

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1023
(Appropriations Committee)
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to provide for the sale of the land and building used by the state water commission as a maintenance shop and the purchase of new property for such use; to provide for a continuing appropriation; to provide statements of legislative intent; to create and enact a new subsection to section 61-02-14, a new section to chapter 61-02.1, and a new subsection to section 61-02.1-04 of the North Dakota Century Code, relating to funding of water development projects, repayment of bonds, and the powers and duties of the state water commission; to amend and reenact subsections 4 and 5 of section 61-01-26 and section 61-01-26.1 of the North Dakota Century Code, sections 10 and 11 of chapter 535 of the 1999 Session Laws, and section 2 of House Bill No. 1151, as approved by the fifty-seventh legislative assembly, relating to funds deposited in the water development trust fund, sharing costs for water quality protection programs, supplementing the water resources of eastern North Dakota, the statewide water development program, the expiration date for the issuance of bonds, and construction of a Devils Lake outlet; to transfer funds from the water development trust fund to the general fund; to provide requirements for the Fargo flood control project; and to provide a line of credit and an appropriation for repayment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the water development trust fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state water commission for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$9,066,759
Operating expenses	7,503,485
Equipment	499,833
Capital improvements	28,710,864
Grants	22,475,067
Cooperative research	3,050,000
Statewide water development projects	<u>28,572,333</u>
Total all funds	\$99,878,341
Less estimated income	<u>90,144,521</u>
Total general fund appropriation	\$9,733,820

SECTION 2. STATEWIDE WATER DEVELOPMENT PROJECTS. The amount of \$200,000, or so much of the funds as may be necessary, included in the statewide water development projects line item in section 1 of this Act is for cost-sharing for projects authorized under section 319 of the Federal Water Pollution Control Act [Pub. L. 100-4; 100 Stat. 52; 33 U.S.C. 1329] for the control of nonpoint sources of pollution for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 3. RESOURCES TRUST FUND. The amount of \$21,718,031, or so much of the funds as may be necessary, included in the total special funds appropriation line item in section 1 of this Act is from the resources trust fund for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 4. WATER DEVELOPMENT TRUST FUND. The amount of \$37,631,684 or so much of the funds as may be necessary, included in the total special funds appropriation line item in section 1 of this Act is from the water development trust fund for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 5. ALLOCATION OF GRANT FUNDS. The funds appropriated in the grants line item in section 1 of this Act must be disbursed by the state water commission in accordance with section 61-02-64.1.

SECTION 6. GRANTS - STATEWIDE WATER DEVELOPMENT PROJECTS. Section 54-44.1-11 does not apply to appropriations made for grants or for statewide water development projects in this Act. However, this exclusion is only in effect for two years after June 30, 2003. Any unexpended funds appropriated from the resources trust fund after that period has expired must be transferred to the resources trust fund and any unexpended funds appropriated from the water development trust fund after that period has expired must be transferred to the water development trust fund.

SECTION 7. RESOURCES TRUST FUND APPROPRIATION - ADJUSTMENT. If the resources trust fund 2001-03 revenues are in excess of \$21,718,031, any excess is appropriated, subject to emergency commission approval, from the resources trust fund to the state water commission for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 8. Sale and purchase of land and building - Authority - Continuing appropriation.

1. The state water commission, on behalf of the state of North Dakota, may sell in one or more parcels the land and building known as the "state water commission maintenance shop" located at 2603 East Broadway Avenue, Bismarck, North Dakota, and legally described as follows:

A tract of land lying in the Northwest Quarter (NW 1/4) of Section Two (2), Township One Hundred Thirty-Eight (138) North, Range Eighty (80) West of the Fifth (5) Principal Meridian, in the County of Burleigh and State of North Dakota, and described as follows:

Commencing at the northwest corner of said section two; thence traveling in a southerly direction along the west boundary of said section two for a distance of seven hundred seventy-four and six-tenths feet (774.60); thence turning a right angle to the left in an easterly direction along a line which is parallel to the north boundary of said section two for a distance of forty-seven feet (47.00), which shall be called the true point of beginning; thence continuing due east along said line for a distance of eight hundred forty-two and nine-tenths feet (842.90); thence turning a deflection angle of ninety degrees and twenty-two minutes (90 degrees 22') to the right and traveling in a southerly direction to a point of intersection with the north fifty foot railroad right-of-way line; thence traveling in a westerly direction along said north fifty foot railroad right-of-way line to a point of intersection with the west boundary of said section two; thence traveling in a northerly direction along the west boundary of said section two for a distance of four hundred seventy-two and one-tenth feet (472.10); thence turning a right angle to the right in an easterly direction along a line which is parallel to the north boundary of said section two for a distance of forty-seven feet (47.00); thence traveling in a northerly direction along a line which is parallel to the west boundary of said section two for a distance of one hundred fifty feet (150.00) to the point of beginning. Including all of the property bounded by the above described line, subject to existing rights-of-way and easements.

The above described tract of land contains 11.77 acres, more or less.

2. The conveyance authorized by this Act is exempt from sections 54-01-05.2 and 54-01-05.5. The conveyance may only be made after the property has been appraised and the property must be sold at public auction unless no bid equals or exceeds the minimum appraised value. The appraisal must be dated no earlier than eighteen months before the auction. If at the public auction no bid equals or exceeds the minimum appraised value, the state water commission may negotiate a price for the land with a purchaser.
3. All proceeds from the sale or so much of the sale proceeds as may be necessary, not otherwise appropriated, are appropriated on a continuing basis to the state water commission for the purchase of land and the construction of a building and associated appurtenances to be used as a new maintenance facility. The purchase authorized by this subsection may proceed only after completion of a certified appraisal of the property to be purchased and completion of a physical inspection of any building to be purchased demonstrating that the building is structurally sound and suitable for the state water commission's purposes.
4. The attorney general shall review and approve the form and legality of all legal documents required for the conveyance and purchase authorized by this Act, including title opinions.

SECTION 9. LEGISLATIVE INTENT. It is the intent of the fifty-seventh legislative assembly that the proceeds of the sale of the state water commission maintenance shop located in east Bismarck be used to purchase land and construct a new maintenance shop building. If the proceeds from the sale are less than \$977,100, the state water commission may use other funds appropriated to the state water commission for the purpose of purchasing land and constructing a new maintenance shop building.

It is further the intent of the fifty-seventh legislative assembly that if the proceeds from the sale are not available at the time the state water commission needs to purchase and construct the new building and associated appurtenances, the state water commission may use other funds appropriated to it provided that, upon receipt of the proceeds of the sale, the state water commission shall transfer to the funds from which money was taken an amount equal to any funds utilized for the purchase of land and construction of the new maintenance building. If the state water commission uses other funds appropriated to it because the funds from the sale of the land and building are insufficient, the state water commission need not make a transfer of sale proceeds.

It is further the intent of the fifty-seventh legislative assembly that no more than a total of \$977,100 may be expended from the amounts appropriated under this Act to purchase land and construct the new maintenance building and associated appurtenances.

SECTION 10. AMENDMENT. Subsections 4 and 5 of section 61-01-26 of the North Dakota Century Code are amended and reenacted as follows:

4. Accruing benefits from these resources can best be achieved for the people of the state through the development, execution, and periodic updating of comprehensive, coordinated, and well-balanced short-term and long-term plans and programs for the conservation and development of such resources by the departments and agencies of the state having responsibilities therefor. The plans and programs for the conservation and development of these resources may include implementation of a program to cost-share with local sponsors of water quality improvement projects.
5. Adequate implementation of such plans and programs shall be provided by the state through cost-sharing and cooperative participation with the appropriate federal and state departments and agencies and political subdivisions within the limitation of budgetary requirements and administrative capabilities, including consideration of cost-sharing for water quality improvement projects.

SECTION 11. AMENDMENT. Section 61-01-26.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-01-26.1. Findings and declaration of policy - Water to eastern North Dakota a critical priority - Water supplementation study - Employment of staff. The legislative assembly finds that many areas and localities in eastern North Dakota do not enjoy safe drinking water, ~~and that the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances.~~ It is also found that other areas and localities in eastern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term water supply. The legislative assembly further finds that supplementation of the water resources of eastern North Dakota ~~with water supplies from other available sources, including the Missouri River,~~ may be the only alternative to provide eastern North Dakota with a dependable source of safe, good quality water and an adequate quantity of water.

It is further declared that effective development and utilization of the land and water resources of this state; the opportunity for greater economic security; the protection of health, property, enterprise, and the preservation of the benefits from the land and water resources of this state; and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is declared necessary that a means to supply and distribute water to the people of eastern North Dakota for all beneficial purposes including domestic, rural water, municipal, livestock, light industrial, mining, agriculture, and other uses must be developed. In furtherance of this public purpose, the supply and delivery of water to eastern North Dakota is established as a critical priority and the state water commission shall continue to cooperate, in cooperation with the Garrison diversion conservancy district in addressing and the communities and rural water systems in eastern North Dakota, address this critical priority by developing a plan and estimate of the costs for supplementing the water resources of eastern North Dakota with water supplies from other available resources, including the Missouri River.

The state water commission may employ full-time personnel and may employ such other personnel as are necessary for the administration of this section as appropriated funds permit. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund or appropriated for purposes of administering this section may be used for salaries and expenses of persons employed pursuant to this section.

SECTION 12. AMENDMENT. Section 2 of House Bill No. 1151, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

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

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

1. Shall make a reasonable and diligent effort to acquire the property interests needed by negotiation. The commission is deemed to have made a reasonable and diligent effort if it has contacted or attempted to contact the owner of the property interest needed at least three times over a thirty-day period. If the commission is unable to acquire the interest needed by negotiation, then it may take possession of the interests needed after making a written offer to purchase and depositing the amount of the offer with the clerk of the district court of the county in which the property interest is located. The amount of the offer must be at least the average value per acre of comparable property. The clerk shall immediately notify the property owner in writing of the deposit. Within thirty days after receiving notice, the property owner may appeal to district court by serving notice of appeal upon the commission and the matter must be tried in the manner prescribed under chapter 32-15.
2. May issue, when it determines that it would be advantageous to the state or that it is necessary in order to construct the outlet in a timely manner, a request for proposals to

design and build the outlet. The request for proposals must require that each proposal submitted contain a single price that includes the cost to design and build the outlet. Neither chapter 48-01.1 or 54-44.7, nor any other law requiring competitive bidding applies to the construction of the outlet if the commission determines to use the design and build procedure. The commission shall select the proposal that it determines is the most advantageous to the state.

SECTION 13. A new subsection to section 61-02-14 of the North Dakota Century Code is created and enacted as follows:

To consider cost-sharing for water quality improvement projects.

SECTION 14. A new section to chapter 61-02.1 of the North Dakota Century Code is created and enacted as follows:

Funding - Statewide water development projects - Bond issuance amount.

1. The priorities for the statewide water development program for the 2001-03 biennium include municipal, rural, and industrial projects; irrigation projects; general water management projects, including rural flood control, snagging and clearing, channel improvement, recreation, and planning studies; flood control projects; and weather modification projects. The state water commission may provide the funds necessary to construct these projects from money appropriated to the state water commission from the resources trust fund, the water development trust fund, or by issuing bonds in an amount not to exceed twenty million dollars plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves. The commission may utilize up to five million five hundred thousand dollars from the water development trust fund, the resources trust fund, or from bond proceeds to provide cost share for a flood control channel and levy project designed to provide protection from overland flooding to a city with a population in excess of eighty thousand as of the 2000 federal decennial census. The amount provided may not exceed fifty percent of the city's share of the cost to construct the project. Bonds may be issued utilizing the procedures set forth in chapter 61-02. The proceeds of any bonds issued under the authority provided in this section are appropriated to the state water commission for the purposes set forth in this section.
2. If the state water commission determines it is appropriate to do so, it may, in lieu of issuing or in combination with the issuance of bonds pursuant to sections 61-02.1-01 and 61-02.1-02, for all or part of the state's cost share for the projects set forth in those provisions, use funds appropriated to it from the resources trust fund or the water development trust fund. Regardless of the source, the amount of funds used may not exceed the limits set forth in section 61-02.1-02.

SECTION 15. A new subsection to section 61-02.1-04 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Principal and interest on bonds issued for projects authorized pursuant to section 14 of this Act are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, and then from any other revenues the state water commission makes available during the then current biennium for that purpose. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium 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.

SECTION 16. LEGISLATIVE INTENT - STATEWIDE WATER PROJECT FUNDING LIMIT.

Notwithstanding the amounts of \$28,572,333 included in the statewide water development projects line item in section 1 of this Act and \$20,000,000 included in section 14 of this Act, and the amount appropriated in chapter 61-02.1, it is the intent of the fifty-seventh legislative assembly that no more than a total of sixty-seven million eight hundred thousand dollars, plus, if bonds are issued, the costs of issuance of the bonds, capitalized interest, and reasonably required reserves, may be expended for statewide water development projects for the 2001-03 biennium. Contracts for water projects to be paid from the water development trust fund may initially be issued up to an amount equal to seventy-five percent of the amount appropriated from that fund for projects. Contracts for the remaining twenty-five percent appropriated may only be issued to the extent uncommitted funds are available in the water development trust fund.

SECTION 17. LINE OF CREDIT - APPROPRIATION. The Bank of North Dakota shall extend a line of credit not to exceed \$25,000,000, which is appropriated for the biennium beginning July 1, 2001, and ending June 30, 2003, to the state water commission for the purpose of interim financing until bonds are issued under chapter 61-02.1.

SECTION 18. APPROPRIATION. There is appropriated out of any moneys in the water development trust fund, not otherwise appropriated, or from bond proceeds, the sum of \$25,000,000, or so much of the sum as may be necessary, to the state water commission for the purpose of repaying the line of credit extended to the state water commission under section 17 of this Act, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 19. TRANSFER. Notwithstanding section 54-27-25, during the biennium beginning July 1, 2001, and ending June 30, 2003, the director of the office of management and budget may transfer \$9,733,820 from the water development trust fund to the general fund.

SECTION 20. Section 10 of chapter 535 of the 1999 Session Laws is amended and reenacted as follows:

SECTION 10. STATEWIDE WATER DEVELOPMENT PROGRAM - LEGISLATIVE INTENT.

The state water commission shall develop a new comprehensive statewide water development program with priorities based upon expected funds available from the water development trust fund for water development projects. This program may include water quality improvement projects. It is the intent of the legislative assembly that the state water commission consider the delivery of water for usable purposes a priority for water development projects after the projects authorized in section 3 of this Act are completed.

SECTION 21. AMENDMENT. Section 11 of chapter 535 of the 1999 Session Laws is amended and reenacted as follows:

SECTION 11. EXPIRATION DATE. The authority of the commission to issue bonds as provided in chapter 61-02.1 is effective through June 30, ~~2004~~ 2003, and after that date is ineffective provided, however, that the commission may continue to exercise all other powers granted to it under this Act and to comply with any covenants entered into pursuant to this Act.

SECTION 22. LEGISLATIVE INTENT - ADMINISTRATIVE EXPENSES. It is the intent of the fifty-seventh legislative assembly that the water development trust fund not be used as a source of funding for state water commission administrative expenses after the 2001-03 biennium.

SECTION 23. FARGO FLOOD CONTROL - REQUIREMENTS. Except for planning, the state water commission may not issue bonds or provide funding for Fargo flood control projects until applicable permits are issued, southeast Cass water resource district has approved the project, and a public hearing process is held on the approved project plan. The total authorization consists of

\$500,000 for expenses for preliminary study and planning of the project and \$5,000,000 for project construction expenses.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1023.

House Vote: Yeas 89 Nays 1 Absent 8

Senate Vote: Yeas 48 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State