

**SECOND ENGROSSMENT  
with Senate Amendments  
REENGROSSED HOUSE BILL NO. 1452**

Introduced by

Representatives Bosch, Delzer, Mitskog, Pollert, Porter

Senators Holmberg, Patten, Bell, Wardner

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

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

11 **17-01-01. ~~25x'25 initiative~~ Low-emission technology.**

12 The legislative assembly adopts the ~~25x'25~~ low-emission technology initiative with the goal  
13 that ~~not later than January 1, 2025,~~ the agricultural, forestry, natural resources, and working  
14 land of the United States should provide energy from ~~renewable resources~~ low-emission  
15 technology not less than twenty-five percent of the total energy consumed in the United States  
16 and continue to produce safe, abundant, and affordable food, fuel, feed, and fiber. Increasing  
17 America's ~~renewable energy~~ low-emission technology use will bring new  
18 ~~technologies~~ advancements to market and save consumers money, reduce the nation's  
19 dependence on oil from the Middle East, create good new jobs in rural America, ~~and~~ clean up  
20 the air ~~and~~, reduce urban smog, and address global warming issues. As used in this initiative,  
21 ~~renewable energy~~ low-emission technology includes biofuels, solar, wind, hydropower,  
22 geothermal, carbon recycling, carbon sequestration, use of waste heat, recycling, ~~low-emission~~  
23 ~~technologies that create or use hydrogen, coal, oil, natural gas,~~ and energy efficiency initiatives.  
24 The ~~25x'25 initiative~~ will benefit agriculture and forestry, the environment, and national security

1 ~~and provide economic growth~~Investing and acknowledging a commitment to low-emission  
2 technology allows the state to use its abundant natural resources for the benefit of current and  
3 future generations. This initiative provides North Dakota consumers with affordable, reliable,  
4 resilient, and sustainable energy for the benefit of the state's economy and communities.

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

7 **17-07-01. Energy policy commission.**

8 1. The energy policy commission is composed of:

- 9 a. The commissioner of commerce, or the commissioner's designee;
- 10 b. A representative of the agriculture community appointed by the governor;
- 11 c. A representative recommended by the lignite energy council appointed by the  
12 governor;
- 13 d. A representative recommended by the North Dakota petroleum council appointed  
14 by the governor;
- 15 e. A member from the biodiesel or green diesel industry appointed by the governor;
- 16 f. A member from the biomass industry appointed by the governor;
- 17 g. A member from the wind industry appointed by the governor;
- 18 h. A member from the ethanol industry appointed by the governor;
- 19 i. A representative recommended by the North Dakota petroleum marketers  
20 association appointed by the governor;
- 21 j. A member from the North Dakota investor-owned electric utility industry  
22 appointed by the governor;
- 23 k. A member from the generation and transmission electric cooperative industry  
24 appointed by the governor;
- 25 l. A member from the lignite coal-producing industry appointed by the governor;
- 26 m. A member from the refining or gas-processing industry appointed by the  
27 governor; and
- 28 n. Additional nonvoting members appointed by the governor.

29 2. Each member of the commission shall serve for a term of two years, beginning July  
30 first, may be reappointed for additional terms, and serves at the pleasure of the  
31 governor.

- 1       3.    The commissioner of commerce, or the commissioner's designee, is chairman of the  
2       commission.
- 3       4.    The commission shall meet at least four times per biennium or as often as the  
4       chairman deems necessary. The commission shall hold at least two public hearings  
5       per biennium, ~~at which time interested parties may present to receive~~ testimony  
6       regarding issues pertinent to the state's comprehensive energy policy and  
7       low-emission technology initiative. The department of commerce shall provide staffing  
8       for the commission.
- 9       5.    ~~The legislative assembly shall develop a comprehensive energy policy for the state.~~  
10      ~~The commission shall monitor progress made toward the goals outlined in the energy~~  
11      ~~policy and make recommendations to the energy policy as needed~~The commission  
12      may identify and make recommendations to the clean sustainable energy authority on  
13      technologies related to low-emission advancements. The recommendations may  
14      include consideration of advancements or developments that have led to increased  
15      economic benefits and positive environmental public health benefits for the citizens  
16      and visitors of North Dakota, including cleaner air, soil, and water; improved  
17      efficiencies; reduction of waste; lower carbon-intensive agricultural products or  
18      processes; and quantities of energy used. The recommendations also may consider  
19      other factors, including environmental, social, and governance policies and the effect  
20      on financial or capital markets. The commission shall consider and make  
21      recommendations on policies to ensure the availability of affordable, reliable, resilient,  
22      and sustainable energy in the state; to expand value-added energy; and to expand the  
23      opportunities to diversify the use of North Dakota's natural resources, which may  
24      increase state tax revenues. The commission shall study and evaluate critical energy  
25      infrastructure and shall make recommendations to ensure the state's comprehensive  
26      energy policy supports electrical grid reliability and resiliency and supports sufficient  
27      dispatchable generation capacity to avoid brownouts, blackouts, or outages. The  
28      commission shall monitor the progress of implementing and achieving environmental  
29      benefits through the state's comprehensive energy policy.

1       6. The legislative assembly shall consider recommendations from the commission to  
2       develop a comprehensive energy policy for the state. The commission shall report its  
3       recommendations biennially to the legislative management.

4       6.7. The members of the commission who are not state employees are entitled to mileage  
5       and expenses as provided by law for state officers and employees. Unless otherwise  
6       provided in this subsection, the expenses of appointed members are to be paid by the  
7       department of commerce. A state employee who is a member of the commission must  
8       receive that employee's regular salary and is entitled to mileage and expenses, to be  
9       paid by the employing agency.

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

12       **Definitions.**

13       As used in this chapter:

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

24       **Clean sustainable energy authority - Purpose.**

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

1       **Clean sustainable energy authority - Membership - Meetings.**

2       1. The clean sustainable energy authority consists of sixteen members, including eight  
3       voting members and eight nonvoting technical advisors.

4       2. The eight voting members consist of:

5       a. One member appointed by the legislative management to serve as chairman;

6       b. Two members appointed by the lignite research council;

7       c. Two members appointed by the oil and gas research council;

8       d. Two members appointed by the renewable energy council; and

9       e. One member appointed by the western Dakota energy association.

10      3. The eight nonvoting technical advisors consist of:

11      a. One member appointed by the North Dakota outdoor heritage fund advisory  
12      board;

13      b. The commissioner of commerce or the commissioner's designee;

14      c. The director of the department of environmental quality or the director's designee;

15      d. The director of mineral resources or the director's designee;

16      e. The director of the North Dakota pipeline authority or the director's designee;

17      f. The director of the North Dakota transmission authority or the director's designee;

18      g. The director of the state energy research center or the director's designee;

19      h. The president of the Bank of North Dakota or the president's designee;

20      4. The term of office for the chairman is two years. The term of office for the other voting  
21      members is four years, and the other voting members may not serve more than two  
22      consecutive terms. The terms of office for the voting members commence on July first.  
23      The initial terms for the voting members of the authority must be staggered following a  
24      method determined by the authority.

25      5. The authority shall meet at least semiannually. The chairman shall call a meeting upon  
26      written request from three voting members of the authority. Five voting members is a  
27      quorum at any meeting.

28      6. The authority may not forward a recommendation to the commission unless the  
29      recommendation fulfills the purposes of this chapter and is approved by a majority of  
30      the voting members of the authority.

1       **Clean sustainable energy authority - Duties - Report.**

2       1.   The authority shall make recommendations to the commission for program guidelines,  
3       including eligibility criteria for entities to receive funding under this chapter.

4       2.   The nonvoting technical advisors shall develop a process to review and evaluate  
5       projects to determine the technical merits and feasibility of any application, including  
6       potential benefits of the development of low-emission technology, the expansion of the  
7       development of the state's natural resources or energy production, and the  
8       contribution to the economic diversity in the state.

9       3.   The authority may develop a loan program or a loan guarantee program under the  
10      clean sustainable energy fund. The Bank of North Dakota shall administer the loan  
11      program or loan guarantee program. The interest rate of a loan under this program  
12      may not exceed two percent per year. The maximum term of a loan under this section  
13      must be approved by the commission based on a recommendation from the authority.  
14      The Bank shall review applications for loans or loan guarantees and shall consider the  
15      business plan, financial statements, and other information necessary to evaluate the  
16      application. To be eligible for a loan or loan guarantee, an entity shall agree to provide  
17      the Bank of North Dakota with information as requested. The Bank of North Dakota  
18      may develop policies for loan participation with local financial institutions.

19     4.   The authority shall make recommendations to the commission for grant awards, loan  
20      approvals, or other financial assistance to provide funding to support research,  
21      development, and technological advancements for the large scale development and  
22      commercialization of projects, processes, activities, and technologies that reduce  
23      environmental impacts and increase sustainability of energy production and delivery in  
24      accordance with this chapter. Any projects, processes, activities, and technologies  
25      selected by the commission for funding must have been recommended by the  
26      authority, must demonstrate feasibility based on a technical review conducted by the  
27      nonvoting technical advisors of the authority, must have other sources of financial  
28      support, and must achieve the priorities and purposes of the program. At the request  
29      of the authority, the Bank of North Dakota shall provide a recommendation regarding  
30      the economic feasibility of a project, process, activity, or technology under

1 consideration by the authority. The Bank shall review the business plan, financial  
2 statements, and other information necessary to provide a recommendation.

3 5. The authority may consult with any other state agency necessary to carry out the  
4 purposes under this chapter.

5 6. Each biennium, the authority shall provide a written report to the legislative  
6 management regarding its activities and the program's financial impact on state  
7 revenues and the state's economy.

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

9 1. The commission is granted all the powers necessary to carry out the purposes of this  
10 chapter, including the power to:

11 a. Provide grants, loans, or other forms of financial assistance to qualified entities  
12 for the research, demonstration, development, and commercialization of projects,  
13 processes, activities, and technologies that reduce environmental impacts and  
14 use energy sources derived from within the state. Other forms of financial  
15 assistance include venture capital investments and interest rate buydowns. The  
16 commission must require an entity to provide assurance of financial and other  
17 types of support that demonstrate a commitment to the project, process, activity,  
18 or technology. The commission may develop policies for the approval of loans or  
19 loan guarantees issued from the clean sustainable energy fund.

20 b. Enter into contracts or agreements to carry out the purposes of this chapter,  
21 including contracting for the administration of the program.

22 c. Keep accurate records of all financial transactions performed under this chapter.

23 d. Cooperate with any private, local, state, or national organization to make  
24 contracts and agreements for programs that advance the mission of the program.

25 e. Accept loan repayments, donations, grants, contributions, or gifts from any public  
26 or private source to carry out the purposes of this chapter, which must be  
27 deposited in the clean sustainable energy fund.

28 f. Make guidelines necessary to carry out the purposes of this chapter, including  
29 guidelines relating to the ownership of intellectual property.

30 2. The commission may acquire, purchase, hold, use, lease, license, sell, transfer, or  
31 dispose of any interest in an asset necessary for clean sustainable energy technology

- 1           development to facilitate the production, transportation, distribution, or delivery of  
2           clean energy commodities produced in the state as a purchases of last resort.  
3        3.   The commission shall provide administrative support to the authority for the operation  
4           of the program, including the preparation of forms, review of applications, and ongoing  
5           review of any contracts. The commission may contract with a public or private entity to  
6           provide technical assistance necessary to implement the purposes of this chapter.  
7        4.   The commission is not subject to the reporting requirements under chapter 54-60.1.

8        **Clean sustainable energy program - Access to records.**

- 9        1.   To the extent the commission or authority determines the materials or data consist of  
10           trade secrets or commercial, financial, or proprietary information of individuals or  
11           entities applying to or contracting with the commission or receiving commission  
12           services under this chapter, materials and data submitted to, made by, or received by  
13           the commission or authority, are not public records subject to section 44-04-18 and  
14           section 6 of article XI of the Constitution of North Dakota, and are subject to section  
15           44-04-18.4.  
16        2.   A person or entity may file a request with the commission to have material designated  
17           as confidential under subsection 1. The request must contain any information required  
18           by the commission and must include at least the following:  
19           a.   A general description of the nature of the information sought to be protected.  
20           b.   An explanation of why the information derives independent economic value,  
21                actual or potential, from not being generally known to other persons.  
22           c.   An explanation of why the information is not readily ascertainable by proper  
23                means of other persons.  
24           d.   A general description of any person that may obtain economic value from  
25                disclosure or use of the information, and how the person may obtain this value.  
26           e.   A description of the efforts used to maintain the secrecy of the information.  
27        3.   Any request under subsection 2 is confidential. The commission shall examine the  
28           request and determine whether the information is relevant to the matter at hand and is  
29           a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the  
30           commission determines the information is either not relevant or not a trade secret, the  
31           commission shall notify the requester and the requester may ask for the return of the

1 information and the request within ten days of the notice. If no return is sought, the  
2 information and request are public record.

3 4. The names or identities of independent technical reviewers on a project or program  
4 are confidential, may not be disclosed by the commission, and are not public records  
5 subject to section 44-04-18 or section 6 of article XI of the Constitution of North  
6 Dakota.

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

8 1. There is created in the state treasury the clean sustainable energy fund. The fund  
9 consists of all moneys transferred to the fund by the legislative assembly; interest  
10 upon moneys in the fund; principal and interest payments to the fund; and donations,  
11 grants, and other contributions received by the commission for deposit in the fund. All  
12 moneys in the fund are appropriated to the commission on a continuing basis to  
13 provide grants, loans, and other financial assistance and for administrative and  
14 operating costs of the authority and program pursuant to the provisions under this  
15 chapter.

16 2. Any bond proceeds deposited in the fund must be used for loans or loan guarantees.  
17 The Bank of North Dakota shall deposit in the fund all principal and interest paid on  
18 the loans made from the fund. The Bank may use a portion of the interest paid on the  
19 outstanding loans as a servicing fee to pay for administrative costs, not to exceed  
20 one-half of one percent of the amount of the interest payment. The Bank shall contract  
21 with a certified public accounting firm to audit the fund annually if the fund has any  
22 outstanding loans. The cost of the audit must be paid from the fund.

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

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

29 **SECTION 5. APPROPRIATION - TRANSFER - CLEAN SUSTAINABLE ENERGY FUND.**

30 There is appropriated out of any moneys in the general fund in the state treasury, not otherwise  
31 appropriated, the sum of \$40,000,000, which the office of management and budget shall

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- 1 transfer to the clean sustainable energy fund, during the biennium beginning July 1, 2021, and
- 2 ending June 30, 2023.