

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2020

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 amend and reenact subsection 3 of section 61-02-78 and section 61-02-79 of
3 the North Dakota Century Code, relating to the infrastructure revolving loan fund and the
4 authorization of a Bank of North Dakota line of credit; to provide for Red River valley water
5 supply requirements; to provide an exemption; to provide for a report to the legislative
6 management; ~~and to provide conditions on appropriations;~~ to provide a statement of legislative
7 intent; to provide for a pilot project; and to declare an emergency.

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

9 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
10 as may be necessary, are appropriated from special funds derived from federal funds and other
11 income, to the state water commission for the purpose of defraying the expenses of the state
12 water commission, for the ~~biennium period~~ beginning ~~July 1, 2019~~ with the effective date of this
13 Act, and ending June 30, 2021, as follows:

		Adjustments or	
	Base Level	Enhancements	Appropriation
16 Salaries and wages	\$19,659,298	\$173,833	\$19,833,131
17 Operating expenses	58,044,691	(14,188,938)	43,855,753
18 Capital assets	124,819,442	23,119,316	147,938,758
19 Project carryover	274,867,897	33,465,921	308,333,818
20 New projects	169,782,147	(169,782,147)	0
21 Water supply – grants	0	115,000,000	115,000,000
22 Rural water supply – grants	0	30,000,000	30,000,000
23 Flood control – grants	0	145,000,000	145,000,000
24 General water – grants	0	35,255,000	35,255,000

1	Total special funds	\$647,173,475	\$198,042,985	\$845,216,460
2	Full-time equivalent positions	93.00	(3.00)	90.00
3	Salaries and wages	\$19,659,298	\$172,688	\$19,831,986
4	Operating expenses	58,044,691	11,711,062	69,755,753
5	Capital assets	124,819,442	56,119,316	180,938,758
6	Project carryover	274,867,897	33,465,921	308,333,818
7	New projects	169,782,147	(169,782,147)	0
8	Water supply - grants	0	128,000,000	128,000,000
9	Rural water supply - grants	0	37,200,000	37,200,000
10	Fargo area flood control including the	0	66,500,000	66,500,000
11	Fargo Moorhead diversion			
12	Mouse River flood control	0	82,500,000	82,500,000
13	Flood control projects other than Fargo	0	48,000,000	48,000,000
14	area flood control including the Fargo			
15	Moorhead diversion			
16	General water - grants	0	27,093,776	27,093,776
17	Total special funds	\$647,173,475	\$320,980,616	\$968,154,091
18	Full-time equivalent positions	93.00	(3.00)	90.00

SECTION 2. ONE-TIME FUNDING - REPORT TO THE SIXTY-SEVENTH LEGISLATIVE

ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

23	<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
24	Line of credit - Bank of North Dakota	\$75,000,000	\$75,000,000
25	Total all funds	\$75,000,000	\$75,000,000
26	Line of credit - Bank of North Dakota	\$75,000,000	\$75,000,000
27	Payoff of outstanding debt	0	25,900,000
28	Total special funds	\$75,000,000	\$100,900,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The state water commission shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the

1 ~~biennium~~period beginning ~~July 1, 2019~~with the effective date of this Act, and ending June 30,
2 2021.

3 **SECTION 3. EXEMPTION - GRANTS - WATER-RELATED PROJECTS - CARRYOVER**

4 **AUTHORITY.** Section 54-44.1-11 does not apply to funding for grants or water-related projects
5 included in the project carryover~~and new projects~~, water supply - grants, rural water supply -
6 grants, Fargo area flood control including the Fargo Moorhead diversion, Mouse River flood
7 control, flood control projects other than Fargo area flood control including the Fargo Moorhead
8 diversion, and general water - grants line items in section 1 of this Act. However, this exclusion
9 is only in effect for two years after June 30, 2021. Any unexpended funds appropriated from the
10 resources trust fund after that period has expired must be transferred to the resources trust fund
11 and any unexpended funds appropriated from the water development trust fund after that period
12 has expired must be transferred to the water development trust fund.

13 **SECTION 4. ADDITIONAL INCOME - APPROPRIATION - BUDGET SECTION**

14 **APPROVAL.** In addition to the amounts appropriated in section 1 of this Act, any additional
15 amounts in the resources trust fund and water development trust fund which become available
16 are appropriated, subject to budget section approval, to the state water commission for the
17 purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2019, and
18 ending June 30, 2021. Before approving any request, the budget section shall determine:

- 19 1. Approving additional appropriations will not negatively affect the sixty-seventh
20 legislative assembly's ability to address water-related needs;
- 21 2. The proposed use of the additional income complies with legislative intent; and
- 22 3. The proposed use of the additional income will not result in future funding
23 commitments.

24 **SECTION 5. CONDITION ON FARGO AREA FLOOD CONTROL LINE ITEM.** The
25 \$66,500,000 appropriated to the state water commission for Fargo area flood control including
26 the Fargo Moorhead diversion in section 1 of this Act for the period beginning with the effective
27 date of this Act, and ending June 30, 2021, may be used only for Fargo area flood control
28 projects including the Fargo Moorhead diversion, and the appropriation of those funds is
29 conditioned on having no other funds appropriated in section 1 being expended on Fargo area
30 flood control including the Fargo Moorhead diversion. This condition does not prohibit the use of

funds appropriated for project carryover in section 1 of this Act for Fargo area flood control projects, subject to section 7 of this Act.

SECTION 6. CONDITION ON OTHER SECTION 1 LINE ITEMS. The \$593,320,273 appropriated to the state water commission for salaries and wages, operating expenses, capital assets, water supply - grants, rural water supply - grants, Mouse River flood control, flood control projects other than Fargo area flood control including the Fargo Moorhead diversion, and general water - grants in section 1 of this Act for the period beginning with the effective date of this Act, and ending June 30, 2021, may be used only for salaries and wages, operating expenses, capital assets, water supply - grants, rural water supply - grants, Mouse River flood control, flood control projects other than Fargo area flood control including the Fargo Moorhead diversion, and general water - grants, respectively, and the appropriation of those funds is conditioned on the funds not being expended on Fargo area flood control projects including the Fargo Moorhead diversion.

SECTION 7. CONDITION ON PROJECT CARRYOVER FUNDS. The \$308,333,818 appropriated to the state water commission for project carryover in section 1 of this Act for the period beginning with the effective date of this Act, and ending June 30, 2021, may be used only for project carryover, and the appropriation of those funds is conditioned on having no more than the amount the state water commission approved for Fargo area flood control including the Fargo Moorhead diversion by April 1, 2019, expended from the project carryover funds on Fargo area flood control including the Fargo Moorhead diversion.

SECTION 8. CONDITION ON APPROPRIATIONS. The \$66,500,000 appropriated to the state water commission for Fargo area flood control including the Fargo Moorhead diversion in section 1 of this Act and the amount the state water commission approved for Fargo area flood control including the Fargo Moorhead diversion by April 1, 2019, which amount is included in project carryover funds appropriated in section 1 of this Act, may not be used for any work under plan B for the Fargo Moorhead diversion project; except for constructing or repairing levees and dikes and purchasing land, easements, and options or rights of first refusal to purchase land, necessary for flood control; until:

1. The federal court injunction on plan B is modified to allow construction of plan B to continue;

2. The Congress of the United States appropriates federal funds for construction of plan B;
3. The state engineer approves the mitigation plan for plan B;
4. The office of state engineer issues all necessary permits the state engineer requires for plan B; and
5. The Minnesota state legislature appropriates funds for construction of plan B.

SECTION 9. LEGISLATIVE INTENT - FARGO FLOOD CONTROL PROJECT FUNDING. It is the intent of the sixty-sixth legislative assembly that the state provide a portion of the local cost-share of Fargo flood control projects, including constructing a federally authorized Fargo flood control project, and that total Fargo flood control project funding to be provided by the state not exceed ~~\$703,000,000~~\$750,000,000, which includes \$120,000,000 originally designated for Fargo interior flood control. It is the intent of the sixty-sixth legislative assembly that the ~~\$332,500,000~~\$379,500,000 yet to be designated by the state for the Fargo flood control project be made available in ~~equal installments over the next five bienniums, beginning July 1, 2019~~installments as follows: \$66,500,000 during the 2019-21, 2021-23, 2023-25, 2025-27, and 2027-29 bienniums, and \$47,000,000 during the 2029-31 biennium.

~~**SECTION 6. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY PROJECT - REPORT TO LEGISLATIVE MANAGEMENT.** It is the intent of the sixty-sixth legislative assembly that the state water commission provide, in the form of a grant, up to \$50,000,000 to the Garrison Diversion Conservancy District for the Red River valley water supply project, for the biennium beginning July 1, 2019, and ending June 30, 2021. It is further the intent of the sixty-sixth legislative assembly that the state water commission provide state funding at an eighty percent state cost-share to the Garrison Diversion Conservancy District for the Red River valley water supply project after June 30, 2021. The Garrison Diversion Conservancy District shall report on a regular basis to the legislative management's water topics overview committee during the 2019-20 interim regarding the progress of the Red River valley water supply project.~~

SECTION 10. FARGO FLOOD CONTROL PROJECT DOWNSTREAM IMPACT MITIGATION. The Fargo Moorhead metropolitan flood risk management project operations may not cause a downstream federal emergency management agency accredited flood protection system in North Dakota to lose its accreditation. The metropolitan flood diversion authority shall take reasonable measures to mitigate downstream impacts to accredited flood protection

1 systems, existing as of April 1, 2019, located in North Dakota bordering the Red River resulting
2 from the operations of the Fargo Moorhead diversion. For purposes of this section, negative
3 downstream impacts to accredited flood protection systems are caused when the water surface
4 profile passing through such systems is raised by more than one-tenth of one foot for the one
5 hundred-year event or when the ability of the accredited flood protection system to protect
6 against a two hundred-year or five hundred-year event is compromised. The metropolitan flood
7 diversion authority shall collaborate with the state engineer and accredited flood protection
8 systems in North Dakota to implement this requirement.

9 **SECTION 11. LEGISLATIVE INTENT - MOUSE RIVER FLOOD CONTROL PROJECT**

10 **FUNDING.** Except for funding provided during bienniums prior to the 2017-19 biennium, it is the
11 intent of the sixty-sixth legislative assembly that the state provide no more than \$193,000,000 of
12 state funding for Mouse River flood control projects within the city limits of Minot. It is the intent
13 of the sixty-sixth legislative assembly that the \$193,000,000 be made available during the
14 2017-19, 2019-21, 2021-23, and 2023-25 bienniums. It is the intent of the sixty-sixth legislative
15 assembly that of the \$193,000,000, the state provide \$57,713,284 during the 2017-19 biennium
16 and that the \$135,286,716 yet to be designated by the state for the Mouse River flood control
17 projects, within the city limits of Minot, be provided during the 2019-21, 2021-23, and 2023-25
18 bienniums.

19 **SECTION 12. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY**

20 **PROJECT - REPORT TO LEGISLATIVE MANAGEMENT - APPLICATION.** It is the intent of
21 the sixty-sixth legislative assembly that the state water commission provide, in the form of a
22 grant, up to \$13,000,000, to the Garrison Diversion Conservancy District for the Red River
23 valley water supply project, to initiate construction of phase one prioritized project features
24 identified in accordance with subsections 2 and 3 of section 14 of this Act, for the period
25 beginning with the effective date of this Act, and ending June 30, 2021. The Garrison Diversion
26 Conservancy District shall report on a regular basis to the legislative management's water
27 topics overview committee during the 2019-20 interim regarding the progress of the Red River
28 valley water supply project. The provisions of section 13 of this Act do not apply to the funding
29 referenced in this section.

30 **SECTION 13. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY PROJECT.**

31 It is the intent of the sixty-sixth legislative assembly that the state water commission provide no

more than \$30,000,000 to the Garrison Diversion Conservancy District for the Red River valley water supply project during the 2019-21 biennium and 2021-23 biennium and that the state funding be provided at a seventy-five percent state cost-share.

SECTION 14. RED RIVER VALLEY WATER SUPPLY PROJECT - REPORT TO LEGISLATIVE MANAGEMENT - BUDGET SECTION APPROVAL. Any funding received by the Garrison Diversion Conservancy District from the state water commission for the Red River valley water supply project during the 2017-19 biennium and the biennium beginning July 1, 2019, and ending June 30, 2021, is subject to the following requirements:

1. Any funding received for the completion of the planning and permitting process of the Red River valley water supply project must result in the following accomplishments:
 - a. The completed Red River valley water supply plan document, which will be the basis and justification for project construction, must include alternative selection, water supply needs, projected project costs, easement acquisitions, environmental regulation compliance to include issuance of a final national pollutant discharge elimination system permit, and acquisition of all other state and federal permits required for the construction of any project features intended to be constructed with funding provided during the 2017-19 biennium and the 2019-21 biennium;
 - b. A signed bureau of reclamation water service contract agreeing to a minimum of one hundred sixty-five cubic feet per second over a minimum of forty years or equivalent to ensure an adequate water source for the project's needs;
 - c. Prioritized project features for phase one construction; and
 - d. A recommendation of funding options for all phases of the Red River valley water supply project.
2. The state water commission shall review any associated appeals or litigation before releasing any funds for the project.
3. Any funding received to initiate construction of phase one prioritized project features identified in subsection 1 may be spent and construction of phase one may begin only after the budget section receives and approves certification from the state water commission and the state engineer that all items listed in subsection 1 have been accomplished.

4. Quarterly progress reports on the Red River valley water supply project from the Garrison Diversion Conservancy District to the water topics overview committee of the legislative management, during the 2019-21 interim.

SECTION 15. PILOT PROJECT - IMPLEMENTATION OF A BASINWIDE PLAN -

REPORT TO THE LEGISLATIVE MANAGEMENT. Up to \$1,000,000 of the \$48,000,000 appropriated to the state water commission for flood control projects other than Fargo area flood control including the Fargo Moorhead diversion in section 1 of this Act for the period beginning with the effective date of this Act, and ending June 30, 2021, may be used to provide grants under the pilot project in this section.

1. If all the water resource districts and joint water resource districts in a basin develop a basinwide water plan identifying water conveyance, flood control, and other water projects to be undertaken in the basin, the districts jointly may apply to the state water commission for a grant of up to \$1,000,000 for implementation of the plan. The state water commission may select a basinwide plan submitted under this subsection for funding and enter into one cooperative agreement with the water resource districts and joint water resource districts that submitted the plan.
2. The cooperative agreement must include the amount of funding the state water commission will provide, the applicable cost-share requirements, a prohibition on using funds provided under the agreement for planning or any purpose other than implementation of the basinwide plan, and the obligations of the state water commission and each water resource district and joint water resource district in the basin in implementing the basinwide plan. The agreement also must provide for monitoring and oversight of the basinwide plan's implementation.
3. The state water commission shall report to the legislative management on the results of this pilot project no later than August 1, 2020.

SECTION 16. AMENDMENT. Subsection 3 of section 61-02-78 of the North Dakota Century Code is amended and reenacted as follows:

3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made

under this section must be made ~~at an interest rate of one and one-half percent~~at the same interest rate as the revolving loan fund established under chapters 61-28.1 and 61-28.2.

SECTION 17. AMENDMENT. Section 61-02-79 of the North Dakota Century Code is amended and reenacted as follows:

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

The Bank of North Dakota shall extend a line of credit not to exceed seventy-five million dollars at a rate of one and one-half percent over the three month London interbank offered rate, but may not exceed three percent to the state water commission. The state water commission shall repay the line of credit from funds available in the resources trust fund, water development trust fund, or other funds, as appropriated by the legislative assembly. The state water commission may access the line of credit, as necessary, to provide funding as authorized by the legislative assembly for water supply projects approved before June 30, ~~2019~~2021, and flood control projects that have approval for funding before June 30, ~~2019~~2021.

SECTION 18. EMERGENCY. This Act is declared to be an emergency measure.