

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1482

Introduced by

Representatives Grosz, Dorso, Boucher

1 A BILL for an Act to provide for the issuance of bonds to finance construction of an outlet to
2 Devils Lake and to finance a statewide water development program; to provide an
3 appropriation; to provide an expiration date; and to declare an emergency.

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

5 **SECTION 1. Designation of bonds - Definition.** Bonds issued under the provisions
6 of this Act are to be known as state of North Dakota water finance bonds, Devils Lake outlet
7 series, and state of North Dakota water finance bonds, North Dakota state water development
8 series. As used in this Act, "Bank" means the Bank of North Dakota and "commission" means
9 the state water commission.

10 **SECTION 2. Legislative findings and intent.** The legislative assembly finds that the
11 Devils Lake basin is suffering and facing a worsening flood disaster. It further finds that
12 construction of an outlet to Devils Lake is necessary for the protection of health, property, and
13 enterprises, and for the promotion of prosperity and general welfare of the people of the state of
14 North Dakota, and that construction of that outlet involves and requires the exercise of the
15 sovereign powers of the state and concerns a public purpose. Therefore, it is declared
16 necessary that an outlet to Devils Lake as authorized by the legislative assembly be established
17 and constructed to provide flood relief to the Devils Lake basin.

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

22 **SECTION 3. Authority to issue bonds.** The commission may prepare, handle, issue,
23 sell, and deliver one or more series of bonds in an amount not to exceed, in the aggregate,
24 twenty million dollars for the purpose of procuring necessary funds for the construction,

operation, and maintenance of an outlet to Devils Lake and for financing the North Dakota state water development program. The principal and interest on the bonds are payable:

1. Exclusively from the income and revenues of a project financed with the proceeds of the bonds or with the proceeds together with a grant from the federal government in aid of the project;
2. Exclusively from the income and revenues of certain projects whether or not they are financed in whole or in part with the proceeds of the bond; or
3. From Bank revenues generally.

The bonds and other obligations of the commission are not payable out of any funds or properties other than those of a project constructed pursuant to this Act, and the bonds may be secured by a pledge of any revenues or by mortgage on a project.

SECTION 4. Bonds to be limited obligation bonds. Obligations issued under the provisions of this Act 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 appropriations or other sources provided for by this Act. Under no circumstances may general fund revenues of the state of North Dakota be used to pay all or part of the bonds issued under this Act, and there is no moral obligation of the state of North Dakota to pay all or part of those bonds. Bonds issued under this Act must contain on their face a statement to the effect that the state of North Dakota is not obligated to pay those bonds nor the interest on them and payments are to be made solely from appropriations, transfers, or other sources of payment, as provided in this Act and pledged therefor, and that the faith and credit of the state of North Dakota is not pledged to the payment of the principal or the interest on the bonds.

SECTION 5. Sale of bonds. The commission may issue bonds or evidences of indebtedness that must be sold at not less than ninety-five percent of par plus any accrued interest. The bonds may be sold at public or private sale, must mature not more than thirty years from their date or dates, and may contain the terms and provisions as the commission determines. The commission may capitalize from bond proceeds all expenses incidental to the issuance of the bonds, including any reserves for the payment of the bonds and any capitalized interest during the period of construction and for a period of one year after construction.

SECTION 6. Bond funds. A sinking fund for the payment of bonds issued under this Act and interest on those bonds must be established and maintained in the Bank or by a

1 designated trustee. The Bank or the designated trustee is the custodian of the sinking fund and
2 shall at all times maintain adequate records on the condition of the sinking fund. All sums
3 appropriated or transferred for the payment of bonds issued under this Act must be deposited in
4 the sinking fund and must be disbursed by the Bank or the designated trustee in payment of the
5 bonds in interest directly or through a paying agent to be designated by the Bank. The Bank
6 may create and establish one or more special accounts within the fund, including a reserve
7 account and a reserve account for replacement. The Bank shall pay into the accounts any
8 moneys appropriated, transferred, or made available by the state for the purpose of the
9 accounts, any proceeds of the sale of bonds to the extent provided in the resolution by the
10 commission authorizing the issuance of the bonds, and any other moneys that may be made
11 available to the Bank for the purpose of the accounts from any other source or sources.

12 **SECTION 7. Bonds tax exempt.** All bonds issued under the provisions of this Act and
13 interest on those bonds are exempt from all state, county, and municipal taxes.

14 **SECTION 8. Rights and remedies of an obligee.** An obligee of the commission, in
15 addition to all other rights which may be conferred on that person, and subject only to any
16 contractual restrictions binding upon the obligee, may:

- 17 1. By mandamus, suit, action, or proceeding at law or inequity, compel the
18 commission, officers, agents, or employees thereof, to perform each and every
19 term, provision, and covenant contained in any contract of the commission with or
20 for the benefit of the obligee, and require the carrying out of any or all of the
21 covenants and agreements of the commission and a fulfillment of all duties
22 imposed upon the commission by this Act.
- 23 2. By suit, action, or proceeding in equity, enjoin any act or thing that may be unlawful
24 or in violation of any of the rights of the obligee of the commission.

25 **SECTION 9. Additional remedies conferrable by commission on obligee.** The
26 commission, by its resolution, trust indenture, mortgage, lease, or other contract, may confer
27 upon any obligee holding or representing a specified amount in bonds, or holding a lease, in
28 addition to all rights that otherwise may be conferred, the right, upon the happening of an event
29 of default as defined in the resolution or instrument, by suit, action, or proceeding, in any court
30 of competent jurisdiction:

- 1 1. To cause possession of any project, or any part of a project, to be surrendered to
- 2 the obligee.
- 3 2. To obtain the appointment of a receiver of any project of the commission, or of any
- 4 part of a project, and of the rents and profits from a project. If the receiver is
- 5 appointed, the receiver may enter into and take possession of the project, or of any
- 6 part of the project, and operate and maintain the project and collect and receive all
- 7 fees, rents, revenues, and other charges from the project, and the receiver shall
- 8 keep the moneys in separate account or accounts and apply the moneys in
- 9 accordance with the obligations of the commission as the court directs.
- 10 3. To require the commission to account as if it were the trustee of an express trust.

11 **SECTION 10. Limitation of action.** No action may be brought or maintained in any
12 court in this state questioning the validity of any bonds issued under this Act, or of any tax
13 levied under this Act, unless the action is commenced within thirty days after the adoption of the
14 resolution of the commission authorizing the sale of the bonds. The commission may
15 commence a special proceeding any time after August 1, 1997, in and by which the
16 constitutionality and validity of the bonds to be issued pursuant to this Act may be judicially
17 examined, approved, and confirmed, or disapproved and disaffirmed. The proceedings must
18 comply as nearly as possible with the procedure required for declaratory judgment proceedings.

19 **SECTION 11. Commission may match federal funds.** The commission may use all
20 or part of any moneys allocated as provided in this Act to match any federal funds available for
21 those purposes. Proceeds realized from the sale of bonds under this Act are available to match
22 federal funds in the ratio of one to four.

23 **SECTION 12. Appropriations and transfers irrepealable.** All appropriations and
24 transfers provided to pay bonds issued under the provisions of this Act and interest on those
25 bonds may not be repealed until the bonds and interest are fully paid. The state pledges and
26 agrees with the holders of any obligations issued pursuant to this Act that the state will not limit
27 or alter the authorities vested in the commission to fulfill the terms of any agreements made
28 with the holders, or in any way impair the rights and remedies of the holders until the bonds,
29 together with the interest on the bonds, with interest on any unpaid installments of interest, and
30 all costs and expenses in connection with any action or proceeding by or on behalf of the

holders are fully met and discharged. The commission may include this pledge and agreement of the state in any agreement with the holders of the bonds.

SECTION 13. Issuance of bonds contingent on certain events.

1. The commission may not issue state of North Dakota water finance bonds, Devils Lake outlet series unless and until the United States authorizes construction of an outlet including provisions for an inlet to Devils Lake.
2. The commission may not issue state of North Dakota water finance bonds, North Dakota state water development series, unless and until 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 Charbonneau-Timber Creek irrigation district; the Williston irrigation project; the Oakes irrigation project; other municipal, rural, and industrial water supply projects; and delivery of Missouri River water to the Sheyenne River.
3. The commission must notify the budget section of the legislative council if either of the contingencies in subsection 1 or 2 occur and bonds are issued under this Act.

SECTION 14. TRANSFER. The sum of \$2,000,000, or so much of the sum as may be necessary, is transferred from the accumulated and undivided profits of the Bank of North Dakota to finance or pay principal and interest on state of North Dakota water finance bonds, Devils Lake outlet series, and state of North Dakota water finance bonds, North Dakota state water development series bonds. The money must be transferred during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 15. APPROPRIATION. There is hereby appropriated out of any revenues derived from bonds issued and sold pursuant to this Act, not otherwise appropriated, the sum of \$20,000,000, or so much of the sum as may be necessary, to the state water commission, for the purpose of constructing an outlet to Devils Lake and constructing a statewide water development program, for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 16. EXPIRATION DATE. This Act is effective through July 1, 1999, and after that date is ineffective.

SECTION 17. EMERGENCY. This Act is declared to be an emergency measure.