

Fifty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1151

Introduced by

Natural Resources Committee

(At the request of the State Water Commission)

1 A BILL for an Act to create and enact a new section to chapter 61-02 of the North Dakota  
2 Century Code, relating to construction of a Devils Lake outlet; to amend and reenact  
3 subdivision e of subsection 1 of section 61-01-26.2, subsections 7 and 9 of section 61-02.1-01,  
4 and subsection 3 of section 61-02.1-02 of the North Dakota Century Code, relating to bonding  
5 for a Devils Lake outlet; and to declare an emergency.

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

7 **SECTION 1. AMENDMENT.** Subdivision e of subsection 1 of section 61-01-26.2 of the  
8 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9 e. Devils Lake outlet to the Sheyenne River and to west Stump Lake:  
10 Seventeen million five hundred thousand dollars in state funds and thirty-two  
11 million five hundred thousand dollars in federal funds. The total state  
12 cost-share of seventeen million five hundred thousand dollars includes  
13 mitigation costs and will be bonded, requiring a local repayment estimated at  
14 one million five hundred thousand dollars per year, with the split between  
15 state and local loan repayment to be determined. Before bonds may be  
16 issued for a Devils Lake outlet, construction of the outlet must be approved by  
17 the state water commission ~~and the federal government must have agreed to~~  
18 ~~participate in construction of the outlet.~~

19 **SECTION 2.** A new section to chapter 61-02 of the North Dakota Century Code is  
20 created and enacted as follows:

21 **Devils Lake outlet - Eminent domain - Design and build construction.** In the  
22 construction of an outlet from Devils Lake, the commission:

23 1. Shall make a reasonable and diligent effort to acquire the property interests  
24 needed by negotiation. The commission is deemed to have made a reasonable

1           and diligent effort if it has contacted or attempted to contact the owner of the  
2           property interest needed at least three times over a thirty-day period. If the  
3           commission is unable to acquire the interest needed by negotiation, then it may  
4           take possession of the interests needed after making a written offer to purchase  
5           and depositing the amount of the offer with the clerk of the district court of the  
6           county in which the property interest is located. The clerk shall immediately notify  
7           the property owner in writing of the deposit. Within thirty days after receiving  
8           notice, the property owner may appeal to district court by serving notice of appeal  
9           upon the commission and the matter must be tried in the manner prescribed under  
10          chapter 32-15.

- 11          2. May issue, when it determines that it would be advantageous to the state or that it  
12          is necessary in order to construct the outlet in a timely manner, a request for  
13          proposals to design and build the outlet. The request for proposals must require  
14          that each proposal submitted contain a single price that includes the cost to design  
15          and build the outlet. Neither chapter 48-01.1 or 54-44.7, nor any other law  
16          requiring competitive bidding applies to the construction of the outlet if the  
17          commission determines to use the design and build procedure. The commission  
18          shall select the proposal that it determines is the most advantageous to the state.

19          **SECTION 3. AMENDMENT.** Subsections 7 and 9 of section 61-02.1-01 of the 1999  
20 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 21          7. In furtherance of the public purposes set forth in subsections 3 and 4, the state  
22          water commission may issue bonds under chapter 61-02 to finance the cost of one  
23          or more of the projects identified in this subsection, provided that:
- 24          a.   (1) The state water commission may only issue bonds for construction of  
25               an outlet from Devils Lake when either the state water commission or  
26               the United States authorizes construction of an outlet and either the  
27               state water commission or a federal agency has developed a plan  
28               addressing damage to basic infrastructure such as roads, culverts, and  
29               bridges; riverbank erosion; downstream flooding; and increased water  
30               treatment costs caused by or resulting from construction of the outlet;

(2) ~~The state water commission or the project sponsor must sign a project cooperation agreement with the United States army corps of engineers;~~

~~(3)~~ The outlet from Devils Lake to west Stump Lake must comply with any environmental impact statement or National Environmental Policy Act provisions required under federal law; and

~~(4)~~ (3) Bonds may not be issued if an order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of an outlet from Devils Lake to the Sheyenne River or to west Stump Lake.

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.

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

**SECTION 4. AMENDMENT.** Subsection 3 of section 61-02.1-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The state water commission bonds issued as provided in subsection 7 of section 61-02.1-01 for a Devils Lake outlet to the Sheyenne River and to west Stump Lake or other projects listed in subdivision b of subsection 7 of section 61-02.1-01 may not exceed, in the aggregate, twenty million dollars, plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves. The state water commission may use all or part of the proceeds of bonds issued as provided in subsection 7 of section 61-02.1-01 and the proceeds are appropriated to pay the costs of such projects or to match, in a ratio no greater than required by the federal

1 government, any federal funds available for the projects identified in subsection 7  
2 of section 61-02.1-01 and to repay the line of credit extended to the state water  
3 commission under S.L. 1999, ch. 535, § 4. The commission may require any  
4 political subdivision affected by Devils Lake flooding to participate in the cost of  
5 construction of an outlet from Devils Lake to the Sheyenne River and to west  
6 Stump Lake by providing matching funds in a percentage of the construction costs  
7 determined by the commission to be reasonable in light of the benefits to be  
8 received by that political subdivision in relation to benefits received by all benefited  
9 political subdivisions. Any local matching fund requirement must be determined by  
10 the commission and the affected political subdivisions must be informed of their  
11 matching fund obligation prior to issuance of bonds pursuant to this chapter.

12 **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.