

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2188

Introduced by

Senator Traynor

Representatives Brekke, Grosz, D. Johnson

1 A BILL for an Act to create and enact a new section to chapter 61-01 and chapter 61-02.1 of
2 the North Dakota Century Code, relating to statewide water development goals and the
3 issuance of bonds to finance construction of flood control projects, the southwest pipeline
4 project, a Devils Lake outlet, and a statewide water development program; to amend and
5 reenact subdivision d of subsection 5 of section 61-02-02 of the North Dakota Century Code,
6 relating to the definition of works; to require the pledging of funds for certain water projects; to
7 allocate funds from settlements with tobacco product manufacturers; to provide a statement of
8 legislative intent; to provide for reports to the legislative council; to provide an appropriation; to
9 provide an effective date; to provide an expiration date; and to declare an emergency.

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

11 **SECTION 1.** A new section to chapter 61-01 of the North Dakota Century Code is
12 created and enacted as follows:

13 **Statewide water development goals.** The legislative assembly is committed to the
14 comprehensive statewide water development program developed pursuant to section 2 of
15 chapter 587 of the 1995 Session Laws and to the state water management plan established
16 under section 61-01-26. In order to implement the state water management plan, the
17 legislative assembly is committed to the following:

18 1. During the 1999-2001 biennium:

19 a. Southwest pipeline project: Six million dollars in state funds and eleven
20 million five hundred thousand dollars in federal funds, assuming Perkins
21 County water system payment to the state water commission of four million
22 five hundred thousand dollars.

23 b. Northwest area water supply project: Eight million two hundred thousand
24 dollars in local funds and fourteen million eight hundred thousand dollars in

1 federal funds, with an option being considered of the state water commission
2 bonding the local cost-share with local repayment to the state water
3 commission.

4 c. Other municipal, rural, and industrial projects: Twenty-five million five
5 hundred thousand dollars in local funds and thirty-nine million nine hundred
6 thousand dollars in federal funds.

7 d. Grand Forks flood control: Twenty-five million dollars in local funds,
8 twenty-five million dollars in state funds, and thirty-eight million five hundred
9 thousand dollars in federal funds. The state total cost-share of fifty-two
10 million dollars will be bonded, requiring a local repayment estimated at three
11 million nine hundred thousand dollars per year with repayment beginning in
12 2001.

13 e. Devils Lake outlet: Seventeen million five hundred thousand dollars in state
14 funds and thirty-two million five hundred thousand dollars in federal funds.
15 The total state cost-share of seventeen million five hundred thousand dollars
16 includes mitigation costs and will be bonded, requiring a local repayment
17 estimated at one million five hundred thousand dollars per year, with the split
18 between state and local loan repayment to be determined.

19 f. General projects: Thirty-one million seven hundred thousand dollars in local
20 funds, twenty-five million nine hundred thousand dollars in state funds, and
21 thirty-nine million eight hundred thousand dollars in federal funds.

22 2. During the 2001-03 biennium:

23 a. Water to eastern North Dakota: Seventeen million dollars in federal funds
24 appropriated under the Garrison Diversion Unit Reformulation Act of 1986
25 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or
26 other federal Act. The local cost has not been determined and will be
27 determined after project configuration is complete.

28 b. Southwest pipeline project: Five hundred thousand dollars in local funds, one
29 million seven hundred thousand dollars in state funds, and twelve million five
30 hundred thousand dollars federal funds.

- 1 c. Northwest area water supply project: Eight million seven hundred thousand
2 dollars in local funds and sixteen million three hundred thousand dollars in
3 federal funds.
- 4 d. Other municipal, rural, and industrial projects: Seventeen million seven
5 hundred thousand dollars in local funds and thirty-two million eight hundred
6 thousand dollars in federal funds.
- 7 e. Grand Forks flood control: Thirty-five million seven hundred thousand dollars
8 in local funds, twenty-seven million dollars in state funds, and sixty-two million
9 nine hundred thousand dollars in federal funds; annual bond payments of
10 three million nine hundred thousand dollars. Components of the Grand Forks
11 flood control project involve water treatment plant improvements. Those
12 federal costs are reflected in subdivision d because of potential cost-sharing
13 using Garrison diversion municipal, rural, and industrial funds. Other projects,
14 such as greenway, are listed under subdivision g.
- 15 f. Devils Lake outlet: Bond repayments of one million five hundred thousand
16 dollars per year.
- 17 g. General projects: Twenty-four million dollars in local funds, eighteen million
18 four hundred thousand dollars in state funds, and five million five hundred
19 thousand dollars in federal funds.
- 20 3. During the 2003-05 biennium:
- 21 a. Water to eastern North Dakota: Six million dollars in federal funds
22 appropriated under the Garrison Diversion Unit Reformulation Act of 1986
23 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or
24 other federal Act. The local cost has not been determined and will be
25 determined after project configuration is complete.
- 26 b. Southwest pipeline project: One million dollars in local funds, five million
27 dollars in state funds, and eleven million four hundred thousand dollars in
28 federal funds.
- 29 c. Northwest area water supply project: Eleven million eight hundred thousand
30 dollars in local funds and twenty-one million eight hundred thousand dollars in
31 federal funds.

d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.

e. Grand Forks flood control: Annual bond payments of three million nine hundred thousand dollars.

f. Devils Lake outlet: Bond repayments of one million five hundred thousand dollars per year.

g. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.

4. During the 2005-07 biennium:

a. Water to eastern North Dakota: Eighty-four million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.

b. Southwest pipeline project: One million dollars in local funds, nine million five hundred thousand dollars in state funds, and nineteen million five hundred thousand dollars in federal funds.

c. Northwest area water supply project: Five million eight hundred thousand dollars in local funds and ten million nine hundred thousand dollars in federal funds.

d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.

e. Grand Forks flood control: Annual bond payments of three million nine hundred thousand dollars.

f. Devils Lake outlet: Bond repayments of one million five hundred thousand dollars per year.

g. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.

5. During the 2007-09 biennium:

a. Water to eastern North Dakota: Fifty-nine million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.

b. Northwest area water supply project: Three million seven hundred thousand dollars in local funds and seven million dollars in federal funds.

c. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.

d. Grand Forks flood control: Annual bond repayments of three million nine hundred thousand dollars.

e. Devils Lake outlet: Bond repayments of one million five hundred thousand dollars per year.

f. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.

6. During the 2009-11 biennium:

a. Water to eastern North Dakota: Two million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.

b. Northwest area water supply project: One million seven hundred thousand dollars in local funds and three million three hundred thousand dollars in federal funds.

1 c. Other municipal, rural, and industrial projects: Seventeen million seven
2 hundred thousand dollars in local funds and thirty-two million eight hundred
3 thousand dollars in federal funds.

4 d. Grand Forks flood control: Annual bond repayments of three million nine
5 hundred thousand dollars.

6 e. Devils Lake outlet: Bond repayments of one million five hundred thousand
7 dollars per year.

8 f. General projects: Twenty-four million dollars in local funds, eighteen million
9 four hundred thousand dollars in state funds, and five million five hundred
10 thousand dollars in federal funds.

11 7. Beyond the year 2011:

12 a. Water to eastern North Dakota: The local cost has not been determined and
13 will be determined after project configuration is complete.

14 b. Northwest area water supply project: Eight million seven hundred thousand
15 dollars in local funds and sixteen million three hundred thousand dollars in
16 federal funds.

17 c. Other municipal, rural, and industrial projects: One hundred thirty million two
18 hundred thousand dollars in local funds and two hundred forty-one million two
19 hundred thousand dollars in state funds. The anticipated three hundred
20 forty-five million dollars in federal cost-share has been used in the previous
21 bienniums and the remaining cost-share for projects has been identified as a
22 potential state cost-share.

23 d. Grand Forks flood control: A total of fifty-eight million five hundred thousand
24 dollars in bond payments is anticipated.

25 e. Devils Lake outlet: A total of fifteen million dollars in bond repayments.

26 f. General projects: One hundred ninety-six million two hundred thousand
27 dollars in local funds, one hundred thirty-eight million dollars in state funds,
28 and twenty-five million eight hundred thousand dollars in federal funds.

29 **SECTION 2. AMENDMENT.** Subdivision d of subsection 5 of section 61-02-02 of the
30 North Dakota Century Code is amended and reenacted as follows:

d. All works for the conservation, control, development, storage, treatment, distribution, and utilization of water including, without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization.

SECTION 3. Chapter 61-02.1 of the North Dakota Century Code is created and enacted as follows:

61-02.1-01. Legislative findings and intent - Authority to issue bonds.

1. The legislative assembly finds that some cities suffered serious economic and social injuries due to the major flood disaster in 1997 and other recent floods and are at significant risk for future flooding; and that construction of flood control or reduction projects is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state and that construction of any such projects involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of constructing flood control or reduction projects through the issuance of bonds.
2. The legislative assembly finds that continued construction of the southwest pipeline project is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state and that continued construction of the southwest pipeline project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. The legislative assembly also finds that current funding for the southwest pipeline project has become uncertain, and therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of continued construction of the southwest pipeline project through the issuance of bonds.
3. The legislative assembly finds that the Devils Lake basin is suffering and facing a worsening flood disaster; and that construction of an outlet from Devils Lake is

1 necessary for the protection of health, property, and enterprises and for the
2 promotion of prosperity and the general welfare of the people of the state; and that
3 construction of the outlet involves and requires the exercise of the sovereign
4 powers of the state and concerns a public purpose. Therefore, it is declared
5 necessary and in the public interest that an outlet from Devils Lake be constructed
6 with financing from the state water commission to provide flood relief to the Devils
7 Lake basin.

8 4. The legislative assembly finds that there is a critical need to develop a
9 comprehensive statewide water development program to serve the long-term
10 water resource needs of the state and its people and to protect the state's current
11 usage of, and the state's claim to, its proper share of Missouri River water.

12 5. In furtherance of the public purpose set forth in subsection 1, the state water
13 commission may issue bonds under chapter 61-02 and the proceeds are
14 appropriated for flood control projects authorized and funded in part by the federal
15 government and designed to provide permanent flood control or reduction to cities
16 that suffered severe damages as a result of the 1997 flood or other recent floods.
17 The commission may issue bonds for a flood control or reduction project only:

18 a. When:

19 (1) A flood control or reduction project involves a city that suffered
20 catastrophic flood damage requiring evacuation of the major share of
21 its populace;

22 (2) A flood control or reduction project includes interstate features and
23 requires acquisition of private property to build permanent flood
24 protection systems to comply with federal flood protection standards;

25 (3) The governing body of a city provides a written certification to the state
26 water commission that the city has committed itself to contribute
27 one-half or more of the North Dakota project sponsor's share of the
28 nonfederal share of the cost to construct the project; and

29 (4) The United States army corps of engineers issues its approval of the
30 flood control or reduction project;

b. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least eight thousand and not more than ten thousand has received significant federal funding through federal grants and funds from the United States army corps of engineers and the federal emergency management agency; or

c. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least four thousand five hundred and not more than six thousand has at least seventy percent of the land within the boundaries of the city located within the one hundred year floodplain as designated on a flood insurance rate map and the United States army corps of engineers issues its approval of the flood control or reduction project.

6. In furtherance of the public purpose set forth in subsection 2, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the southwest pipeline project. The commission may only issue bonds under this chapter for continued construction of the southwest pipeline project when it is determined that the Perkins County water system will not make payment to the state water commission in the amount of four million five hundred thousand dollars or on January 1, 2000, whichever occurs earlier. If the Perkins County water system makes payment to the state water commission after January 1, 2000, the payment must be used to pay principal and interest on bonds issued for continued construction of the southwest pipeline project as provided in subsection 2 of section 61-02.1-04.

7. In furtherance of the public purposes set forth in subsections 3 and 4, the state water commission may issue bonds under chapter 61-02 to finance the cost of one or more of the projects identified in this subsection, provided that:

a. The state water commission may only issue bonds for construction of an outlet from Devils Lake when the United States authorizes construction of an outlet and either the state water commission or a federal agency has developed a plan addressing damage to basic infrastructure such as roads, culverts, and bridges; riverbank erosion; downstream flooding; and increased water treatment costs caused by or resulting from construction of the outlet.

b. The state water commission may only issue bonds to finance the nonfederal cost-share of the Garrison diversion unit when the Congress of the United States enacts legislation for the completion of the Garrison diversion unit, which may include the delivery of water to the northwest area water supply project; southwest pipeline project; Turtle Lake irrigation district; Nesson-Valley irrigation district; Elk Charbon irrigation district; the Williston irrigation project; the Oakes irrigation project; other irrigation, municipal, rural, and industrial water supply projects; augmented streamflow and ground water recharge projects; development of a Red River valley water supply; and delivery of Missouri River water to the Sheyenne River.

8. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or 61-24.3-01.

9. Notwithstanding this section, the state water commission may not issue bonds under subsection 5 or subdivision a of subsection 7 for a project unless that project has received federal funds.

61-02.1-02. Bond issuance amount limited.

1. The state water commission bonds issued for flood control or reduction projects meeting the requirements of subdivision a of subsection 5 of section 61-02.1-01 may not exceed forty-five percent and bonds issued for flood control or reduction projects meeting the requirements of subdivision b or c of subsection 5 of section 61-02.1-01 may not exceed one-half of the North Dakota project sponsor's share of the nonfederal share of the cost to construct the flood control or reduction project or, in the aggregate, sixty million three hundred thousand dollars plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves, whichever is less. Of the sixty million three hundred thousand dollars authorized in this subsection for flood control or reduction projects under subsection 5 of section 61-02.1-01, fifty-two million dollars must be allocated for flood control or reduction projects meeting the requirements of subdivision a of subsection 5 of section 61-02.1-01, three million five hundred thousand dollars must be allocated for flood control or reduction projects meeting the requirements of subdivision b of subsection 5 of section 61-02.1-01, and four million eight hundred thousand dollars

1 must be allocated for flood control or reduction projects meeting the requirements
2 of subdivision c of subsection 5 of section 61-02.1-01.

3 2. The state water commission bonds issued under subsection 6 of section
4 61-02.1-01 for continued construction of the southwest pipeline project may not
5 exceed, in the aggregate, four million five hundred thousand dollars plus the costs
6 of issuance of the bonds, capitalized interest, and reasonably required reserves.

7 3. The state water commission bonds issued under subsection 7 of section
8 61-02.1-01 for the Devils Lake outlet or other projects listed in subdivision b of
9 subsection 7 of section 61-02.1-01 may not exceed, in the aggregate, twenty
10 million dollars, plus the costs of issuance of the bonds, capitalized interest, and
11 reasonably required reserves. The state water commission may use all or part of
12 the proceeds of bonds issued as provided in subsection 7 of section 61-02.1-01
13 and the proceeds are appropriated to match, in a ratio no greater than required by
14 the federal government, any federal funds available for the projects identified in
15 subsection 7 of section 61-02.1-01. The commission may require any political
16 subdivision affected by Devils Lake flooding to participate in the cost of
17 construction of an outlet from Devils Lake by providing matching funds in a
18 percentage of the construction costs determined by the commission to be
19 reasonable in light of the benefits to be received by that political subdivision in
20 relation to benefits received by all benefited political subdivisions. Any local
21 matching fund requirement must be determined by the commission and the
22 affected political subdivisions must be informed of their matching fund obligation
23 prior to issuance of bonds pursuant to this chapter.

24 **61-02.1-03. Limitation of action.** An action may not be brought or maintained in any
25 court in this state questioning the validity of any bonds issued under this chapter unless the
26 action is commenced within thirty days after the adoption of the resolution of the state water
27 commission authorizing the sale of the bonds. The state water commission may commence a
28 special proceeding any time after the effective date of this chapter in and by which the
29 constitutionality and validity of the bonds to be issued pursuant to this chapter may be judicially
30 examined, approved and confirmed, or disapproved and disaffirmed. Proceedings must comply
31 as nearly as possible with the procedure required for declaratory judgment proceedings.

61-02.1-04. Bonds payable from appropriations and other revenues.

1. Principal and interest on bonds issued for flood control or reduction projects under this chapter are payable from transfers to be made and appropriated by the legislative assembly from the resources trust fund as provided in section 5 of this Act, from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture, or from appropriations of other available revenues in the then current biennium, and any other revenues the state water commission makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of flood control or reduction projects to pay bonds issued for that project.
2. Principal and interest on bonds issued for continued construction of the southwest pipeline project are payable from transfers to be made and appropriated by the legislative assembly from the resources trust fund as provided in section 5 of this Act, from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture, from appropriations of other available revenues in the then current biennium, or from payment from the Perkins County rural water system, and any other revenues the state water commission makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of the southwest pipeline project to pay bonds issued for the project.
3. Principal and interest on bonds issued under subsection 7 of section 61-02.1-01 are payable from transfers to be made and appropriated by the legislative

assembly from the resources trust fund as provided in section 5 of this Act, from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds pursuant to a trust indenture, or from appropriations of other available revenues in the then current biennium, and any other revenues the state water commission makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of an outlet to Devils Lake to pay bonds issued for that project, or financing a statewide water development program to pay bonds issued for that project.

4. Obligations issued under this chapter do not constitute a debt, liability, or obligation of the state of North Dakota or a pledge of the faith and credit of the state of North Dakota, but are payable solely from the sources as described in this chapter.

5. The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state for each year of the respective biennium during the term of any bonds issued under this chapter an amount fully sufficient to pay the principal and interest required to be paid in each year of the biennium, if any, from moneys from nongeneral fund sources. Provided, that should the governor not include in the executive budget for any reason the amounts required to be included by this section, the state water commission shall request independently that the legislative assembly amend the executive budget appropriation so as to include the amounts.

SECTION 4. CORPORATE CENTER - CONTRACT TO PLEDGE REVENUES.

Before the issuance of any bonds for any flood control or reduction project in Grand Forks under chapter 61-02.1, the state water commission shall require a contract be entered with the city of Grand Forks pledging revenue from the corporate center in that city as follows:

1. After all moneys pledged for the repayment of revenue bonds for the corporate center project have been paid, the city must pledge revenue from the project to the resources trust fund as repayment for the flood control or reduction project to

facilitate economic development in this state. This contract must be in compliance with all applicable federal requirements.

2. If the corporate center is sold, the city must pledge the proceeds of the sale to the resources trust fund as repayment for the flood control or reduction project to facilitate economic development in this state. The corporate center may not be sold without the prior approval of the budget section of the legislative council.

3. The revenue to be pledged must be in amounts similar to the amounts previously dedicated each year for the repayment of the revenue bonds.

4. The period during which revenue must be pledged under this section is from the date of the final payment of the revenue bonds until the end of the projected life of the corporate center, which must be not less than forty years from the date of initial occupancy.

5. Any refinancing of debt or any improvements to the corporate center requiring the incurring of indebtedness cannot be entered without prior approval of the budget section of the legislative council.

SECTION 5. ALLOCATION OF TOBACCO SETTLEMENT FUNDS. Forty-five percent of any funds received by the state pursuant to the 1998 settlement agreement with tobacco product manufacturers, or any successor agreement, must be deposited in the resources trust fund for use in paying for bonds issued under section 3 of this Act and for other water projects.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the fifty-sixth legislative assembly that a total of six million dollars of funding be provided to the state water commission for the southwest pipeline project through a combination of funding sources. The potential funding source must include payment from the Perkins County rural water system, bonds issued by the state water commission, or other available resources.

SECTION 7. EFFECTIVE DATE. The authority of the commission to issue bonds under subsection 2 of section 61-02.1-01 becomes effective on the date the state engineer certifies to the state water commission that the Perkins County water system will not make a payment to the state water commission in the amount of four million five hundred thousand dollars or January 1, 2000, whichever occurs earlier.

1 **SECTION 8. REPORTS TO LEGISLATIVE COUNCIL - COMPREHENSIVE**

2 **STATEWIDE WATER DEVELOPMENT PROGRAM AND STATE WATER MANAGEMENT**

3 **PLAN IMPLEMENTATION - BOND ISSUANCE.** The state engineer shall report periodically to
4 the budget section and to any other interim committee designated by the legislative council
5 regarding implementation of the comprehensive statewide water development program and
6 state water management plan and the issuance of bonds to finance construction of flood control
7 projects, the southwest pipeline project, a Devils Lake outlet, and a statewide water
8 development program during the 1999-2000 interim.

9 **SECTION 9. EXPIRATION DATE.** The authority of the commission to issue bonds
10 under chapter 61-02.1 is effective through June 30, 2001, and after that date is ineffective.

11 **SECTION 10. EMERGENCY.** This Act is declared to be an emergency measure.