

CHAPTER 54-63.1

CLEAN SUSTAINABLE ENERGY AUTHORITY

54-63.1-01. Definitions.

As used in this chapter:

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

54-63.1-02. Clean sustainable energy authority - Purpose.

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

54-63.1-03. Clean sustainable energy authority - Membership - Meetings.

1. The clean sustainable energy authority consists of eighteen members, including nine voting members and nine nonvoting technical advisors.
2. The nine voting members consist of:
 - a. Two members, one from the senate and one from the house of representatives, appointed by the legislative management to serve as co-chairmen;
 - b. Two members appointed by the lignite research council;
 - c. Two members appointed by the oil and gas research council;
 - d. Two members appointed by the renewable energy council; and
 - e. One member appointed by the western Dakota energy association.
3. The nine nonvoting technical advisors consist of:
 - a. One member appointed by the North Dakota outdoor heritage fund advisory board;
 - b. The commissioner of commerce or the commissioner's designee;
 - c. The director of the department of environmental quality or the director's designee;
 - d. The director of the department of water resources or the director's designee;
 - e. The director of mineral resources or the director's designee;
 - f. The director of the North Dakota pipeline authority or the director's designee;
 - g. The director of the North Dakota transmission authority or the director's designee;
 - h. The director of the state energy research center or the director's designee; and
 - i. The president of the Bank of North Dakota or the president's designee.
4. The term of office for each co-chairman is two years. The term of office for the other voting members is four years, and the other voting members may not serve more than two consecutive terms. The terms of office for the voting members commence on July first. The initial terms for the voting members of the authority must be staggered following a method determined by the authority.
5. The authority shall meet at least semiannually. The co-chairmen shall call a meeting upon written request from three voting members of the authority. Five voting members is a quorum at any meeting.

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

54-63.1-04. Clean sustainable energy authority - Duties - Report. (Retroactive application - [See note](#))

1. The authority shall make recommendations to the commission for program guidelines, including eligibility criteria for entities to receive funding under this chapter.
2. The nonvoting technical advisors shall develop a process to review and evaluate projects to determine the technical merits and feasibility of any application, including potential benefits of the development of low-emission technology, the expansion of the development of the state's natural resources or energy production, and the contribution to the economic diversity in the state.
3. The authority may develop a loan program or a loan guarantee program under the clean sustainable energy fund. The Bank of North Dakota shall administer the loan program or loan guarantee program. The interest rate of a loan under this program may not exceed two percent per year. The maximum term of a loan under this section must be approved by the commission based on a recommendation from the authority. The Bank shall review applications for loans or loan guarantees and shall consider the business plan, financial statements, and other information necessary to evaluate the application. To be eligible for a loan or loan guarantee, an entity shall agree to provide the Bank of North Dakota with information as requested. The Bank of North Dakota may develop policies for loan participation with local financial institutions.
4. The authority shall make recommendations to the commission for grant awards, loan approvals, or other financial assistance to provide funding to support research, development, and technological advancements for the large scale development and commercialization of projects, processes, activities, and technologies that reduce environmental impacts and increase sustainability of energy production and delivery in accordance with this chapter. Any projects, processes, activities, and technologies selected by the commission for funding must have been recommended by the authority, must demonstrate feasibility based on a technical review conducted by the nonvoting technical advisors of the authority, must have other sources of financial support, and must achieve the priorities and purposes of the program. At the request of the authority, the Bank of North Dakota shall provide a recommendation regarding the economic feasibility of a project, process, activity, or technology under consideration by the authority. The Bank shall review the business plan, financial statements, and other information necessary to provide a recommendation.
5. The authority shall develop a fertilizer development incentive program, including guidelines to provide loan forgiveness. Funding for the fertilizer development incentive program under this subsection is limited to one hundred twenty-five million dollars.
 - a. To be eligible for the fertilizer development incentive program:
 - (1) The fertilizer production facility must be located within the state;
 - (2) The owner of the fertilizer production facility must be an entity domiciled in the United States or Canada;
 - (3) The owner must borrow money under a program administered by the Bank of North Dakota; and
 - (4) The fertilizer production facility must use hydrogen produced by the electrolysis of water.
 - b. Upon completion of the construction of the fertilizer production facility, the authority shall forgive the loan and shall use fertilizer development incentive funding to repay any outstanding amount borrowed, as certified by the Bank. The authority shall request an appropriation from the strategic investment and improvements fund or other funding sources to provide fertilizer development incentive funding to repay any outstanding amount borrowed.
6. The authority may consult with any other state agency necessary to carry out the purposes under this chapter.

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

54-63.1-05. Clean sustainable energy program - Powers and duties of the commission.

1. The commission is granted all the powers necessary to carry out the purposes of this chapter, including the power to:
 - a. Provide grants, loans, or other forms of financial assistance to qualified entities for the research, demonstration, development, and commercialization of projects, processes, activities, and technologies that reduce environmental impacts and use energy sources derived from within the state. Other forms of financial assistance include venture capital investments and interest rate buydowns. The commission must require an entity to provide assurance of financial and other types of support that demonstrate a commitment to the project, process, activity, or technology. The commission may develop policies for the approval of loans or loan guarantees issued from the clean sustainable energy fund.
 - b. Enter into contracts or agreements to carry out the purposes of this chapter, including contracting for the administration of the program.
 - c. Keep accurate records of all financial transactions performed under this chapter.
 - d. Cooperate with any private, local, state, or national organization to make contracts and agreements for programs that advance the mission of the program.
 - e. Accept loan repayments, donations, grants, contributions, or gifts from any public or private source to carry out the purposes of this chapter, which must be deposited in the clean sustainable energy fund.
 - f. Make guidelines necessary to carry out the purposes of this chapter, including guidelines relating to the ownership of intellectual property.
 - g. Borrow from the Bank of North Dakota, as authorized by the legislative assembly, to make loans or loan guarantees under a loan program or loan guarantee program developed by the clean sustainable energy authority.
2. The commission may acquire, purchase, hold, use, lease, license, sell, transfer, or dispose of any interest in an asset necessary for clean sustainable energy technology development to facilitate the production, transportation, distribution, or delivery of clean energy commodities produced in the state as a purchases of last resort.
3. The commission shall provide administrative support to the authority for the operation of the program, including the preparation of forms, review of applications, and ongoing review of any contracts. The commission may contract with a public or private entity to provide technical assistance necessary to implement the purposes of this chapter.

54-63.1-06. Clean sustainable energy program - Access to records.

1. To the extent the commission or authority determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the commission or receiving commission services under this chapter, materials and data submitted to, made by, or received by the commission or authority, are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota, and are subject to section 44-04-18.4.
2. A person or entity may file a request with the commission to have material designated as confidential under subsection 1. The request must contain any information required by the commission and must include at least the following:
 - a. A general description of the nature of the information sought to be protected.
 - b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
 - c. An explanation of why the information is not readily ascertainable by proper means of other persons.

- d. A general description of any person that may obtain economic value from disclosure or use of the information, and how the person may obtain this value.
- e. A description of the efforts used to maintain the secrecy of the information.
- 3. Any request under subsection 2 is confidential. The commission shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the commission determines the information is either not relevant or not a trade secret, the commission shall notify the requester and the requester may ask for the return of the information and the request within ten days of the notice. If no return is sought, the information and request are public record.
- 4. The names or identities of independent technical reviewers on a project or program are confidential, may not be disclosed by the commission, and are not public records subject to section 44-04-18 or section 6 of article XI of the Constitution of North Dakota.

54-63.1-07. Clean sustainable energy fund - Continuing appropriation - Line of credit - Loans - Repayments.

- 1. There is created in the state treasury the clean sustainable energy fund. The fund consists of all moneys transferred to the fund by the legislative assembly; loan proceeds; interest upon moneys in the fund; principal and interest payments to the fund; and donations, grants, and other contributions received by the commission for deposit in the fund. All moneys in the fund are appropriated to the commission on a continuing basis to provide grants, loans, and other financial assistance and for administrative and operating costs of the authority and program pursuant to the provisions under this chapter.
- 2. Any bond proceeds deposited in the fund must be used for loans or loan guarantees. The Bank of North Dakota shall deposit in the fund all principal and interest paid on the loans made from the fund. The Bank may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administrative costs, not to exceed one-half of one percent of the amount of the interest payment. The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.
- 3. The Bank of North Dakota shall extend a line of credit to the industrial commission to support loans or loan guarantees issued from the clean sustainable energy fund. The line of credit may not exceed three hundred ninety million dollars, and the interest rate associated with the line of credit must be the prevailing interest rate charged to North Dakota governmental entities. The industrial commission shall repay the line of credit from moneys available in the clean sustainable energy fund derived from payments received on loans issued under this chapter or other sources. If the moneys available from the clean sustainable energy fund on June 30, 2029, are not sufficient to repay the line of credit, the industrial commission shall request from the legislative assembly a deficiency appropriation to repay the line of credit or the industrial commission may repay the line of credit from other funds, as appropriated by the legislative assembly.
- 4. The industrial commission may access the line of credit to the extent needed through June 30, 2029, to provide funding as authorized by the legislative assembly to support loans or loan guarantees issued from the clean sustainable energy fund. Any moneys borrowed from the Bank of North Dakota pursuant to this section must be transferred to the clean sustainable energy fund to support loans or loan guarantees.