individually or in conjunction with other receipt holders, from pursuing concurrently such other remedy against the person or property of ~~such~~ the warehouseman, for the whole, or any deficiency occurring in the redemption, of the receipts.

#1
p27
cont
com

SECTION 69. AMENDMENT. Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

60-04-06. Commissioner to marshal trust assets.

Upon ~~its~~ the commissioner's appointment by the district court, the ~~commissioner~~ commissioner may maintain suits at law or in equity, or any special proceeding, in the name of the state of North Dakota, upon ~~its~~ the commissioner's own relation, but for the benefit of all such receipt holders against:

1. The insurers of grain;
2. The warehouseman's bond;
3. Any person who may have converted any grain; or
4. Any receipt holder who ~~shall have~~ received more than ~~its~~ the receipt holder's just and pro rata share of grain,

for the purpose of marshalling all of the trust fund assets and distributing the same among the receipt holders. The ~~commissioner~~ commissioner shall seek possession of any grain in the warehouse before recourse is had against the insurers of grain, and the remedy against the insurers of grain ~~shall must~~ be exhausted before recourse is had against the bond, and against the bond before recourse is had against the person honestly converting grain, unless the ~~commission~~ commissioner ~~shall deem~~ deems it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

SECTION 70. AMENDMENT. Section 60-04-07 of the North Dakota Century Code is amended and reenacted as follows:

60-04-07. Power of ~~commission~~ commissioner to prosecute or compromise claims.

The ~~commission~~ commissioner may:

1. Prosecute any action provided in this chapter in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action ~~whenever~~ if it is in the best interests of the receiptholders.
4. Settle and compromise any action ~~when~~ if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of the compromise or of the full amount of any insurance policy, bond, or conversion claim, exonerate the person so compromising or paying in full from further liability growing out of the action.

#1
P28
Conf
Comm

SECTION 71. AMENDMENT. Section 60-04-08 of the North Dakota Century Code is amended and reenacted as follows:

60-04-08. Money received by trustee - Deposited in Bank of North Dakota.

All moneys collected and received by the ~~commission~~ commissioner as trustee under this chapter, pending the marshalling of the fund, ~~shall~~ must be deposited in the Bank of North Dakota.

SECTION 72. AMENDMENT. Section 60-04-09 of the North Dakota Century Code is amended and reenacted as follows:

60-04-09. Report of trustee to court - Approval - Distribution.

Upon the receipt and evaluation of claims filed with ~~the~~ the commissioner, the ~~commission~~ commissioner shall file with the court a report showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges ~~thereon~~ the claims.
2. Assignments ~~thereof~~ of the claims.
3. Deductions ~~therefrom~~ from the claims by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount ~~thereof~~ of the claims or checks.
5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the market price prevailing on the date the ~~commission~~ commissioner first received a copy of the written demand required by section 60-04-02.

6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.

H-26-19
SB 2009

The report must also contain the proposed reimbursement to the ~~commission~~ commissioner for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the ~~commission~~ commissioner in the administration of this chapter, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants as ~~the~~ the interests of the claimants are determined. If the trust fund is insufficient to redeem all receiptholder claims in full, the fund must be shown prorated in the report in the manner the ~~commission~~ commissioner deems fair and equitable.

#1
p29
cont
com

The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commission's~~ commissioner's report should not be approved and credit-sale contract indemnity fund payments and distribution of the trust fund be made as proposed, and payments from the credit-sale contracts be made as proposed. Copies of the report and notice of hearing must be served by the ~~commission~~ commissioner by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the ~~commission~~ commissioner.

Any aggrieved person having an objection to the ~~commission's~~ commissioner's report shall file the objection with the court and serve copies on the ~~commission~~ commissioner, the warehouseman, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the ~~commission~~ commissioner from ~~its~~ the commissioner's trust.

SECTION 73. AMENDMENT. Section 60-04-10 of the North Dakota Century Code is amended and reenacted as follows:

60-04-10. Filing fees and court costs - Expenses.

In any action in a state court in this state, the ~~commission shall~~ commissioner may not be required to pay any filing fee or other court costs or disbursements if the fees accrue to the county or to the state. The attorney general may employ outside legal services to assist the ~~commission~~ commissioner in the prosecution of such action as in the attorney general's judgment may be necessary and the ~~commission~~ commissioner shall deduct the expenses of the same from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the ~~commission~~ commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission, its~~ commissioner, the commissioner's employees, and others engaged in carrying out the provisions of this chapter, must be reimbursed to the ~~commission~~ commissioner from the trust fund and credit-sale indemnity funds as appropriate.

SECTION 74. AMENDMENT. Section 60-05-01 of the North Dakota Century Code is amended and reenacted as follows:

60-05-01. Public elevators and warehouses - ~~Commission~~Commissioner may require uniform accounting system.

The ~~public service commissioner~~ ~~commissioner~~ may require every association, copartnership, corporation, or limited liability company conducting a public elevator or warehouse in this state to adopt a uniform accounting system established by ~~such~~ ~~commissioner~~ ~~the commissioner~~.

SECTION 75. AMENDMENT. Section 60-05-02 of the North Dakota Century Code is amended and reenacted as follows:

60-05-02. Examination of financial accounts of elevator or warehouse by competent examiner - Request by percentage of stockholders.

The ~~commissioner~~ ~~commissioner~~ may install, and ~~whenever~~if requested by not less than fifteen percent of the partners, stockholders, or members of any association, copartnership, corporation, or limited liability company conducting such public elevator or warehouse, shall install, the uniform system of accounting mentioned in section 60-05-01. The ~~commissioner~~ ~~commissioner~~ on ~~its~~the commissioner's own motion may, or on request of the required percentage of partners, stockholders, or members, the ~~commissioner~~ ~~commissioner~~ shall, send a competent examiner to examine the books and financial accounts of ~~such~~the elevator or warehouse. ~~Whenever~~If a request for the examination of the accounts of any association, copartnership, corporation, or limited liability company has been made to the ~~commissioner~~ ~~commissioner~~, as provided for in this section, ~~an examination thereafter shall~~subsequent examinations must be made at least once every year until the ~~commission shall be~~commissioner is requested to discontinue such examination by resolution adopted by the partners, stockholders, or members at any annual meeting. ~~When~~if such examination has been made, the examiner shall report immediately the results ~~thereof~~of the examination to the president and the secretary of such association, copartnership, corporation, or limited liability company and to the ~~commissioner~~ ~~commissioner~~.

SECTION 76. AMENDMENT. Section 60-05-03 of the North Dakota Century Code is amended and reenacted as follows:

60-05-03. Certificate issued by ~~commissioner~~commissioner after its examination of accounts.

If the ~~commissioner~~ ~~commissioner~~ is satisfied from ~~its~~the commissioner's examination that the person, association, copartnership, corporation, or limited liability company examined is solvent and ~~its~~the method of doing business is such as is likely to be beneficial to all of its members or persons interested therein, the ~~commissioner~~ ~~commissioner~~ shall issue a certificate, countersigned by the examiner, to the agent or manager. Such certificate ~~shall~~must be kept posted conspicuously in the warehouse or elevator of such person, association, copartnership, corporation, or limited liability company and ~~shall~~must state:

1. That said methods of doing business are sound.
2. That such person, association, copartnership, corporation, or limited liability company is solvent.
3. That its books and accounts are kept properly.

#1
p30
conf
com

4.26-19
SB 2009
1
P31
cont
corn

If the affairs and methods of doing business of such person, association, copartnership, corporation, or limited liability company ~~shall do~~ not seem sound or satisfactory to the ~~commission, it commissioner, the commissioner~~ shall issue a certificate or statement, countersigned by the person who made the examination, stating in what particular and in what respect the business methods practiced or methods of keeping books and accounts of such person, association, copartnership, corporation, or limited liability company are not deemed safe. The ~~commission commissioner~~ shall mail a copy of ~~said~~ the statement or certificate to each of such shareholders or stockholders as may have requested the ~~commission commissioner~~ to make such examination. The ~~commission commissioner~~ also shall send a copy thereof to the president and the secretary of such association, copartnership, corporation, or limited liability company.

SECTION 77. AMENDMENT. Section 60-05-04 of the North Dakota Century Code is amended and reenacted as follows:

60-05-04. Fees of examiner for installing and examining accounting system.

For making installation of a uniform accounting system and examining the financial accounts of an elevator or public warehouse, an association, copartnership, corporation, or limited liability company shall pay the examiner a reasonable fee, as determined by the ~~commission commissioner~~. In case any such association, copartnership, corporation, or limited liability company shall wrongfully refuse or neglect to pay such fees, then the ~~commission commissioner~~ may cancel the license to do business. All such fees ~~shall must~~ be paid into the state treasury. The expenses incurred by the examiner under the provisions of this chapter shall be paid out of the appropriations made by the legislative assembly for this purpose and such expenses ~~shall must~~ be audited and paid in the same manner as other expenses are audited and paid.

SECTION 78. AMENDMENT. Section 60-06-05 of the North Dakota Century Code is amended and reenacted as follows:

60-06-05. Sidetracks to be provided by railroad company on its land.

Every railroad company or corporation organized under the laws of this state or doing business ~~therein this state~~, upon application in writing, shall provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator without reference to its size, cost, or capacity, ~~whereif~~ grain or potatoes are or may be stored. The railroad company is not required to construct or furnish any sidetracks except upon its own land or right of way. Such elevators and warehouses may not be constructed within one hundred feet [30.48 meters] of any existing structure and must be at safe fire distance from the station buildings so as not to conflict essentially with the safe and convenient operation of the road. ~~Whereif~~ stations are ten miles [16.09 kilometers] or more apart the railroad company, ~~whenif~~ required so to do by the ~~public service commissioner~~, shall construct and maintain a sidetrack for the use of shippers between such stations.

SECTION 79. AMENDMENT. Section 60-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

4-26-19
SB 2009

60-06-06.1. Determination - Appropriation Expenses.

Any party may petition the ~~public service commissioner~~ commissioner to determine rights governed under this chapter. The ~~commissioner~~ shall determine the matter in accordance with chapter 28-32 and the parties' rights of appeal are as limited by chapter 28-32. The value of a leaseholder's improvements may not be considered in determining a reasonable lease rate or selling price. The parties to such a proceeding shall pay the expenses of the proceeding, as determined by the commissioner, directly to the entities owed. The commissioner may adopt rules to carry out this section.

1
P 32
conf
Com

SECTION 80. AMENDMENT. Section 60-10-01 of the North Dakota Century Code is amended and reenacted as follows:

60-10-01. Credit-sale contracts - Assessment on grain - Submission of assessment.

An assessment at the rate of two-tenths of one percent is placed on the value of all grain sold in this state under a credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14. The licensee purchasing the grain shall note the assessment on the contract required under sections 60-02-19.1 and 60-02.1-14 and shall deduct the assessment from the purchase price payable to the seller. The licensee shall submit any assessment collected under this section to the ~~public service commissioner~~ commissioner no later than thirty days after each calendar quarter. The commissioner shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

SECTION 81. AMENDMENT. Section 60-10-02 of the North Dakota Century Code is amended and reenacted as follows:

60-10-02. Credit-sale contract indemnity fund - Creation - Continuing appropriation.

There is created in the state treasury the credit-sale contract indemnity fund. The state treasurer shall invest available moneys in the fund in accordance with section 21-10-07 and in cooperation with the ~~public service commissioner~~ commissioner and shall deposit any income earned through the investments into the fund. The fund and earnings of the fund are appropriated to the ~~public service commissioner~~ commissioner on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

SECTION 82. AMENDMENT. Section 60-10-03 of the North Dakota Century Code is amended and reenacted as follows:

60-10-03. Credit-sale contract indemnity fund - Suspension of assessment.

At the end of the calendar quarter in which the credit-sale contract indemnity fund reaches a level of six million dollars, the ~~public service commissioner~~ commissioner shall suspend collection of the assessment required by this chapter. If after suspension of collection the balance in the fund is less than three million dollars, the ~~public service commissioner~~ commissioner shall require collection of the assessment.

SECTION 83. AMENDMENT. Section 60-10-05 of the North Dakota Century Code is amended and reenacted as follows:

60-10-05. Credit-sale contract indemnity fund - Availability of money.

Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the ~~public service commission~~ commissioner serve as the trustee, the ~~public service commission~~ commissioner shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

#1
P33
Conf
Comm

SECTION 84. AMENDMENT. Section 60-10-07 of the North Dakota Century Code is amended and reenacted as follows:

60-10-07. Credit-sale contract indemnity fund - Prorated claims.

If claims for indemnity payments from the credit-sale contract indemnity fund exceed the amount in the fund, the ~~public service commission~~ commissioner shall prorate the claims and pay the prorated amounts. As future assessments are collected, the ~~public service commission~~ commissioner shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this chapter.

SECTION 85. AMENDMENT. Section 60-10-08 of the North Dakota Century Code is amended and reenacted as follows:

60-10-08. Reimbursement for later insolvencies.

The ~~public service commission~~ commissioner shall ensure that all persons eligible for payment from the indemnity fund as a result of an insolvency are fully compensated to the extent permitted by this chapter before any payments from the indemnity fund are initiated as a result of a later insolvency. The chronological order of insolvencies is determined by the date the ~~public service commission~~ commissioner is appointed trustee under section 60-02.1-29 or 60-04-03.

SECTION 86. AMENDMENT. Section 60-10-09 of the North Dakota Century Code is amended and reenacted as follows:

60-10-09. Credit-sale contract indemnity fund - Reimbursement for administrative expenses.

Any expense incurred by the ~~public service commission~~ commissioner in administrating the credit-sale contract indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

SECTION 87. AMENDMENT. Section 60-10-10 of the North Dakota Century Code is amended and reenacted as follows:

60-10-10. Credit-sale contract indemnity fund assessment - Failure to collect assessment - Penalty.

Any person who knowingly or intentionally refuses or fails to collect the assessment required under this chapter from producers or to submit any assessment collected from producers to the ~~public service commission~~ commissioner for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

SB 2009
4-26-19
#1
P34
Cont
Comm

SECTION 88. AMENDMENT. Section 60-10-11 of the North Dakota Century Code is amended and reenacted as follows:

60-10-11. Revocation and suspension.

The ~~commission~~ commissioner may suspend or revoke the license of any licensee for cause upon notice and hearing for violation of this chapter.

SECTION 89. AMENDMENT. Section 60-10-12 of the North Dakota Century Code is amended and reenacted as follows:

60-10-12. Cease and desist.

If a person engages in an activity or practice that is contrary to this chapter or rules adopted by the ~~commission~~ commissioner, the ~~commission~~ commissioner, upon ~~its~~ the commissioner's own motion without complaint and with or without a hearing, may order the person to cease and desist from the activity until further order of the ~~commission~~ commissioner. The order may include any corrective action up to and including license suspension. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 90. AMENDMENT. Section 60-10-14 of the North Dakota Century Code is amended and reenacted as follows:

60-10-14. Subrogation.

Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against whom the claim was made. The ~~commission~~ commissioner may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate ~~its~~ the interest of the claimant, if any, to the ~~commission~~ commissioner in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

SECTION 91. AMENDMENT. Section 60-10-15 of the North Dakota Century Code is amended and reenacted as follows:

60-10-15. Unlicensed facility-based grain buyer.

This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01, which is licensed under the United States Warehouse Act but which does not possess a state grain buyer license. The ~~commission~~ commissioner has the duty and power to examine and inspect, during regular business hours, all books, documents, and records related to collections and remittances pertaining to the credit-sale contract indemnity fund. In the case of insolvency, credit-sale contract payments to valid claimants must be reduced by an amount equal to the credit-sale contract indemnity payments received from payments administered by the United States department of agriculture."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

4-26-19

Senate Bill No. 2009 - Department of Agriculture - Conference Committee Action

SB 2009

	Base Budget	Senate Version	Conference Committee Changes	Conference Committee Version	House Version	Comparison to House
Salaries and wages	\$12,372,949	\$13,049,463	\$1,183,283	\$14,232,746	\$13,651,222	\$581,524
Operating expenses	6,444,336	6,577,780	125,000	6,702,780	6,702,780	
Capital assets	13,000	15,000		15,000	15,000	
Grants	8,817,774	8,823,774		8,823,774	8,823,774	
State Board of Animal Health	865,718	865,718		865,718	865,718	
Wildlife services	1,408,000	1,457,400		1,457,400	1,457,400	
Crop Harmonization Board	75,000	75,000		75,000	75,000	
Pipeline restoration and reclamation	200,000	200,000		200,000	200,000	
Ag. Products Utilization Commission		3,176,791	583,626	3,760,417	4,000,000	(239,583)
Grain insolvency litigation			100,000	100,000		100,000
Total all funds	\$30,196,777	\$34,240,926	\$1,991,909	\$36,232,835	\$35,790,894	\$441,941
Less estimated income	21,087,676	24,503,189	819,217	25,322,406	25,366,732	(44,326)
General fund	\$9,109,101	\$9,737,737	\$1,172,692	\$10,910,429	\$10,424,162	\$486,267
FTE	73.00	75.00	3.00	78.00	77.00	1.00

#1
p35
Conf
Com

Department 602 - Department of Agriculture - Detail of Conference Committee Changes

	Adjusts Funding for Salary and Benefit Increases ¹	Adds Funding for Temporary Salaries ²	Adjusts Funding for Agriculture Commissioner Salary Equity Increase ³	Adjusts Funding for Wildlife Services Operating Fees ⁴	Adjusts Funding for APUC ⁵	Transfers Grain Warehouse Inspection Program from the PSC ⁶
Salaries and wages	\$55,476	\$159,852	(\$127)		\$239,583	\$728,499
Operating expenses						125,000
Capital assets						
Grants						
State Board of Animal Health						
Wildlife services						
Crop Harmonization Board						
Pipeline restoration and reclamation						
Ag. Products Utilization Commission					583,626	
Grain insolvency litigation						
Total all funds	\$55,476	\$159,852	(\$127)	\$0	\$823,209	\$853,499
Less estimated income	26,339	159,852	0	49,400	583,626	0
General fund	\$29,137	\$0	(\$127)	(\$49,400)	\$239,583	\$853,499
FTE	0.00	0.00	0.00	0.00	(1.00)	4.00

4-26-19
SB 2009

#1
P36
cont
com

	Adds Funding for Grain Insolvency Litigation ²	Total Conference Committee Changes
Salaries and wages		\$1,183,283
Operating expenses		125,000
Capital assets		
Grants		
State Board of Animal Health		
Wildlife services		
Crop Harmonization Board		
Pipeline restoration and reclamation		
Ag. Products Utilization Commission		583,626
Grain insolvency litigation	\$100,000	100,000
Total all funds	\$100,000	\$1,991,909
Less estimated income	0	819,217
General fund	\$100,000	\$1,172,692
FTE	0.00	3.00

¹ Funding of \$51,014, of which \$24,675 is from the general fund and \$26,339 is from other funds, is added for 2019-21 biennium salary increases of 2 percent with a minimum monthly increase of \$120 and a maximum monthly increase of \$200 on July 1, 2019, and 2.5 percent on July 1, 2020. The Senate provided funding for salary increases of 2 percent on July 1, 2019, and 3 percent increase on July 1, 2020. Funding of \$4,462 is also added from the general fund for increases in health insurance premiums related to the transfer of 1 FTE from the Public Service Commission.

² Funding of \$159,852 is added from the Department of Agriculture operating fund for temporary salaries. The Senate and House did not add funding for temporary salaries.

³ Funding of \$127 is reduced from the general fund to provide a salary equity increase of \$14,586, including increases for fringe benefits, for the Agriculture Commissioner. Of this amount, \$5,889 is related to a salary equity increase, the same salary equity increase provided to the State Treasurer. The Senate provided total funding for a salary equity increase for the Agriculture Commissioner of \$14,713 to align the Agriculture Commissioner's salary to the Tax Commissioner's salary. The House did not provide a salary equity increase for the Agriculture Commissioner.

⁴ The funding source for \$49,400 for wildlife services operating fees is changed to the environment and rangeland protection fund rather than the general fund to provide total funding of \$1,457,400 for wildlife services, the same amount as the Senate. The House also provided for this funding source change to provide a total of \$1,457,400 for the program.

⁵ Funding for the Agricultural Products Utilization Commission (APUC) is adjusted as follows:

	FTE	General Fund	Other Funds	Total
Reduces funding from APUC special funds	(1.00)	\$0	(\$1,176,791)	(\$1,176,791)
Adjusts funding for salaries of 1 FTE APUC position	0.00	239,583	(239,583)	0
Adds one-time funding from Bank of North Dakota profits	0.00	0	2,000,000	2,000,000
Total	(1.00)	\$239,583	\$583,626	\$823,209

Total funding approved by the Conference Committee for APUC is \$4 million, of which \$1,760,417 is from the APUC fund and \$2 million is one-time funding 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 salaries and benefits of 1 FTE in the salaries and wages line item.

The House approved \$4 million, of which \$2 million was from the APUC fund and \$2 million was one-time funding from the profits of the Bank of North Dakota, and 1 FTE position for the program. The Senate approved total funding of \$3,176,791 from the APUC fund and 2 FTE positions.

⁶ Transfers grain warehouse license and inspection program from the Public Service Commission to the Agriculture Commissioner as follows:

4-26-19
 SB 2009
 #1
 P37
 cont
 com

	<u>Salaries and Wages</u>	<u>Operating Expenses</u>	<u>Total General Fund</u>
Adds 3 FTE grain warehouse inspectors	\$563,006	\$120,000	\$683,006
Adds 1 FTE accounting budget specialist	<u>165,493</u>	<u>5,000</u>	<u>170,493</u>
Total	\$728,499	\$125,000	\$853,499

These transfers were also provided for by the House.

⁷ One-time funding of \$100,000 is added from the general fund to pay the Public Service Commission to continue providing services related to grain insolvency litigation that began prior to July 1, 2019. This appropriation is provided in a separate section of the bill. The Senate and House did not provide funding for this purpose.

The House removed 1 FTE undesignated position and funding of \$157,940, of which \$123,517 was from the general fund, \$6,673 was from the Department of Agriculture operating fund, and \$27,750 was from federal funds. The Conference Committee did not remove this FTE positions.

This amendment also:

- Amends a section identifying the amount of funding from the environment and rangeland protection fund.
- Amends a section relating to the salary increase of the Agriculture Commissioner to provide a salary equity increase to the Agriculture Commissioner of \$5,889, increasing the current annual salary of \$108,656 to \$114,545 and to increase the salary to \$116,836 (2 percent) in fiscal year 2020 and to \$119,757 (2.5 percent) in fiscal year 2021.
- Adds a section related to the transfer of \$2 million from Bank of North Dakota profits to the APUC fund during the 2019-21 biennium, the same as the House version.
- Remove statutory sections related to APUC, the same as the House version. The statutory changes needed to move APUC from the Department of Commerce to the Agriculture Commissioner are included in Senate Bill No. 2328.
- Adds a section to provide a one-time appropriation of \$100,000 from the general fund for the purpose of paying the Public Service Commission to continue providing services related to grain insolvency litigation that began prior to July 1, 2019. The Senate and House did not provide funding for this purpose.
- Adds statutory sections to transfer grain, grain buyers, warehousing, deposits, and warehousemen programs from the Public Service Commission to the Agriculture Commissioner and increases annual license fees, resulting in additional general fund revenues of approximately \$83,200 during the 2019-21 biennium. The House also included this section.