# Fifty-ninth Legislative Assembly of North Dakota In Regular Session Commencing Tuesday, January 4, 2005

HOUSE BILL NO. 1153
(Appropriations Committee)
(At the request of the State Water Commission)

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 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 <u>The</u> authority of the commission to issue bonds as provided in chapter 61-02.1 is effective through June 30, 2001 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 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 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 the outlet 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 an outlet from Devils Lake be constructed with financing from the state water commission to provide flood relief to the Devils Lake basin.
- 4. The legislative assembly finds that there is a critical need to develop a comprehensive statewide water development program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.
- 5. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for flood control projects authorized and funded in part by the federal government and designed to provide permanent flood control or reduction to cities that suffered severe damages as a result of the 1997 flood or other recent floods and to repay the line of credit extended to the state water commission under S.L. 1999, ch. 535, § 4. The commission may issue bonds for a flood control or reduction project only:

#### a. When:

- (1) A flood control or reduction project involves a city that suffered catastrophic flood damage requiring evacuation of the major share of its populace;
- (2) A flood control or reduction project includes interstate features and requires acquisition of private property to build permanent flood protection systems to comply with federal flood protection standards;
- (3) The governing body of a city provides a written certification to the state water commission that the city has committed itself to contribute one-half or more of the North Dakota project sponsor's share of the nonfederal share of the cost to construct the project;
- (4) The United States army corps of engineers issues its approval of the flood control or reduction project;
- (5) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state of Minnesota or one of its political subdivisions in which the flood control or reduction project is to be constructed;
- (6) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state or one of its political subdivisions in which the flood control or reduction project is to be constructed:
- (7) The governing body of the city has approved a financing plan for all amounts of the nonfederal share of a flood control or reduction project in excess of the amounts to be paid by the state; <u>and</u>
- (8) That no order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of the flood control or reduction project; and
- (9) That the flood control or reduction project is designed to be cost-effective and that any impact on residential neighborhoods is minimized in an amount

reasonably practicable as determined by the state engineer and approved by the governor;

- 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 and to repay the line of credit extended to the state water commission under S.L. 1999, ch. 535, § 4. 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. 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. 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. (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 crosion; 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 Shevenne 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 section.

- 8. 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.
- Notwithstanding this section, the state water commission may not issue bonds authorized under subsection 5 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.
- 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. REPEAL.** Section 61-02.1-02 of the North Dakota Century Code is repealed.

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

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	Speaker of the House				President of the Senate			
	Chief Clerk of the House			Secretary of the Senate				
Assembly	of North Da	akota and is Ì	known on the	records of	Representatives of that body as Hou tives voted in favo	se Bill N	o. 1153 and that	
Vote:	Yeas	83	Nays	5	Absent	6		
	Speaker of the House				Chief Clerk of the House			
This certi	fies that two-	thirds of the r	members-elect	of the Ser	nate voted in favor	of said la	aw.	
Vote:	Yeas	43	Nays	2	Absent	2		
	President of the Senate				Secretary of the Senate			
Received by the Governor at M. on							_, 2005.	
Approved at M. on							_, 2005.	
				G	overnor			
Filed in this office this day of							_, 2005,	
at	o'clock _	M.						
				S	ecretary of State			