

Fifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1153

Introduced by

Appropriations Committee

(At the request of the State Water Commission)

A BILL for an Act to amend and reenact section 11 of chapter 535 of the 1999 Session Laws, as amended by section 1 of chapter 559 of the 2001 Session Laws, as amended by section 1 of chapter 549 of the 2003 Session Laws, relating to the issuance of bonds for construction of an outlet from Devils Lake; to amend and reenact sections 61-02.1-01 and 61-02.1-02.1 and subsection 3 of section 61-02.1-04 of the North Dakota Century Code, relating to the water commission's authority to issue bonds for projects; to repeal section 61-02.1-02 of the North Dakota Century Code, relating to bond issuance amount limits; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11 of chapter 535 of the 1999 Session Laws, as amended by section 1 of chapter 559 of the 2001 Session Laws, as amended by section 1 of chapter 549 of the 2003 Session Laws is amended and reenacted as follows:

Section 11. EXPIRATION DATE. ~~Except for the issuance of bonds for construction of an outlet from Devils Lake, the~~ The authority of the commission to issue bonds as provided in chapter 61-02.1 is effective through June 30, ~~2004~~ 2007, and after that date is ineffective. ~~The authority of the commission to issue bonds as provided in chapter 61-02.1 for construction of an outlet from Devils Lake is effective through June 30, 2005, and after that date is ineffective.~~ However, 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 2. AMENDMENT. Section 61-02.1-01 of the North Dakota Century Code is amended and reenacted 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

1 reduction projects is necessary for the protection of health, property, and
2 enterprises and for the promotion of prosperity and the general welfare of the
3 people of the state and that construction of any such projects involves and requires
4 the exercise of the sovereign powers of the state and concerns a public purpose.
5 Therefore, it is declared necessary and in the public interest that the state by and
6 through the state water commission assist in financing the costs of constructing
7 flood control or reduction projects through the issuance of bonds.

- 8 2. The legislative assembly finds that continued construction of the southwest pipeline
9 project is necessary for the protection of health, property, and enterprises and for
10 the promotion of prosperity and the general welfare of the people of the state and
11 that continued construction of the southwest pipeline project involves and requires
12 the exercise of the sovereign powers of the state and concerns a public purpose.
13 The legislative assembly also finds that current funding for the southwest pipeline
14 project has become uncertain, and therefore, it is declared necessary and in the
15 public interest that the state by and through the state water commission assist in
16 financing the costs of continued construction of the southwest pipeline project
17 through the issuance of bonds.

- 18 3. The legislative assembly finds that the Devils Lake basin is suffering and facing a
19 worsening flood disaster; and that construction of an outlet from Devils Lake is
20 necessary for the protection of health, property, and enterprises and for the
21 promotion of prosperity and the general welfare of the people of the state; and that
22 construction of the outlet involves and requires the exercise of the sovereign
23 powers of the state and concerns a public purpose. Therefore, it is declared
24 necessary and in the public interest that an outlet from Devils Lake be constructed
25 with financing from the state water commission to provide flood relief to the Devils
26 Lake basin.

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

1 5- In furtherance of the public purpose set forth in subsection 1, the state water
2 commission may issue bonds under chapter 61-02 and the proceeds are
3 appropriated for flood control projects authorized and funded in part by the federal
4 government and designed to provide permanent flood control or reduction to cities
5 that suffered severe damages as a result of the 1997 flood or other recent floods
6 and to repay the line of credit extended to the state water commission under
7 S.L. 1999, ch. 535, § 4. The commission may issue bonds for a flood control or
8 reduction project only:

9 a. When:

- 10 (1) A flood control or reduction project involves a city that suffered
11 catastrophic flood damage requiring evacuation of the major share of its
12 populace;
- 13 (2) A flood control or reduction project includes interstate features and
14 requires acquisition of private property to build permanent flood
15 protection systems to comply with federal flood protection standards;
- 16 (3) The governing body of a city provides a written certification to the state
17 water commission that the city has committed itself to contribute
18 one-half or more of the North Dakota project sponsor's share of the
19 nonfederal share of the cost to construct the project;
- 20 (4) The United States army corps of engineers issues its approval of the
21 flood control or reduction project;
- 22 (5) A project cooperation agreement, which contains provisions acceptable
23 to the state engineer and is approved by the governor, is entered by the
24 state of Minnesota or one of its political subdivisions in which the flood
25 control or reduction project is to be constructed;
- 26 (6) A project cooperation agreement, which contains provisions acceptable
27 to the state engineer and is approved by the governor, is entered by the
28 state or one of its political subdivisions in which the flood control or
29 reduction project is to be constructed;

1 (7) The governing body of the city has approved a financing plan for all
2 amounts of the nonfederal share of a flood control or reduction project
3 in excess of the amounts to be paid by the state; and

4 (8) ~~That no order for injunctive relief has been issued by a court of~~
5 ~~competent jurisdiction enjoining construction of the flood control or~~
6 ~~reduction project; and~~

7 (9) That the flood control or reduction project is designed to be
8 cost-effective and that any impact on residential neighborhoods is
9 minimized in an amount reasonably practicable as determined by the
10 state engineer and approved by the governor;

11 b. When a flood control or reduction project in a city with a population as of the
12 1990 federal decennial census of at least eight thousand and not more than
13 ten thousand has received significant federal funding through federal grants
14 and funds from the United States army corps of engineers and the federal
15 emergency management agency; or

16 c. When a flood control or reduction project in a city with a population as of the
17 1990 federal decennial census of at least four thousand five hundred and not
18 more than six thousand has at least seventy percent of the land within the
19 boundaries of the city located within the one hundred year floodplain as
20 designated on a flood insurance rate map and the United States army corps
21 of engineers issues its approval of the flood control or reduction project.

22 6- 5. In furtherance of the public purpose set forth in subsection 2, the state water
23 commission may issue bonds under chapter 61-02 and the proceeds are
24 appropriated for construction of the southwest pipeline project and to repay the line
25 of credit extended to the state water commission under S.L. 1999, ch. 535, § 4.
26 The commission may only issue bonds under this chapter for continued
27 construction of the southwest pipeline project when it is determined that the
28 Perkins County water system will not make payment to the state water commission
29 in the amount of four million five hundred thousand dollars or on January 1, 2000,
30 whichever occurs earlier. If the Perkins County water system makes payment to
31 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. If the Perkins County water system does not make payment to the state water commission, no benefits may accrue to the Perkins County water system.

7. ~~6.~~ In furtherance of the public ~~purposes~~ purpose set forth in ~~subsections~~ subsection 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~~ the Devils Lake outlet identified in subsection, ~~provided that:~~ 3.

a. ~~(1) The state water commission may only issue bonds for construction of an outlet from Devils Lake when either the state water commission or 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;~~
~~(2) 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~~
~~(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.~~

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

9- 8. Notwithstanding this section, the state water commission may not issue bonds authorized under subsection 5 4 for a project unless federal funds have been appropriated for that project.

10- ~~Notwithstanding this section, if bonds are issued under this chapter, any bonds subsequently issued after the first issuance must meet the same conditions as the bonds initially issued.~~

11- ~~Notwithstanding this section, except for a project listed in subdivision a of subsection 7 the state water commission may not issue bonds under this chapter unless the local project sponsor has agreed to repay the local project sponsor's share of any bonds issued for the entire nonfederal share of the cost of a project.~~

SECTION 3. AMENDMENT. Section 61-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02.1-02.1. 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, which are authorized and declared to be in the public interest. 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~~ sixty million dollars plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves. 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~~ this

section or section 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.

SECTION 4. AMENDMENT. Subsection 3 of section 61-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

3. Principal and interest on bonds issued under subsection ~~7~~ 6 of section 61-02.1-01 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, 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. 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 5. REPEAL. Section 61-02.1-02 of the North Dakota Century Code is repealed.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.