

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED HOUSE BILL NO. 1020**

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the state water
2 commission; to provide an appropriation to the industrial commission; to amend and reenact
3 section 57-51.1-07, subsection 10 of section 61-02-02, section 61-02-08, subsection 1 of
4 section 61-02-78, section 61-02-79, the new section to chapter 61-03, as created by section 12
5 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, and sections
6 61-29-06, 61-40-05, and 61-40-11of the North Dakota Century Code, relating to the oil
7 extraction tax development fund, the definition of water conveyance project, the state water
8 commission chairman and vice chairman, the infrastructure revolving loan fund, a Bank of North
9 Dakota line of credit, economic analyses for certain water projects, management of the Little
10 Missouri scenic river, the authority of the western area water supply authority, and water rates of
11 the western area water supply authority; to provide for budget section approval; to provide for a
12 state engineer study; to provide for an industrial commission study; to provide for a legislative
13 management study; to provide for reports; to provide a statement of legislative intent; to
14 designate funding; to provide for a transfer; to provide exemptions; to provide a contingent
15 effective date; to provide an effective date; to provide an expiration date; and to declare an
16 emergency.

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

18 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
19 as may be necessary, are appropriated from special funds derived from federal funds and other
20 income, to the state water commission for the purpose of defraying the expenses of the state
21 water commission, for the biennium beginning July 1, 2017, and ending June 30, 2019, as
22 follows:

23		Adjustments or	
24	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>

1	Administrative and support services	\$5,535,618	\$97,568	\$5,633,186
2	Water and atmospheric resources	<u>863,400,218</u>	<u>(146,859,929)</u>	<u>716,540,289</u>
3	Total all funds	\$868,935,836	(\$146,762,361)	\$722,173,475
4	Full-time equivalent positions	97.00	(4.00)	93.00

5 **SECTION 2. HEALTH INSURANCE INCREASE.** The appropriation in section 1 of this Act
6 includes the sum of \$257,498 of other funds, for increases in employee health insurance
7 premiums from \$1,130 to \$1,241 per month.

8 **SECTION 3. ADDITIONAL INCOME - APPROPRIATION - BUDGET SECTION**

9 **APPROVAL.** In addition to the amounts appropriated in section 1 of this Act, any additional
10 amounts in the resources trust fund and water development trust fund which become available
11 are appropriated, subject to budget section approval, to the state water commission for the
12 purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2017, and
13 ending June 30, 2019.

14 **SECTION 4. 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, 2019. 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 5. STATE WATER COMMISSION PROJECT FUNDING DESIGNATIONS -**
22 **TRANSFERS - BUDGET SECTION APPROVAL.**

- 23 1. Of the funds appropriated in the water and atmospheric resources line item in section
24 1 of this Act from funds available in the resources trust fund and water development
25 trust fund, \$298,875,000 is designated as follows:
- 26 a. \$120,125,000 for water supply;
 - 27 b. \$27,000,000 for rural water supply;
 - 28 c. \$136,000,000 for flood control; and
 - 29 d. \$15,750,000 for general water.
- 30 2. The funding designated in this section is for the specific purposes identified; however,
31 the state water commission may transfer funding among these items, subject to

1 budget section approval and upon notification to the legislative management's water
2 topics overview committee.

3 **SECTION 6. LEGISLATIVE INTENT - MOUSE RIVER FLOOD CONTROL PROJECT**

4 **FUNDING.** Except for funding provided during bienniums prior to the 2017-19 biennium, it is the
5 intent of the sixty-fifth legislative assembly that the state provide no more than \$193,000,000 of
6 state funding for Mouse River flood control projects within the city limits of Minot. It is the intent
7 of the sixty-fifth legislative assembly that the \$193,000,000 be made available during the
8 2017-19, 2019-21, 2021-23, and 2023-25 bienniums.

9 **SECTION 7. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY PROJECT -**

10 **BUDGET SECTION APPROVAL.** It is the intent of the sixty-fifth legislative assembly that the
11 state water commission provide, in the form of a grant, up to \$30,000,000, of which
12 \$17,000,000 is for the completion of the planning and permitting process and \$13,000,000 is to
13 initiate construction of phase one prioritized project features identified in accordance with
14 subsection 2 of section 8 of this Act, to the Garrison diversion conservancy district for the Red
15 River valley water supply project, for the biennium beginning July 1, 2017, and ending June 30,
16 2019. The Garrison diversion conservancy district must receive budget section approval prior to
17 changing any funding between designations identified in this section.

18 **SECTION 8. RED RIVER VALLEY WATER SUPPLY PROJECT - REPORT TO**

19 **LEGISLATIVE MANAGEMENT - BUDGET SECTION APPROVAL.** Any funding received by the
20 Garrison diversion conservancy district from the state water commission for the Red River
21 valley water supply project during the biennium beginning July 1, 2017, and ending June 30,
22 2019, is subject to the following requirements:

- 23 1. Any funding received for the completion of the planning and permitting process of the
24 Red River valley water supply project must result in the following accomplishments:
- 25 a. The completed Red River valley water supply plan document that will be the
26 basis and justification for project construction and must include alternative
27 selection, water supply needs, projected project costs, easement acquisitions,
28 environmental regulation compliance to include the Boundary Waters Treaty of
29 1909, and an implementation schedule;

- 1 b. Acquisition of all state and federal permits required for the construction of any
 - 2 project features intended to be constructed with funding provided during the
 - 3 2017-19 biennium;
 - 4 c. A signed bureau of reclamation water service contract agreeing to a minimum of
 - 5 one hundred sixty-five cubic feet per second over a minimum of forty years or
 - 6 equivalent to ensure an adequate water source for the project's needs;
 - 7 d. Prioritized project features for phase one construction; and
 - 8 e. A recommendation for funding options for all phases of the Red River valley
 - 9 water supply project.
- 10 2. Any funding received to initiate construction of phase one prioritized project features
 - 11 identified in subsection 1 may be spent and construction of phase one may begin only
 - 12 after the budget section receives and approves certification from the state water
 - 13 commission and the state engineer that all items listed in subsection 1 have been
 - 14 accomplished.
 - 15 3. Quarterly progress reports on the Red River valley water supply project from the
 - 16 Garrison diversion conservancy district to the water topics overview committee of the
 - 17 legislative management, during the 2017-18 interim.

18 **SECTION 9. WESTERN AREA WATER SUPPLY AUTHORITY - BANK OF NORTH**

19 **DAKOTA LOAN - REPORTS.** Notwithstanding section 5 of chapter 500 of the 2011 Session
20 Laws, the Bank of North Dakota shall consolidate the \$40,000,000 loan to the western area
21 water supply authority authorized in section 5 of chapter 20 of the 2013 Session Laws, the
22 \$50,000,000 loan to the western area water supply authority authorized in section 2 of chapter
23 500 of the 2011 Session Laws, and the \$25,000,000 loan from the general fund to the western
24 area water supply authority authorized in section 3 of chapter 500 of the 2011 Session Laws.
25 The terms and conditions of the consolidation loan must be negotiated by the western area
26 water supply authority and the Bank of North Dakota. The western area water supply authority
27 is not obligated to repay principal on loans from the resources trust fund for the period
28 beginning July 1, 2017, and ending June 30, 2018. The interest rate on the \$10,000,000 loan to
29 the western area water supply authority authorized in section 4 of chapter 500 of the 2011
30 Session Laws must be 2.5 percent on any outstanding balance remaining after the effective
31 date of this Act. The Bank of North Dakota shall report the terms of the consolidation loan upon

1 its completion to the legislative management's water topics overview committee during the
2 2017-18 interim. The western area water supply authority shall provide its monthly financial
3 statements and industrial sales to the legislative council for the legislative management's water
4 topics overview committee's review during the 2017-18 interim.

5 **SECTION 10. WESTERN AREA WATER SUPPLY AUTHORITY DEBT SERVICE**

6 **SHORTFALL - BUDGET SECTION APPROVAL.** If the western area water supply authority
7 defaults on its payment of the principal or interest on the consolidation loan provided for in
8 section 9 of this Act or the revenue bonds or other financing provided for in section 12 of this
9 Act, the Bank of North Dakota shall notify the legislative council, and the state water
10 commission shall provide a payment, subject to budget section approval, to the Bank of North
11 Dakota in an amount of the default as certified to the budget section by the Bank of North
12 Dakota.

13 **SECTION 11. APPROPRIATION - INDUSTRIAL COMMISSION STUDY - WESTERN**

14 **AREA WATER SUPPLY AUTHORITY - REPORT TO LEGISLATIVE MANAGEMENT.** There is
15 appropriated out of any moneys in the resources trust fund, in the state treasury, the sum of
16 \$150,000, or so much of the sum as may be necessary, to the industrial commission for the
17 purpose of conducting an independent study of the feasibility and desirability of the sale or
18 lease of the industrial water supply assets of the western area water supply authority, for the
19 period beginning with the effective date of this Act, and ending June 30, 2019. The study must
20 provide information regarding the financial impact to the western area water supply authority, its
21 members and customers, the financial viability of the authority, and options available to the
22 authority for debt servicing. The industrial commission may form a nonvoting advisory
23 committee chaired by the state engineer to provide input regarding the scope of the study and
24 to receive reports on the status of the study. The industrial commission shall report to the
25 legislative management's interim water topics overview committee on the results of the study by
26 June 1, 2018.

27 **SECTION 12. ACTIONS RESULTING FROM THE WESTERN AREA WATER SUPPLY**
28 **AUTHORITY STUDY.**

29 1. If the industrial commission determines, based on the study directed in section 11 of
30 this Act, that it is feasible and desirable to lease or sell the industrial water supply
31 assets of the western area water supply authority, the industrial commission shall

1 develop a timeline to complete the lease or the sale of the industrial water assets of
2 the western area water supply authority and report to the legislative management's
3 interim water topics overview committee.

4 2. If the industrial commission determines, based on the study directed in section 11 of
5 this Act, that it is not feasible and desirable to lease or sell the industrial water supply
6 assets of the western area water supply authority, notwithstanding section 5 of chapter
7 500 of the 2011 Session Laws, the western area water supply authority shall, with the
8 assistance of the industrial commission and the Bank of North Dakota, repay its
9 obligations to the Bank of North Dakota through the issuance of revenue bonds or
10 other financing options acceptable to the industrial commission and Bank of North
11 Dakota.

12 **SECTION 13. STATE ENGINEER - FLOOD HAZARD RISK MANAGEMENT STUDY -**
13 **ADDITIONAL INCOME - APPROPRIATION.** The water and atmospheric resources line item in
14 section 1 of this Act includes \$30,000 of which \$15,000 is from the resources trust fund and
15 \$15,000 of other funds received from Ward County, for the purpose of conducting a flood
16 hazard risk management framework study and demonstration in section 14 of this Act, for the
17 biennium beginning July 1, 2017, and ending June 30, 2019. The state engineer may seek
18 funding from federal, local, and private sector co-funding partnerships. Any fees collected from
19 data users and partners and any other funds from public or private sources, including federal
20 grants and county revenue contributions, are appropriated to the state engineer for the study
21 and for expanding the project to additional counties for the biennium beginning July 1, 2017,
22 and ending June 30, 2019.

23 **SECTION 14. LEGISLATIVE MANAGEMENT STUDY - FLOOD HAZARD RISK**
24 **MANAGEMENT.** During the 2017-18 interim, the legislative management shall study issues
25 related to the state's development of a statewide flood hazard risk management framework by
26 granting authority to the state engineer to perform a study and proof of concept demonstration
27 to implement statewide flood risk management capabilities for assessing, managing, and
28 reducing property-specific flood risk.

29 1. In performing the study and proof of concept demonstration, the state engineer may
30 leverage, coordinate, and partner with the North Carolina floodplain mapping program
31 and with Ward County to conduct the study and proof of concept demonstration. The

- 1 state engineer shall acquire and leverage data necessary to support the study and
2 proof of concept demonstration including:
- 3 a. Footprints and elevations from current and future light detection and ranging data
4 collections that meet federal emergency management agency risk mapping,
5 assessment, and planning standards;
 - 6 b. First floor elevations and elevation certificates from local planning and zoning
7 offices or light detection and ranging data;
 - 8 c. Parcel, address, and imagery data necessary for individual property flood hazard
9 identification, assessment, and reduction; and
 - 10 d. Any other data the state engineer deems necessary to meet the objectives in
11 creating the database.
- 12 2. To complete the pilot project, the state engineer shall:
- 13 a. Construct and maintain flood hazard and risk data in a spatial, relational
14 database;
 - 15 b. Disseminate flood hazard and risk data through a digital display environment
16 prompted through dynamic querying;
 - 17 c. Coordinate, incentivize, and partner with a least one county to obtain the
18 necessary parcel data and other data needed for this study and serve as the
19 repository for the property flood risk dataset;
 - 20 d. Establish a technical committee consisting of federal, state, local, and private
21 sector stakeholders and providers to the greatest extent possible to allow data
22 sharing, coordination, synergy, and partnering;
 - 23 e. Work with the North Carolina floodplain mapping program to incorporate the
24 property risk dataset into the multistate flood risk information system maintained
25 by North Carolina, augment the dataset with federal emergency management
26 agency digital flood insurance data, and assess any data or other gaps
27 preventing this state's full use of the system;
 - 28 f. Make the data publicly available on the state water commission's website in an
29 easily accessible and useable format;
 - 30 g. Provide technical assistance to data users, including reports and analysis as
31 needed; and

- 1 h. Work with the federal emergency management agency and the study county to
2 enable the communities and property owners to use the elevation, light detection
3 and ranging, and other data provided on the website to submit letters of map
4 amendment or revision to the federal emergency management agency.
- 5 3. The state engineer shall report to the legislative management as requested by the
6 legislative management. At the conclusion of the study, the state engineer shall
7 provide the following information to the legislative management:
- 8 a. A description of the engineer's current cooperative technical flood mapping
9 partnership with the federal emergency management agency and any additional
10 authority, staffing, and funding required to create a fully independent and
11 self-sustaining state flood mapping program in lieu of the federal emergency
12 management agency program, including the processing of letters of map change;
- 13 b. A detailed estimate of overall program costs and flood risk reductions of a
14 self-sustaining state flood mapping program; and
- 15 c. A county assessment of the private, county, state, and federal data and resources
16 that are currently available as compared to the resources that would be required
17 to fully use North Carolina's flood risk information system for flood risk
18 management, including recommendations for improvement or the statewide
19 expansion of the project established under this study and suggested funding
20 mechanisms and alternatives for data dissemination, which may include a
21 one-state online repository or the provision of data by local planning and zoning
22 offices.

23 **SECTION 15. AMENDMENT.** Section 57-51.1-07 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **57-51.1-07. Allocation of moneys in oil extraction tax development fund.**

26 Moneys deposited in the oil extraction tax development fund must be transferred monthly by
27 the state treasurer as follows:

- 28 1. Twenty percent must be allocated and credited to the sinking fund established for
29 payment of the state of North Dakota water development bonds, southwest pipeline
30 series, and any moneys in excess of the sum necessary to maintain the accounts
31 within the sinking fund and for the payment of principal and interest on the bonds must

1 be credited to a special trust fund, to be known as the resources trust fund. The
2 resources trust fund must be established in the state treasury and the funds therein
3 must be deposited and invested as are other state funds to earn the maximum amount
4 permitted by law which income must be deposited in the resources trust fund.
5 ~~Five~~Three percent of the amount credited to the resources trust fund must be
6 transferred no less than quarterly into the renewable energy development fund, not to
7 exceed three million dollars per biennium. One-half of one percent of the amount
8 credited to the resources trust fund must be transferred no less than quarterly into the
9 energy conservation grant fund not to exceed ~~one million~~ two hundred thousand
10 dollars per biennium. The principal and income of the resources trust fund may be
11 expended only pursuant to legislative appropriation and are available to:

- 12 a. The state water commission for planning for and construction of water-related
13 projects, including rural water systems. These water-related projects must be
14 those which the state water commission has the authority to undertake and
15 construct pursuant to chapter 61-02; and
- 16 b. The industrial commission for the funding of programs for development of
17 renewable energy sources; for studies for development of cogeneration systems
18 that increase the capacity of a system to produce more than one kind of energy
19 from the same fuel; for studies for development of waste products utilization; and
20 for the making of grants and loans in connection therewith.
- 21 c. The department of commerce for the funding of programs for development of
22 energy conservation and for the making of grants and loans relating to energy
23 conservation.

- 24 2. Twenty percent must be allocated to the common schools trust fund and foundation
25 aid stabilization fund as provided in section 24 of article X of the Constitution of North
26 Dakota.
- 27 3. Thirty percent must be allocated to the legacy fund as provided in section 26 of
28 article X of the Constitution of North Dakota.
- 29 4. Thirty percent must be allocated and credited to the state's general fund.

30 **SECTION 16. AMENDMENT.** Section 57-51.1-07 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **57-51.1-07. Allocation of moneys in oil extraction tax development fund.**

2 Moneys deposited in the oil extraction tax development fund must be transferred monthly by
3 the state treasurer as follows:

4 1. Twenty percent must be allocated and credited to the sinking fund established for
5 payment of the state of North Dakota water development bonds, southwest pipeline
6 series, and any moneys in excess of the sum necessary to maintain the accounts
7 within the sinking fund and for the payment of principal and interest on the bonds must
8 be credited to a special trust fund, to be known as the resources trust fund. The
9 resources trust fund must be established in the state treasury and the funds therein
10 must be deposited and invested as are other state funds to earn the maximum amount
11 permitted by law which income must be deposited in the resources trust fund. Three
12 percent of the amount credited to the resources trust fund must be transferred no less
13 than quarterly into the renewable energy development fund, not to exceed three
14 million dollars per biennium. One-half of one percent of the amount credited to the
15 resources trust fund must be transferred no less than quarterly into the energy
16 conservation grant fund not to exceed one million two hundred thousand dollars per
17 biennium. The principal and income of the resources trust fund may be expended only
18 pursuant to legislative appropriation and are available to:

- 19 a. The state water commission for planning for and construction of water-related
20 projects, including rural water systems. These water-related projects must be
21 those which the state water commission has the authority to undertake and
22 construct pursuant to chapter 61-02; and
- 23 b. The industrial commission for the funding of programs for development of
24 renewable energy sources; for studies for development of cogeneration systems
25 that increase the capacity of a system to produce more than one kind of energy
26 from the same fuel; for studies for development of waste products utilization; and
27 for the making of grants and loans in connection therewith.
- 28 c. The department of commerce for the funding of programs for development of
29 energy conservation and for the making of grants and loans relating to energy
30 conservation.

1 2. Twenty percent must be allocated to the common schools trust fund and foundation
2 aid stabilization fund as provided in section 24 of article X of the Constitution of North
3 Dakota.

4 3. Thirty percent must be allocated to the legacy fund as provided in section 26 of
5 article X of the Constitution of North Dakota.

6 4. Thirty percent must be allocated and credited to the state's general fund.

7 **SECTION 17. AMENDMENT.** Subsection 10 to section 61-02-02 of the North Dakota
8 Century Code as amended by section 3 of House Bill No. 1374, as approved by the sixty-fifth
9 legislative assembly, is amended and reenacted as follows:

10 10. "Water conveyance project" means any surface ~~or subsurface~~ drainage works, bank
11 stabilization, or snagging an clearing of water courses.

12 **SECTION 18. AMENDMENT.** Section 61-02-08 of the North Dakota Century Code as
13 amended by section 6 of House Bill No. 1374, as approved by the sixty-fifth legislative
14 assembly, is amended and reenacted as follows:

15 **61-02-08. Meetings of commission.**

16 The commission shall hold at least one meeting every two months at places as it, by
17 resolution, may provide. The governor shall serve as chairman, and the commission shall select
18 a member of the commission to serve as vice chairman. The chairman, or in the chairman's
19 absence or disability, the vice chairman of the commission, may issue a call for any meeting at
20 any time. The governor, ~~as chairman,~~ or governor's appointed representative shall preside at all
21 meetings of the commission ~~and in case of the governor's, and in case of the~~ absence or
22 disability ~~of the governor and governor's appointed representative,~~ the vice chairman shall
23 preside. ~~The seven appointed members of the commission shall select an appointed member to~~
24 ~~serve as vice chairman of the commission.~~

25 **SECTION 19. AMENDMENT.** Subsection 1 of section 61-02-78 of the North Dakota
26 Century Code is amended and reenacted as follows:

27 1. An infrastructure revolving loan fund is established on January 1, 2015, within the
28 resources trust fund to provide loans for water supply, flood protection, or other water
29 development and water management projects. Ten percent of oil extraction moneys
30 deposited in the resources trust fund, not to exceed a total deposit from oil extraction
31 moneys of twenty-six million dollars, are made available on a continuing basis for

1 making loans in accordance with this section. Accounts may be established in the
2 resources trust fund as necessary for its management and administration.

3 **SECTION 20. AMENDMENT.** Section 61-02-79 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-02-79. Bank of North Dakota - Line of credit.**

6 The Bank of North Dakota shall extend a line of credit not to exceed ~~two hundred seventy-~~
7 five million dollars at a rate ~~that of one and one-half percent over the three month London~~
8 interbank offered rate, but may not exceed ~~one and three-quarters~~three percent to the state
9 water commission. The state water commission shall repay the line of credit from funds
10 available in the resources trust fund, water development trust fund, or other funds, as
11 appropriated by the legislative assembly. The state water commission may access the line of
12 credit, as necessary, to provide funding as authorized by the legislative assembly for ~~water-~~
13 ~~supply projects in suspense, water supply projects identified in section 19 of chapter 54 of the~~
14 ~~2015 session laws, and~~ water supply projects approved before June 30, ~~2017~~2019, and flood
15 control projects that have approval for funding before June 30, ~~2017~~2019.

16 **SECTION 21.** The new section to chapter 61-03 of the North Dakota Century Code created
17 by section 12 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, is
18 amended and reenacted as follows:

19 **Economic analysis process required for certain projects.**

20 The state engineer shall develop an economic analysis process for water conveyance
21 projects and flood-related projects expected to cost more than ~~seven hundred fifty thousand~~one
22 million dollars, and a life cycle analysis process for municipal water supply projects. When the
23 state water commission is considering whether to fund a water conveyance project, flood-
24 related project, or water supply project, the state engineer shall review the economic analysis or
25 life cycle analysis, and inform the state water commission of the findings from the analysis and
26 review.

27 **SECTION 22. AMENDMENT.** Section 61-29-06 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **61-29-06. Management.**

30 Channelization, reservoir construction, or diversion other than for agricultural or_
31 recreational, or temporary use purposes and the dredging of waters within the confines of the

1 Little Missouri scenic river and all Little Missouri River tributary streams are expressly
2 prohibited. Flood control dikes may be constructed within the floodplain of the Little Missouri
3 River. Diking and riprapping for bank erosion control shall be permitted within the confines of
4 the Little Missouri scenic river. The construction of impoundments for any purpose on the Little
5 Missouri mainstream shall be prohibited.

6 This chapter shall in no way affect or diminish the rights of owners of the land bordering the
7 river to use the waters for domestic purposes, including livestock watering, or any other rights of
8 riparian landowners.

9 **SECTION 23. AMENDMENT.** Section 61-40-05 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-40-05. Authority of the western area water supply authority.**

12 In addition to authority declared under section 61-40-01, the board of directors of the
13 western area water supply authority may:

- 14 1. Sue and be sued in the name of the authority.
- 15 2. Exercise the power of eminent domain in the manner provided by title 32 or as
16 described in this chapter for the purpose of acquiring and securing any right, title,
17 interest, estate, or easement necessary or proper to carry out the duties imposed by
18 this chapter, and particularly to acquire the necessary rights in land for the
19 construction of an entire part of any pipeline, reservoir, connection, valve, pumping
20 installation, or other facility for the storage, transportation, or utilization of water and all
21 other appurtenant facilities used in connection with the authority. However, if the
22 interest sought to be acquired is a right of way for any project authorized in this
23 chapter, the authority, after making a written offer to purchase the right of way and
24 depositing the amount of the offer with the clerk of the district court of the county in
25 which the right of way is located, may take immediate possession of the right of way,
26 as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty
27 days after notice has been given in writing to the landowner by the clerk of the district
28 court that a deposit has been made for the taking of a right of way as authorized in this
29 subsection, the owner of the property taken may appeal to the district court by serving
30 a notice of appeal upon the acquiring agency, and the matter must be tried at the next

- 1 regular or special term of court with a jury unless a jury be waived, in the manner
2 prescribed for trials under chapter 32-15.
- 3 3. Accept funds, property, services, pledges of security, or other assistance, financial or
4 otherwise, from federal, state, and other public or private sources for the purpose of
5 aiding and promoting the construction, maintenance, and operation of the authority.
6 The authority may cooperate and contract with the state or federal government, or any
7 department or agency of state or federal government, or any city, water district, or
8 water system within the authority, in furnishing assurances and meeting local
9 cooperation requirements of any project involving treatment, control, conservation,
10 distribution, and use of water.
- 11 4. Cooperate and contract with the agencies or political subdivisions of this state or other
12 states, in research and investigation or other activities promoting the establishment,
13 construction, development, or operation of the authority.
- 14 5. Appoint and fix the compensation and reimbursement of expenses of employees as
15 the board determines necessary to conduct the business and affairs of the authority
16 and to procure the services of engineers and other technical experts, and to retain
17 attorneys to assist, advise, and act for the authority in its proceedings.
- 18 6. Operate and manage the authority to distribute water to authority members and others
19 within or outside the territorial boundaries of the authority and this state.
- 20 7. Hold, own, sell, or exchange any and all property purchased or acquired by the
21 authority. All money received from any sale or exchange of property must be deposited
22 to the credit of the authority and may be used to pay expenses of the authority.
- 23 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure,
24 bulk water sale or lease, which contracts may provide for payments to fund some or all
25 of the authority's costs of acquiring, constructing, or reconstructing one or more water
26 supply or infrastructure.
- 27 9. Acquire, construct, improve, and own water supply infrastructure, office and
28 maintenance space in phases, in any location, and at any time.
- 29 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial
30 use to persons within or outside the authority. The contracts may provide for payments
31 to fund some or all of the authority's costs of acquiring, constructing, or reconstructing

1 one or more water system projects, as well as the authority's costs of operating and
2 maintaining one or more projects, whether the acquisition, construction, or
3 reconstruction of any water supply project actually is completed and whether water
4 actually is delivered pursuant to the contracts. The contracts the cities, water districts,
5 and other entities that are members of the western area water supply authority are
6 authorized to execute are without limitation on the term of years.

7 11. Borrow money as provided in this chapter.

8 12. Make all contracts, execute all instruments, and do all things necessary or convenient
9 in the exercise of its powers or in the performance of its covenants or duties or in order
10 to secure the payment of its obligations, but an encumbrance, mortgage, or other
11 pledge of property of the authority may not be created by any contract or instrument.

12 13. Accept from any authorized state or federal agency loans or grants for the planning,
13 construction, acquisition, lease, or other provision of a project, and enter agreements
14 with the agency respecting the loans or grants. Other than state-guaranteed loans,
15 additional debt that may form the basis of a claim for territorial or franchise protection
16 for industrial water sales for oil and gas exploration and production may be acquired
17 by the authority or member entities only upon approval by the industrial commission
18 and the emergency commission.

19 14. Contract debts and borrow money, pledge property of the authority for repayment of
20 indebtedness, and provide for payment of debts and expenses of the authority.

21 15. Operate and manage the authority to distribute water to any out-of-state cities or water
22 systems that contract with the authority.

23 16. Accept, apply for, and hold water allocation permits.

24 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and
25 ratesetting regarding water sold by the authority. The authority may adopt a rate
26 structure with elevated rates set for project industrial water depot and lateral supplies
27 in recognition that a large component of the project expense is being incurred to meet
28 the demands of industrial users. The industrial water depot and lateral rate structure
29 must be approved in accordance with section 61-40-11.

30 18. Develop water supply systems; store and transport water; and provide, contract for,
31 and furnish water service for domestic, municipal, and rural water purposes; milling,

1 manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses;
2 and fix the terms and rates therefore. The authority may acquire, construct, operate,
3 and maintain dams, reservoirs, ground water storage areas, canals, conduits,
4 pipelines, tunnels, and any and all treatment plants, works, facilities, improvements,
5 and property necessary the same without any required public vote before taking
6 action.

7 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water
8 supplies without requiring any vote of the public on the projects or contracts. In relation
9 to the initial construction of the system and for the purposes of entering a contract with
10 the authority, municipalities are exempt from the public voting requirements or water
11 contract duration limitations otherwise imposed by section 40-33-16.

12 20. Accept assignment by member entities of contracts that obligate member entities to
13 provide a water supply, contracts that relate to construction of water system
14 infrastructure, or other member entity contracts that relate to authorities transferred to
15 the authority under this chapter.

16 21. Issue revenue bonds to repay its loan obligations to the Bank of North Dakota. For the
17 purpose of issuing such revenue bonds, the provisions of chapters 40-35 and 40-36
18 apply to the extent necessary and consistent with section 12 of this Act.

19 **SECTION 24. AMENDMENT.** Section 61-40-11 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **61-40-11. Water rates.**

22 ~~The authority shall develop an industrial water depot and lateral retail rate and present the~~
23 ~~rate to the industrial commission for approval. Any industrial water depot and lateral rate~~
24 ~~adjustment must have approval of the industrial commission before going into effect~~The
25 industrial commission may authorize the authority to contract at competitive, floating, market
26 rates for industrial water depot and lateral retail sales. The authority shall provide a report on
27 the rates to the commission and legislative management's water topics overview committee on
28 a regular basis. The authority shall develop domestic water rates that must include all costs for
29 operation, maintenance, and operating and capital reserves, and debt repayment of all
30 infrastructure managed or constructed by the authority, with the exception of the costs identified
31 in section 61-40-10 which are paid for by industrial water depot and lateral sales.

1 **SECTION 25. TRANSFER - INFRASTRUCTURE REVOLVING LOAN FUND TO**

2 **RESOURCES TRUST FUND.** On July 1, 2017, the state treasurer shall transfer any oil
3 extraction moneys exceeding \$26,000,000 which have been deposited in the infrastructure
4 revolving loan fund from the infrastructure revolving loan fund to the resources trust fund.

5 **SECTION 26. LEGISLATIVE MANAGEMENT STUDY - OIL AND GAS INDUSTRIAL**

6 **WATER USE.** During the 2017-18 interim, the legislative management shall study industrial
7 water use of the oil and gas industry. The study must include the recapture of water used in
8 fracking, the recycling of water used in fracking, and other oil and gas activities, fracking
9 methods which do not require the use of water, and taxes or fees other states charge for water
10 used in the oil and gas industry.

11 **SECTION 27. STATE WATER COMMISSION - 2019-21 BIENNIUM BUDGET.** The state
12 water commission, in accordance with section 54-44.1-04, shall prepare its 2019-21 biennium
13 budget request and the office of management and budget shall prepare the draft appropriations
14 Act under section 54-44.1-16 for the state water commission for consideration by the sixty-sixth
15 legislative assembly with funding provided separately in a salaries and wages line item,
16 operating expenses line item, capital assets line item, project carryover line item, new projects
17 line item, and any additional line items as determined necessary by the commission or the office
18 of management and budget. The state water commission shall present funding for projects in a
19 manner consistent with the funding designations identified in section 5 of this Act, for the
20 2019-21 biennium.

21 **SECTION 28. EFFECTIVE DATE - EXPIRATION DATE.** Section 15 of this Act becomes
22 effective on August 1, 2017, is effective through July 31, 2019, and after that date is ineffective.
23 Section 16 of this Act becomes effective on August 1, 2019. Sections 17, 18, and 21 of this Act
24 become effective on August 1, 2017.

25 **SECTION 29. CONTINGENT EFFECTIVE DATE.** Section 23 of this Act is contingent on
26 certification by the industrial commission to the legislative council that the industrial commission
27 has determined the western area water supply authority shall, with the assistance of the
28 industrial commission and the Bank of North Dakota, repay its obligations to the Bank of North
29 Dakota through the issuance of revenue bonds, as provided under subsection 2 of section 12 of
30 this Act.

1 **SECTION 30. EMERGENCY.** Sections 9, 10, 11, 12, 22, 23, and 29 of this Act are declared
2 to be an emergency measure.