

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 subsection 3 of section 54-27-25, subdivision e of subsection 1 of section 61-01-26.2,
4 subsections 7 and 9 of section 61-02.1-01, and subsection 3 of section 61-02.1-02 of the North
5 Dakota Century Code, relating to funds deposited in the water development trust fund and
6 bonding for a Devils Lake outlet; and to declare an emergency.

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

8 **SECTION 1. AMENDMENT.** Subsection 3 of section 54-27-25 of the 1999 Supplement
9 to the North Dakota Century Code is amended and reenacted as follows:

10 3. Transfers to the water development trust fund ~~to~~ Interest earned on the fund must
11 be credited to the fund and deposited in the fund. Funds transferred and interest
12 earned on those funds must be used to address the long-term water development
13 and management needs of the state. Transfers under this subsection must equal
14 forty-five percent of the total annual transfers from the tobacco settlement trust
15 fund.

16 **SECTION 2. AMENDMENT.** Subdivision e of subsection 1 of section 61-01-26.2 of the
17 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18 e. Devils Lake outlet to the Sheyenne River and to west Stump Lake:
19 Seventeen million five hundred thousand dollars in state funds and thirty-two
20 million five hundred thousand dollars in federal funds. The total state
21 cost-share of seventeen million five hundred thousand dollars includes
22 mitigation costs and will be bonded, requiring a local repayment estimated at
23 one million five hundred thousand dollars per year, with the split between
24 state and local loan repayment to be determined. Before bonds may be

1 issued for a Devils Lake outlet, construction of the outlet must be approved by
2 the state water commission ~~and the federal government must have agreed to~~
3 ~~participate in construction of the outlet.~~

4 **SECTION 3.** A new section to chapter 61-02 of the North Dakota Century Code is
5 created and enacted as follows:

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

- 8 1. Shall make a reasonable and diligent effort to acquire the property interests
9 needed by negotiation. The commission is deemed to have made a reasonable
10 and diligent effort if it has contacted or attempted to contact the owner of the
11 property interest needed at least three times over a thirty-day period. If the
12 commission is unable to acquire the interest needed by negotiation, then it may
13 take possession of the interests needed after making a written offer to purchase
14 and depositing the amount of the offer with the clerk of the district court of the
15 county in which the property interest is located. The clerk shall immediately notify
16 the property owner in writing of the deposit. Within thirty days after receiving
17 notice, the property owner may appeal to district court by serving notice of appeal
18 upon the commission and the matter must be tried in the manner prescribed under
19 chapter 32-15.
- 20 2. May issue, when it determines that it would be advantageous to the state or that it
21 is necessary in order to construct the outlet in a timely manner, a request for
22 proposals to design and build the outlet. The request for proposals must require
23 that each proposal submitted contain a single price that includes the cost to design
24 and build the outlet. Neither chapter 48-01.1 or 54-44.7, nor any other law
25 requiring competitive bidding applies to the construction of the outlet if the
26 commission determines to use the design and build procedure. The commission
27 shall select the proposal that it determines is the most advantageous to the state.

28 **SECTION 4. AMENDMENT.** Subsections 7 and 9 of section 61-02.1-01 of the 1999
29 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 1 7. In furtherance of the public purposes set forth in subsections 3 and 4, the state
2 water commission may issue bonds under chapter 61-02 to finance the cost of one
3 or more of the projects identified in this subsection, provided that:
- 4 a. (1) The state water commission may only issue bonds for construction of
5 an outlet from Devils Lake when either the state water commission or
6 the United States authorizes construction of an outlet and either the
7 state water commission or a federal agency has developed a plan
8 addressing damage to basic infrastructure such as roads, culverts, and
9 bridges; riverbank erosion; downstream flooding; and increased water
10 treatment costs caused by or resulting from construction of the outlet;
- 11 (2) ~~The state water commission or the project sponsor must sign a project~~
12 ~~cooperation agreement with the United States army corps of engineers;~~
- 13 (3) The outlet from Devils Lake to west Stump Lake must comply with any
14 environmental impact statement or National Environmental Policy Act
15 provisions required under federal law; and
- 16 (4) (3) Bonds may not be issued if an order for injunctive relief has been
17 issued by a court of competent jurisdiction enjoining construction of an
18 outlet from Devils Lake to the Sheyenne River or to west Stump Lake.
- 19 b. The state water commission may only issue bonds to finance the nonfederal
20 cost-share of the Garrison diversion unit when the Congress of the United
21 States enacts legislation for the completion of the Garrison diversion unit,
22 which may include the delivery of water to the northwest area water supply
23 project; southwest pipeline project; Turtle Lake irrigation district;
24 Nesson-Valley irrigation district; Elk Charbon irrigation district; the Williston
25 irrigation project; the Oakes irrigation project; other irrigation, municipal, rural,
26 and industrial water supply projects; augmented streamflow and ground water
27 recharge projects; development of a Red River valley water supply; and
28 delivery of Missouri River water to the Sheyenne River.
- 29 9. Notwithstanding this section, the state water commission may not issue bonds
30 authorized under subsection 5 ~~or subdivision a of subsection 7~~ for a project unless
31 federal funds have been appropriated for that project.

1 **SECTION 5. AMENDMENT.** Subsection 3 of section 61-02.1-02 of the 1999
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3 3. The state water commission bonds issued as provided in subsection 7 of section
4 61-02.1-01 for a Devils Lake outlet to the Sheyenne River and to west Stump Lake
5 or other projects listed in subdivision b of subsection 7 of section 61-02.1-01 may
6 not exceed, in the aggregate, twenty million dollars, plus the costs of issuance of
7 the bonds, capitalized interest, and reasonably required reserves. The state water
8 commission may use all or part of the proceeds of bonds issued as provided in
9 subsection 7 of section 61-02.1-01 and the proceeds are appropriated to pay the
10 costs of such projects or to match, in a ratio no greater than required by the federal
11 government, any federal funds available for the projects identified in subsection 7
12 of section 61-02.1-01 and to repay the line of credit extended to the state water
13 commission under S.L. 1999, ch. 535, § 4. The commission may require any
14 political subdivision affected by Devils Lake flooding to participate in the cost of
15 construction of an outlet from Devils Lake to the Sheyenne River and to west
16 Stump Lake by providing matching funds in a percentage of the construction costs
17 determined by the commission to be reasonable in light of the benefits to be
18 received by that political subdivision in relation to benefits received by all benefited
19 political subdivisions. Any local matching fund requirement must be determined by
20 the commission and the affected political subdivisions must be informed of their
21 matching fund obligation prior to issuance of bonds pursuant to this chapter.

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