

**Department of Commerce  
Budget No. 601  
House Bill No. 1018 and Senate Bill Nos. 2015 and 2265**

	<b>FTE Positions</b>	<b>General Fund</b>	<b>Other Funds</b>	<b>Total</b>
2019-21 legislative appropriation	61.80	\$40,191,721 <sup>1</sup>	\$58,423,293	\$98,615,014
2017-19 legislative appropriation	<u>66.40</u>	<u>60,092,680<sup>2</sup></u>	<u>68,585,658</u>	<u>128,678,338</u>
2019-21 appropriation increase (decrease) to 2017-19 appropriation	(4.60)	(\$19,900,959)	(\$10,162,365)	(\$30,063,324)

<sup>1</sup>This amount includes \$7,325,000 of one-time funding. Excluding this amount, the agency's ongoing general fund appropriation is \$32,866,721.

<sup>2</sup>This amount includes a supplemental appropriation of \$28,750,000, of which \$28,000,000 is for a beyond visual line of sight (BVLOS) UAS program and \$750,000 is for North Dakota gorge preservation grants.

**Item Description**

**FTE position changes** - The 2019 Legislative Assembly approved 61.80 FTE positions for the Department of Commerce for the 2019-21 biennium, a decrease of 4.60 FTE positions from the 2017-19 biennium authorized level of 66.40 FTE positions.

In May 2018 the department implemented a reduction-in-force plan involving 12.60 FTE positions. Of these positions, 1.60 FTE positions were removed by the 2019 Legislative Assembly. The remaining 11 FTE positions from the reduction-in-force were retained by the department and reclassified as part of the department's reorganization.

**Status/Result**

The Department of Commerce removed the 4.60 FTE positions, which were all vacant. The department removed 2 FTE program assistant positions, 1 FTE APUC executive director position, 1 FTE administrative assistant position, and a 0.60 FTE grant and program officer position. Of the positions removed the 1 FTE administrative assistant and 0.60 FTE grant and program officer positions were included in the department's reduction-in-force.

Of the 12.60 FTE positions included in the department's reduction-in-force, 11.60 FTE positions were paid from the general fund and 1 FTE position from federal funds. The reduction-in-force included the following positions:

<b>Title</b>	<b>FTE</b>
Administrative assistant	2.00
Receptionist and administrative assistant	1.00
Travel counselor and administrative assistant	0.60
Business research specialist	1.00
Commercialization manager	1.00
Tourism development manager	1.00
Entrepreneurship manager	1.00
Marketing manager	1.00
Business development manager	1.00
Office manager	1.00
Research manager	1.00
Program and grants officer	1.00
<b>Total</b>	<b>12.60</b>

Of the 12.60 FTE positions included in the reduction-in-force, 11 FTE positions were retained by the department and reclassified as follows:

<b>Former Position Title</b>	<b>Current Position Title</b>
Administrative assistant <sup>1</sup>	Administrative assistant <sup>1</sup>
Receptionist and administrative assistant	Executive assistant to commissioner
Travel counselor and administrative assistant <sup>2</sup>	Social media strategist <sup>2</sup>
Business research specialist	Business developer
Commercialization manager	Communication specialist

Tourism development manager	Graphic design specialist
Entrepreneurship manager	Head of investments and innovation
Marketing manager	Community development liaison
Business development manager	Intellectual property and commercialization development manager
Office manager	Executive assistant/HR specialist
Research manager	Economic and market research analyst

<sup>1</sup>The reduction-in-force included 2 FTE administrative assistant positions. Of these positions, 1 FTE position was removed by the 2019 Legislative Assembly and 1 FTE position was retained by the department.

<sup>2</sup>After the reduction-in-force, the department reclassified the 0.60 FTE travel counselor and administrative assistant position as a 1.0 FTE social media strategist. The department reclassified a 1.0 FTE program and grants officer position to a 0.60 FTE program and grants officer position, which was removed by the 2019 Legislative Assembly.

**Beyond Visual Line of Sight Unmanned Aircraft System Program - Supplemental appropriation** - In Section 12 of House Bill No. 1018, the Legislative Assembly provided a supplemental appropriation of \$28 million from the general fund to the Department of Commerce for the 2017-19 biennium for a BVLOS UAS program. The department is authorized to continue funding for the program into the 2019-21 biennium.

Section 13 of the bill created Section 54-60-29.1 to establish a BVLOS UAS program for the design, purchase, implementation, and operating costs of a BVLOS UAS. The department must require any entity receiving funding for this program which is operating the BVLOS UAS to provide quarterly payments to the State Treasurer equal to 3 percent of the entity's gross income associated with the operation of the BVLOS UAS as reported in the entity's prior year financial statements. The State Treasurer is required to deposit any funds received under this section in the general fund.

**North Dakota gorge preservation grant - Supplemental appropriation** - In Section 19 of House Bill No. 1018, the Legislative Assembly provided a supplemental appropriation of \$750,000 from the general fund to the Department of Commerce for the 2017-19 biennium to provide North Dakota gorge preservation grants, on a reimbursement basis, to an organization dedicated to preserving a North Dakota gorge. Grant awards may be awarded only for expenditures related to the purchase and maintenance of outdoor recreation equipment, the improvement and maintenance of real property, enhancing public access to natural resources, and addressing public safety hazards in a North Dakota gorge. Grant funds may be awarded only to the extent that matching funds on a dollar-for-dollar basis are provided from private or other nonstate sources. Matching funds may include in-kind payments for labor and materials. The department is authorized to continue funding for the program into the 2019-21 biennium.

The department did not spend any of the \$28 million appropriation during the 2017-19 biennium. Through March 2020, the department has spent \$581,763 on the BVLOS UAS program, primarily related to work contracted with UND and work contracted for the operation of the BVLOS UAS.

The department has contracted with three entities for the operation of BVLOS UAS and of the \$581,763 spent through March 2020, the department has provided \$365,849 to one of the entities. The department does not anticipate quarterly payments will be remitted to the State Treasurer until the 2021-23 biennium.

The department did not spend any of the \$750,000 appropriation during the 2017-19 biennium. The department distributed the entire appropriation for North Dakota gorge preservation grants in September 2019 and November 2019 to the Pembina Gorge Foundation.

**One-time funding** - In Section 2 of House Bill No. 1018, the Legislative Assembly identified \$11,625,000 of one-time funding for the Department of Commerce, of which \$7,325,000 is from the general fund, \$3,000,000 is from the strategic investment and improvements fund, and \$1,300,000 is from the beginning farmer revolving loan fund. The table below summarizes one-time funding provided to the Department of Commerce for the 2019-21 biennium.

	General Fund	Other Funds	Total Funds
UAS operating expenses	\$2,225,000		\$2,225,000
Enhanced use lease grants	3,000,000		3,000,000
Entrepreneurship grants and vouchers		\$2,000,000	2,000,000
Census 2020 program		1,000,000	1,000,000
Workforce grants to tribally controlled community colleges	500,000		500,000
Workforce safety grant	1,000,000		1,000,000
Nonresident nurse employment recruitment program	500,000		500,000
Intermodal container transportation shipping fees		1,300,000	1,300,000
Sculpture maintenance grants	75,000		75,000
Job development and economic growth grant	25,000		25,000
<b>Total</b>	<b>\$7,325,000</b>	<b>\$4,300,000</b>	<b>\$11,625,000</b>

**Unmanned aircraft systems program** - The 2019 Legislative Assembly appropriated \$4.25 million to the Department of Commerce for

The following is a summary of the status of the department's one-time funding items:

UAS operating expenses	See the <b>Unmanned aircraft systems program</b> section below.
Enhanced use lease grants	Through March 2020, the department has not spent any of the enhanced use lease grant appropriation. The amount anticipated to be spent during the biennium is dependent on weather and the progress made on projects. The department anticipates at least \$2.25 million, or 75 percent, of the appropriation will be spent by the end of the biennium.
Entrepreneurship grants and vouchers	See the <b>Entrepreneurship grants and vouchers</b> section below.
Census 2020 program	Through March 2020, the department has spent \$161,624 for the Census 2020 program and anticipates spending approximately \$900,000 during the biennium.
Workforce grants to tribally controlled community colleges	Through March 2020, the department has not spent any of the \$500,000 appropriation but anticipates the entire amount will be spent by the end of the biennium.
Workforce safety grant	The department provided a \$1 million grant to the North Dakota Safety Council in August 2019. The funding has been used for training, creating a first aid and cardiopulmonary resuscitation (CPR) program, and purchasing equipment. The funding has also been used for hosting conferences related to addictions in the workplace and how businesses can safely reopen following the COVID-19 pandemic.
Nonresident nurse employment recruitment program	Through March 2020, the department has not spent any nonresident nurse employment recruitment funding. The department awarded \$20,000 during this time, which is obligated until 2024. The department estimated an additional \$40,000 may be awarded by the end of the biennium. The department reported health care facilities have not applied for funding from this program because they are focused on retaining current nursing staff, many of which have 2- or 3-year work agreements that would conflict with the 4-year requirement of the program.
Intermodal container transportation shipping fees	The department has not requested any transfers from the Bank of North Dakota for intermodal container transportation shipping fees. It is unknown how much will be spent for this program during the biennium.
Sculpture maintenance grants	Through March 2020, the department has awarded the entire appropriation, which was primarily spent for repairing, welding, and painting the "Fisherman's Dream" sculpture, as well as repairing other sculptures on the Enchanted Highway.
Job development and economic growth grant	Through March 2020, the department has not spent any of the \$25,000 appropriation but anticipates the entire amount will be spent by the end of the biennium.

Through March 2020, the department spent \$895,323 on UAS operating expenses. During this time, the department has received approximately

the UAS program for the 2019-21 biennium, of which \$2.25 million was a one-time general fund appropriation for operating expenses of the UAS program. The remaining \$2 million was considered ongoing funding for grants, including \$1 million from federal funds and \$1 million of matching funds from private donations deposited in the UAS fund. The department was also authorized to continue unexpended strategic investment and improvements funding from the 2017-19 biennium, estimated at \$750,000, to provide a total of \$5 million available for the 2019-21 biennium.

**Discretionary funds** - In House Bill No. 1018, the Legislative Assembly appropriated \$2.15 million from the general fund in the Department of Commerce discretionary funds line item. Section 3 of the bill designates \$200,000 of this funding for matching funds for an organization assisting in the recruitment, distribution, and supply, and enhancing the quality and efficiency of personnel providing health services in rural areas of the state.

**Operation Intern program** - In Section 7 of House Bill No. 1018, the Legislative Assembly authorized OMB to transfer \$855,000 from the Department of Commerce operating expenses line item to the internship fund for administering the Operation Intern program during the 2019-21 biennium.

**North Dakota Trade Office** - In Section 9 of House Bill No. 1018, the Legislative Assembly identified \$1.6 million from the general fund for the North Dakota Trade Office. The department may spend 60 percent of the appropriation without requiring matching funds from the North Dakota Trade Office. Any additional amounts may be spent only with dollar-for-dollar matching funds from private or other public sources. Matching funds may include money spent by businesses or organizations to pay salaries to export assistants, provide training to export assistants, or buy computer equipment as part of the North Dakota Trade Office's export assistance program.

**Entrepreneurship grants and vouchers** - Section 10 of House Bill No. 1018 identifies \$2,948,467 in Section 1 for the entrepreneurship grants and vouchers program, also known as Innovate ND, which includes ongoing funding of \$740,956 from the general fund, \$207,511 of ongoing funding from the economic development fund, and \$2 million of one-time funding from the strategic investment and improvements fund.

Of the \$2 million provided from the strategic investment and improvements fund, \$900,000 is to be distributed equally to entrepreneurial centers located in Bismarck, Fargo, and Grand Forks, and \$150,000 is to be distributed to the entrepreneurial center located in Jamestown. The funding for the Jamestown entrepreneurial center may be provided only to

\$1.3 million of federal funding and \$160,000 of private donations for UAS grants, which has been distributed to UND for the UAS program. The department anticipates an additional \$5.5 million to \$7 million of federal funding and approximately \$1 million of private funds will be available to the department for the UAS program during the 2019-21 biennium. If received, this additional funding will result in the department exceeding the total authorized other funds appropriation for the 2019-21 biennium. The department anticipates requesting Emergency Commission and Budget Section approval to accept these funds if they become available.

See the **Exemptions** section below for additional information.

Through March 2020, the department has spent \$337,692 from the discretionary funds line item. In April 2020, the department awarded \$100,000 of funding designated for health services in rural areas of the state. The department anticipates awarding the remaining \$100,000 in September 2020. See the **Exemptions** section below for additional information.

The transfer was made in July 2019. Through March 2020, the department has spent \$285,940 on the Operation Intern program, which has provided funding for 169 student internships in 75 businesses. The department anticipates spending almost all of the appropriation during the biennium. See the **Exemptions** section below for additional information.

Through March 2020, the department has provided \$1.18 million to the North Dakota Trade Office. The North Dakota Trade Office has provided matching funds of approximately \$220,000.

Through March 2020, the department has spent approximately \$901,000 for the entrepreneurship grants and vouchers program, of which \$368,000 is from the general fund, \$525,000 is from the strategic investment and improvements fund, and \$8,000 is from the economic development fund.

Through March 2020, the department has awarded \$150,000 to the NDSU Research and Technology Park in Fargo, \$150,000 to the UND Center for Innovation Foundation in Grand Forks, \$150,000 to the Center for Technology and Business in Bismarck, and \$75,000 to the Jamestown Regional Entrepreneur Center in Jamestown from strategic investment and improvements funding. The department anticipates using strategic investment and improvements funding to award the entire \$300,000 to each of the Fargo, Grand Forks, and Bismarck

the extent the center provides \$1 of matching funds from private or other nonstate sources for each \$1 provided by the department during the 2019-21 biennium.

The department is required to establish guidelines to award vouchers to entrepreneurs to procure business development assistance from certified entrepreneurial centers or to provide grants to entrepreneurs working with an entrepreneurial center. Any unexpended funds from the entrepreneurship grants and vouchers program line item may be continued into the 2021-23 biennium.

**Biotechnology grants** - Section 11 of House Bill No. 1018 identifies \$300,000 from the general fund in Section 1 for providing biotechnology grants to a local association with bioscience experience to promote bioscience and biotechnology research and business development in North Dakota agriculture and life and energy science industries.

Senate Bill No. 2224 (2019) provides for a \$700,000 transfer from the Research North Dakota fund to the bioscience innovation grant fund, provides the Agriculture Commissioner a continuing appropriation for the bioscience innovation grant program, and requires the Agriculture Commissioner to collaborate with the Department of Commerce when awarding bioscience innovation grants to coordinate the management of the Agriculture Commissioner's bioscience innovation grant program and the Department of Commerce's biotechnology grant program.

**Exemptions** - In Section 12 of Senate Bill No. 2018 (2017), the Legislative Assembly provided an exemption to allow unexpended 2017-19 biennium funds for the entrepreneurship grants and vouchers program to continue and to be spent during the 2019-21 biennium.

In House Bill No. 1018, the Legislative Assembly provided exemptions to allow unexpended 2017-19 biennium funds to continue and to be spent during the 2019-21 biennium as follows:

- Section 4 - Provides an exemption for the discretionary funds line item.
- Section 5 - Provides an exemption for the UAS program.
- Section 6 - Provides an exemption for the early childhood education grant program.
- Section 8 - Provides an exemption for the Operation Intern program.

**Research North Dakota grant program** - The 2013 Legislative Assembly established the Research North Dakota grant program and the Research North Dakota venture program.

Section 15 of Senate Bill No. 2018 (2013) established the Research North Dakota grant program in Section 54-65-06 to provide grants to research universities for research, development, and commercialization activities in collaboration with a private sector partner.

The Research North Dakota fund is established in Section 54-65-08 and

entrepreneurship centers and the entire \$150,000 to the Jamestown entrepreneurial center during the 2019-21 biennium.

The department anticipates spending the entire appropriation by the end of the 2019-21 biennium.

See the **Exemptions** section below for additional information.

In August 2019 the department distributed \$150,000 of biotechnology grants to the Bioscience Association of North Dakota and anticipates dispersing the remaining \$150,000 in July 2020.

The transfer from the Research North Dakota fund to the bioscience innovation grant fund was made in July 2019. The Department of Commerce has indicated the Department of Agriculture and Department of Commerce have been coordinating the administration of the bioscience and biotechnology programs during the 2019-21 biennium.

The department continued the following unspent 2017-19 biennium appropriations into the 2019-21 biennium:

	<b>General Fund</b>	<b>Other Funds</b>	<b>Total</b>
Entrepreneurship grants and vouchers	\$796,830	\$236,480	\$1,033,310
Discretionary funds	883,699	858,528	1,742,227
UAS program		535,628	535,628
Early childhood education grant program	404,172		404,172
Operation Intern program		254,786	254,786
<b>Total</b>	<b>\$2,084,701</b>	<b>\$1,885,422</b>	<b>\$3,970,123</b>

The department currently estimates the transfer from the Research North Dakota fund to the general fund will be \$65,092 on June 30, 2021.

See the **Biotechnology grants** section above for additional information.

provides a continuing appropriation from the fund to the department for administering Research North Dakota.

The 2019 Legislative Assembly did not appropriate any new funding for the Research North Dakota grant program or the Research North Dakota venture program.

In Senate Bill No. 2224 (2019), the Legislative Assembly:

- Approved a transfer of any balance in the centers of excellence fund and the centers of research excellence fund to the Research North Dakota fund on July 1, 2019.
- Approved a transfer of \$700,000 from the Research North Dakota fund to a newly created bioscience innovation grant fund.
- Approved a transfer of any balance in the Research North Dakota fund to the general fund on June 30, 2021. The 2019 Legislative Assembly estimated the transfer from the Research North Dakota fund to the general fund on June 30, 2021, to be \$581,000.
- Repealed Section 10-30.5-14 and Chapter 54-65 related to the Research North Dakota program, effective July 1, 2021.

**Research North Dakota venture program** - The Research North Dakota venture program is part of the Research North Dakota grant program and is divided into two parts--the Research North Dakota venture grant program and Research North Dakota venture investment program.

Section 16 of Senate Bill No. 2018 (2013) established the Research North Dakota venture grant program in Section 54-65-07 to provide grants to research universities to further commercialize technology developed through a research university.

The Research North Dakota venture investment program was established in Section 10-30.5-14 by Section 9 of Senate Bill No. 2018 (2013) to provide funding from the North Dakota Development Fund, Inc., for investments to startup or spinoff businesses that utilize technology developed through a research university. A business is limited to an individual investment of up to \$250,000.

**Early childhood education grant program** - In House Bill No. 1018, the Legislative Assembly provided \$1.5 million from the general fund for early childhood education grants, also known as prekindergarten community grants.

**Homeless shelter grants** - In House Bill No. 1018, the Legislative Assembly provided \$1.5 million from the general fund for homeless shelter grants for the 2019-21 biennium, an increase of \$1.2 million from the 2017-19 biennium.

**Research-based literacy intervention services** - In Section 22 of Senate Bill No. 2265, the Legislative Assembly appropriated \$200,000 from

Through March 2020, the department has awarded \$194,419 of Research North Dakota venture grants since the start of the program.

In November 2019, the department awarded \$100,000 of funding from the development fund for a qualifying project for the Research North Dakota venture investment program.

Through March 2020, the department has spent \$265,979 for the early childhood education grant program and anticipates spending a total of approximately \$825,000 by the end of the 2019-21 biennium. See the **Exemptions** section above for additional information.

Through March 2020, the department has spent \$335,516 of the \$1.5 million appropriation and anticipates spending the entire amount during the biennium. From July 2019 through December 2019, the department reported 2,295 individuals were assisted using funding from the program, providing 34,678 shelter nights for homeless individuals.

Through March 2020, the department has awarded the entire \$200,000 to the Southeast Education Cooperative but has not distributed any funding. The

the general fund to the department for providing a grant to an organization providing research-based literacy intervention services to students below grade 4 who score below proficient in reading.

**Innovation loan fund and program** - House Bill No. 1333 (2019) established an Innovation Loan Fund to Support Technology Advancement Committee and loan program. The commissioner of commerce is the chairperson of the committee, is a nonvoting member of the committee, and appoints the members of the committee with the president of the Bank of North Dakota.

The department is required to administer the program in consultation with the Bank of North Dakota to provide loans. The department is required to provide administrative support for the program, including the drafting of application forms, receiving applications, reviewing applications for completeness and compliance with committee policy, and forwarding complete applications to the committee in accordance with the guidelines established by the committee. The innovation loan fund to support technology advancement is administered by the department, and the funding is appropriated to the department on a continuing basis for providing innovation technology loans and for administrative expenses.

The department is required to conduct post-award monitoring of loans provided for this program. The Bank of North Dakota is required to transfer \$15 million from the Bank's current earnings and undivided profits to the innovation loan fund to support technology advancement for the purpose of providing innovation technology loans during the 2019-21 biennium.

**2019 operational audit** - The State Auditor's office conducted an operational audit of the Department of Commerce for the 2017-19 biennium. The report identified the following major findings:

- **Circumventing procurement guidelines** - The Department of Commerce circumvented procurement requirements related to the "Be Legendary" logo.
- **Violation of appropriation law** - The Department of Commerce improperly charged \$853,908 related to the enhanced use lease grant program for the 2017-19 biennium in the 2019-21 biennium. The department entered a grant agreement with Grand Forks County, which submitted reimbursement requests for work completed but the final payment to the county exceeded the reimbursement request by \$458,801, resulting in an advance payment prohibited by the grant agreement. An additional \$395,107 for the program related to July 2019 expenditures was improperly charged to appropriations for the 2017-19 biennium. The department did not request an exemption from the 2019 Legislative Assembly to continue funding for the program from the 2017-19 biennium to the 2019-21 biennium. Therefore, the total of \$853,908 should have

department anticipates distributing the funding by the end of the biennium.

Through April 2020, the Bank has provided \$5.5 million of innovation loans to five organizations and the department has submitted \$16,084 of administrative expenses to the Bank for reimbursement.

The department agreed with the violation of appropriation law and lack of internal control surrounding appropriations findings. The department indicated internal controls will be strengthened and additional procedures will be established to avoid similar situations in future bienniums.

The department did not agree with the circumventing procurement guidelines and noncompliance with contract requirements findings. The department indicated work performed related to the "Be Legendary" logo was done appropriately and that there was no overlap between contract work and work performed by temporary employees. The department indicated subcontractor contract deliverables were approved verbally, but acknowledged written approval is preferable.

The investigation conducted by the South Dakota Division of Criminal Investigation did not result in criminal charges being filed against the department or any employees of the department.

been canceled at the end of the 2017-19 biennium and retained in the originating funding sources--the general fund and the strategic investment and improvements fund.

- **Noncompliance with contract requirements** - The Department of Commerce did not monitor contract deliverables of an entrepreneurial contract, resulting in \$123,750 being paid to unapproved subcontractors. An additional \$23,448 was not supported by progress reports.
- **Lack of internal control surrounding appropriations** - The Department of Commerce's internal control procedures were not effective to ensure expenditures are charged to the proper biennial appropriations authorized by the Legislative Assembly, as seen in the violation of appropriation law audit finding.

Pursuant to Section 44-08-05.1, the State Auditor notified the Attorney General regarding the audit of the Department of Commerce to inform the Attorney General of an actual or possible violation. The section requires the Attorney General's office to investigate the possible violation. Because of potential conflicts of interest, the Attorney General asked the South Dakota Division of Criminal Investigation to conduct the investigation.