

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1020

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of the state water
2 commission; to provide exemptions; to provide legislative intent; ~~to create and enact a new~~
3 ~~section to chapter 61-02 of the North Dakota Century Code, relating to the development of~~
4 ~~policies and procedures of the state water commission;~~ to amend and reenact sections
5 6-09.5-03 ~~and 54-35-02.37~~ of the North Dakota Century Code and ~~sections 6 and 7 of~~
6 ~~chapter 46 of the 2011 Session Laws~~section 54-35-02.7 of the North Dakota Century Code as
7 amended by Senate Bill No. 2233, as approved by the sixty-third legislative assembly, relating
8 to the community water facility loan fund; and the water-related topics overview committee; ~~and~~
9 ~~Fargo flood control project funding;~~ to provide for legislative management reports; to provide for
10 a loan from the Bank of North Dakota; and to declare an emergency.

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

12 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
13 as may be necessary, are appropriated from special funds derived from federal funds and other
14 income, to the state water commission for the purpose of defraying the expenses of the state
15 water commission, for the biennium beginning July 1, 2013, and ending June 30, 2015, as
16 follows:

	Base Level	Adjustments or Enhancements	Appropriation
19 Administrative and support services	\$3,229,873	\$679,627	\$3,909,500
20 Water and atmospheric resources	498,413,774	323,925,584	822,339,358
21 Accrued leave payments	0	325,774	325,774
22 Total all funds	\$501,643,647	\$324,930,985	\$826,574,632
23 Less estimated income	486,648,448	339,926,184	826,574,632
24 Total general fund	\$14,995,199	(\$14,995,199)	\$0

1	<u>Administrative and support services</u>	<u>\$3,229,873</u>	<u>\$1,531,792</u>	<u>\$4,761,665</u>
2	<u>Accrued leave payments</u>	<u>0</u>	<u>325,774</u>	<u>325,774</u>
3	<u>Water and atmospheric resources</u>	<u>498,413,774</u>	<u>324,194,592</u>	<u>822,608,366</u>
4	<u>Total all funds</u>	<u>\$501,643,647</u>	<u>\$326,052,158</u>	<u>\$827,695,805</u>
5	<u>Less estimated income</u>	<u>486,648,448</u>	<u>341,047,357</u>	<u>827,695,805</u>
6	<u>Total general fund</u>	<u>\$14,995,199</u>	<u>(\$14,995,199)</u>	<u>\$0</u>
7	Full-time equivalent positions	87.00	3.00	90.00

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO

SIXTY-FOURTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-second legislative assembly for the 2011-13 biennium and the 2013-15 one-time funding items included in the appropriation in section 1 of this Act:

12	<u>One-Time Funding Description</u>	<u>2011-13</u>	<u>2013-15</u>
13	Federal stimulus funds	\$7,271,773	\$0
14	Ray/Tioga, Burke/Divide/Williams, Wildrose and	500,000	0
15	Stanley water projects		
16	Excavator	0	243,200
17	Office space renovation	0	45,000
18	Total all funds	\$7,771,773	\$288,200
19	Total special funds	<u>7,771,773</u>	<u>288,200</u>
20	Total general fund	\$0	\$0

The 2013-15 one-time funding amounts are not part of the entity's base budget for the 2015-17 biennium. The state water commission shall report to the appropriations committees of the sixty-fourth legislative assembly on the use of the one-time funding for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 3. SOVEREIGN LANDS ENFORCEMENT GRANT. The administrative and support services line item in section 1 of this Act includes \$135,000 from the resources trust fund that the state water commission shall provide as a grant to the game and fish department for law enforcement activities on sovereign lands in the state, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 4. ADDITIONAL INCOME - APPROPRIATION. In addition to the amounts included in the estimated income line item in section 1 of this Act, any additional amounts in the

1 resources trust fund and water development trust fund that become available are appropriated,
2 subject to budget section approval, to the state water commission for the purpose of defraying
3 the expenses of that agency, for the biennium beginning July 1, 2013, and ending June 30,
4 2015.

5 **SECTION 5. BANK OF NORTH DAKOTA LOAN - WESTERN AREA WATER SUPPLY**

6 **AUTHORITY.** The Bank of North Dakota shall provide a loan of \$40,000,000 to the western
7 area water supply authority for construction of the project. The terms and conditions of the loan
8 must be negotiated by the western area water supply authority and the Bank of North Dakota
9 and any previous loans may be added to and merged into this loan as agreed by the authority
10 and the Bank of North Dakota. The authority may repay the loan from income from specific
11 project features. If the authority is in default in the payment of the principal of or interest on the
12 obligation to the Bank of North Dakota for the loan, the authority is subject to the default
13 provisions under section 61-40-09.

14 **SECTION 6. GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY.**

15 Section 54-44.1-11 does not apply to funding for grants or water-related projects included in the
16 water and atmospheric resources line item in section 1 of this Act. However, this exclusion is
17 only in effect for two years after June 30, 2015. Any unexpended funds appropriated from the
18 resources trust fund after that period has expired must be transferred to the resources trust fund
19 and any unexpended funds appropriated from the water development trust fund after that period
20 has expired must be transferred to the water development trust fund.

21 ~~SECTION 7. AMENDMENT. Section 6 of chapter 46 of the 2011 Session Laws is amended~~
22 ~~and reenacted as follows:~~

23 ~~SECTION 7. FARGO FLOOD CONTROL PROJECT FUNDING - EXEMPTION.~~

24 ~~Of the funds appropriated in the water and atmospheric resources line item in~~
25 ~~section 1 of this Act, \$45,000,000 is for Fargo flood control projects, for the biennium~~
26 ~~beginning July 1, 2009, and ending June 30, 2011. Any funds not spent by June 30,~~
27 ~~2011, are not subject to section 54-44.1-11 and must be continued into the next or~~
28 ~~subsequent bienniums and may be expended only for Fargo flood control projects.~~
29 ~~These~~Except as otherwise provided, these funds may be used only for land purchases
30 and construction, including right of way acquisition costs and may not be used for the
31 purchase of dwellings or for a river diversion project. Notwithstanding any other

~~provision of law, including a political subdivision home rule charter, no public funds may be used for the construction of ring dikes or water retention structures associated with the Fargo flood control project. No more than ten percent of these funds may not be used for administration, engineering, legal, planning, or other similar purposes; and are not subject to the sixty-five percent funding requirement contained in Senate Bill No. 2316 (2009). The city of Fargo, Cass County, and the Cass County joint water resource district must approve any expenditures made under this section. Costs incurred by nonstate entities for dwellings or other real property that are not paid by state funds are eligible for application by the nonstate entity for cost sharing with the state.~~

— **SECTION 8. AMENDMENT.** Section 7 of chapter 46 of the 2011 Session Laws is amended and reenacted as follows:

~~— **SECTION 7. FARGO FLOOD CONTROL PROJECT FUNDING - EXEMPTION.** Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act, \$30,000,000 is for Fargo flood control projects, for the biennium beginning July 1, 2011, and ending June 30, 2013. Any funds not spent by June 30, 2013, are not subject to section 54-44.1-11 and must be continued into the next or subsequent bienniums and may be expended only for Fargo flood control projects. Except as otherwise provided, these funds may be used only for land purchases and construction, including right-of-way acquisition costs and may not be used for the purchase of dwellings or for a river diversion project. Notwithstanding any other provision of law, including a political subdivision home rule charter, no public funds may be used for the construction of ring dikes or water retention structures associated with the Fargo flood control project. No more than ten percent of these funds may be used for engineering, legal, planning, or other similar purposes. The city of Fargo, Cass County, and the Cass County joint water resource district must approve any expenditures made under this section. Costs incurred by nonstate entities for dwellings or other real property that are not paid by state funds are eligible for application by the nonstate entity for cost sharing with the state.~~

SECTION 7. FARGO FLOOD CONTROL PROJECT CONSTRUCTION - LIMITATION.

Except for the construction of ring dikes and levees, construction relating to Fargo flood control

1 project components located south of the city of Fargo's extraterritorial zoning jurisdiction may
2 not begin until after July 1, 2014.

3 **SECTION 8. FARGO FLOOD CONTROL PROJECT FUNDING.** Funds designated by the
4 sixty-first legislative assembly, the sixty-second legislative assembly, and the sixty-third
5 legislative assembly for Fargo flood control are available only for levee and dike protection until
6 the Fargo flood control project receives federal authorization, a project partnership agreement is
7 executed, a federal appropriation is provided for project construction, and the budget for the
8 Fargo flood control project is approved by the state water commission.

9 **SECTION 9. FARGO FLOOD CONTROL PROJECT FUNDING AGREEMENT.** Prior to the
10 state water commission expending any state cost-sharing funds, the local Fargo flood control
11 sponsor and state water commission shall enter a cost-sharing agreement. The agreement
12 must provide for the exclusion of state cost-sharing for components of the project identified as
13 recreational by the United States Army Corps of Engineers. The agreement must also provide
14 for the exclusion of state cost-sharing relating to funds expected to be provided for the project
15 by nonfederal entities outside the state of North Dakota. An advance funding agreement
16 between the United States Army Corps of Engineers and the local Fargo flood control sponsor
17 must precede any state funding used to advance construction work considered to be a federal
18 responsibility.

19 **SECTION 10. LEGISLATIVE INTENT - FARGO FLOOD CONTROL PROJECT FUNDING.**
20 It is the intent of the sixty-third legislative assembly that the state provide one-half of the local
21 cost-share of constructing a federally authorized Fargo flood control project and that total Fargo
22 flood control project funding to be provided by the state not exceed \$450,000,000. It is further
23 the intent of the sixty-third legislative assembly that the \$275,000,000 yet to be designated by
24 the state for the Fargo flood control project be made available in equal installments over the
25 next four bienniums.

26 **SECTION 11. FARGO FLOOD CONTROL PROJECT FUNDING - EXEMPTION.** Of the
27 funds appropriated in the water and atmospheric resources line item in section 1 of this Act,
28 \$100,000,000 is for Fargo flood control projects, for the biennium beginning July 1, 2013, and
29 ending June 30, 2015. Any funds not spent by June 30, 2015, are not subject to section
30 54-44.1-11 and must be continued into the next or subsequent bienniums and may be
31 expended only for Fargo flood control projects, including levees and dikes. Except as otherwise

1 provided, these funds may be used only for land purchases and construction, including
2 right-of-way acquisition costs and may not be used for the purchase of dwellings ~~or for a river~~
3 ~~diversion project. Notwithstanding any other provision of law, including a political subdivision~~
4 ~~home rule charter, no public funds may be used for the construction of ring dikes or water~~
5 ~~retention structures associated with the Fargo flood control project.~~ No more than ten percent of
6 these funds may be used for engineering, legal, planning, or other similar purposes. The city of
7 Fargo, Cass County, and the Cass County joint water resource district must approve any
8 expenditures made under this section. Costs incurred by nonstate entities for dwellings or other
9 real property which are not paid by state funds are eligible for application by the nonstate entity
10 for cost-sharing with the state.

11 ~~—SECTION 14. LEGISLATIVE INTENT - FARGO FLOOD CONTROL PROJECT FUNDING.~~
12 ~~It is the intent of the sixty third legislative assembly that total Fargo flood control project funding~~
13 ~~to be provided by the state not exceed \$325,000,000 to provide flood protection for the city of~~
14 ~~Fargo to the forty two and one half foot level, and to provide, to the extent possible, flood~~
15 ~~protection for areas along the Red River north and south of Fargo. It is further the intent of the~~
16 ~~legislative assembly that funds appropriated by the legislative assembly for Fargo flood control~~
17 ~~not be used for a river diversion flood control project.~~

18 **SECTION 12. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY.** Of the
19 funds appropriated in the water and atmospheric resources line item in section 1 of this Act,
20 \$11,000,000 is for the Red River valley water supply project, for the biennium beginning July 1,
21 2013, and ending June 30, 2015.

22 **SECTION 13. LEGISLATIVE INTENT - BOND PAYMENTS.** Of the funds appropriated in
23 section 1 of this Act, \$60,000,000 in the water and atmospheric resources line item is from the
24 resources trust fund for the purposes of paying off or defeasing outstanding bond issues. The
25 state water commission may expend funds for this purpose only if available funding from the
26 resources trust fund for water projects for the biennium beginning July 1, 2013, and ending
27 June 30, 2015, has exceeded ~~\$515,000,000~~ \$287,000,000.

28 ~~—SECTION 17. STATE WATER COMMISSION STUDY - FARGO FLOOD CONTROL.~~
29 ~~During the 2013-14 interim, the state water commission shall study the use of ring dikes as part~~
30 ~~of a flood protection plan for the city of Fargo. The study must include the effects of ring dikes in~~
31 ~~the Fargo area on flood protection for areas north and south of Fargo. The state water~~

1 ~~commission shall provide periodic reports to the legislative management on the findings-~~
2 ~~resulting from the study.~~

3 ~~—SECTION 13. STATE WATER COMMISSION STUDY - RED RIVER VALLEY WATER-~~

4 ~~SUPPLY. During the 2013-14 interim, the state water commission shall study water supply-~~
5 ~~needs in the Red River valley, including projected costs of projects to meet water supply needs-~~
6 ~~and the potential state commitment to supply water to the Red River valley. The state water-~~
7 ~~commission shall provide periodic reports to the legislative management on the findings-~~
8 ~~resulting from the study.~~

9 ~~—SECTION 14. INFORMATION TECHNOLOGY HARDWARE - TRANSFER TO SECURE-~~

10 ~~DATA CENTER. The state water commission shall transfer all appropriate information-~~
11 ~~technology hardware to the information technology department secure data center during the-~~
12 ~~biennium beginning July 1, 2013, and ending June 30, 2015.~~

13 **SECTION 14. STATE WATER COMMISSION PRIORITY PROJECTS LIST - REPORTS TO**

14 **THE BUDGET SECTION.** The state water commission shall report to the budget section every
15 six months during the 2013-14 interim regarding any changes made to the state water
16 commission priority projects list presented to the sixty-third legislative assembly ~~within ninety-~~
17 ~~days of the state water commission approving the change~~ for the biennium beginning July 1,
18 2013, and ending June-30, 2015.

19 **SECTION 15. FARGO FLOOD CONTROL - REPORTS TO THE BUDGET SECTION.**

20 During the 2013-14 interim, the Fargo-Moorhead area diversion authority board shall report to
21 the budget section biannually regarding an update on congressional authorization of the
22 diversion project and the status of the self-insured crop insurance pool; mitigation efforts,
23 alternatives, and costs; easements; and the project budget. The MNDak upstream coalition
24 shall report to the budget section biannually regarding an update on the impacts of the Fargo
25 flood control project and mitigation efforts, alternatives, and costs.

26 **SECTION 16. AMENDMENT.** Section 6-09.5-03 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **6-09.5-03. Transfer of funds - Revolving fund.**

29 A community water facility loan fund with an authorized ceiling of ~~twenty-five~~ million
30 dollars is hereby established from the future undivided profits of the Bank of North Dakota or
31 other state funds. This is a revolving fund, and all moneys transferred into the fund, interest

1 upon fund moneys, and collections of interest and principal on fund loans must be used for the
2 purposes of this chapter.

3 ~~SECTION 17. AMENDMENT. Section 54-35-02.7 of the North Dakota Century Code is~~
4 ~~amended and reenacted as follows:~~

5 ~~54-35-02.7. (Effective through November 30, 20132014) Water-related topics overview~~
6 ~~committee -- Duties.~~

7 ~~The legislative management, during each interim, shall appoint a water-related topics~~
8 ~~overview committee in the same manner as the legislative management appoints other interim~~
9 ~~committees. The committee must meet quarterly and is responsible for legislative overview of~~
10 ~~water-related topics and related matters and for any necessary discussions with adjacent states~~
11 ~~on water-related topics. During the 2011-12 interim, theThe committee shall review the state's~~
12 ~~irrigation laws and rules and evaluate the process of the prioritization of water projects and~~
13 ~~prepare a schedule of priorities with respect to water projects. The state water commission and~~
14 ~~state engineer shall assist the committee in developing the schedule of priorities. The~~
15 ~~committee consists of thirteenseventeen members and the legislative management shall~~
16 ~~designate the chairman of the committee. The committee shall operate according to the statutes~~
17 ~~and procedure governing the operation of other legislative management interim committees and~~
18 ~~include the schedule of priorities with its final report to the legislative management.~~

19 ~~(Effective after November 30, 20132014) Garrison diversion overview. The legislative~~
20 ~~management is responsible for legislative overview of the Garrison diversion project and related~~
21 ~~matters and for any necessary discussions with adjacent states on water-related topics.~~

22 ~~SECTION 18. A new section to chapter 61-02 of the North Dakota Century Code is created~~
23 ~~and enacted as follows:~~

24 ~~State water commission -- Project development and financing.~~

25 ~~The state water commission shall adopt policies regarding the development and financing~~
26 ~~of projects as follows:~~

27 ~~1. Municipal project funding and financing, including water treatment plants. The state~~
28 ~~water commission shall develop and adopt policies relating to the circumstances under~~
29 ~~which a project qualifies for a grant and when the project qualifies for a loan.~~

30 ~~2. Pipelines. The state water commission shall develop and adopt policies relating to:~~

31 ~~a. Pipeline expansion;~~

- 1 ~~b. Public and industrial use of water;~~
- 2 ~~c. Cost analyses of future project development; and~~
- 3 ~~d. Ongoing maintenance cost of current and future projects.~~
- 4 ~~3. Technology. The state water commission shall develop and adopt policies relating to~~
- 5 ~~the use of technology, including the use of technology for permitting and electronic~~
- 6 ~~metering.~~

7 **SECTION 17. AMENDMENT.** Section 54-35-02.7 of the North Dakota Century Code as
8 amended by Senate Bill No. 2233, as approved by the sixty-third legislative assembly, is
9 amended and reenacted as follows:

10 **54-35-02.7. Water-related topics overview committee - Duties.**

11 The legislative management, during each interim, shall appoint a water-related topics
12 overview committee in the same manner as the legislative management appoints other interim
13 committees. The committee must meet quarterly and is responsible for legislative overview of
14 water-related topics and related matters, the Garrison diversion project, and for any necessary
15 discussions with adjacent states on water-related topics. The committee shall work
16 collaboratively with the state water commission to develop policies to further define the state
17 role in major flood control projects ~~and the prioritization of water projects.~~ The committee shall
18 prepare a schedule of priorities with respect to water projects. The state water commission and
19 state engineer shall assist the committee in developing the schedule of priorities, and the
20 committee may seek input from stakeholders within the state regarding water project priorities.
21 The committee also shall study policies regarding the development and financing of municipal
22 projects, including water treatment plants; pipelines, including pipeline expansion, public and
23 industrial use of water, cost analysis of future project development, and ongoing maintenance
24 cost of current and future projects; and technology, including the use of technology for
25 permitting and electronic metering. During the 2013-14 interim, the committee shall review
26 water supply routes and alternatives for the Red River valley water supply project. The
27 committee consists of thirteen members, and the legislative management shall designate the
28 chairman of the committee. The committee shall operate according to the statutes and
29 procedure governing the operation of other legislative management interim committees.

30 **SECTION 18. EMERGENCY.** The water and atmospheric resources line item in section 1 of
31 this Act and section 5 of this Act ~~is~~ are declared to be an emergency measure.