

**FIRST ENGROSSMENT
with House Amendments
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 section 61-02-79 of the North Dakota Century Code,
3 relating to the authorization of a Bank of North Dakota line of credit; to provide for Red River
4 valley water supply requirements; to provide an exemption; to provide for a report to the
5 legislative management; to provide conditions on appropriations; to provide statements of
6 legislative intent; and to declare an emergency.

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

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

		Adjustments or	
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
14 Salaries and wages	\$19,659,298	\$172,688	\$19,831,986
16 Operating expenses	58,044,691	11,711,062	69,755,753
17 Capital assets	124,819,442	56,119,316	180,938,758
18 Project carryover	274,867,897	33,465,921	308,333,818
19 New projects	169,782,147	(169,782,147)	0
20 Water supply - grants	0	128,000,000	128,000,000
21 Rural water supply - grants	0	37,200,000	37,200,000
22 Fargo area flood control including the	0	66,500,000	66,500,000
23 Fargo Moorhead diversion			
24 Mouse River flood control	0	82,500,000	82,500,000

1	Flood control projects other than Fargo	0	48,000,000	48,000,000
2	area flood control including the Fargo			
3	Moorhead diversion			
4	General water - grants	<u>0</u>	<u>27,093,776</u>	<u>27,093,776</u>
5	Total special funds	\$647,173,475	\$320,980,616	\$968,154,091
6	Full-time equivalent positions	93.00	(3.00)	90.00

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

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

11	<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
12	Line of credit - Bank of North Dakota	\$75,000,000	\$75,000,000
13	Payoff of outstanding debt	<u>0</u>	<u>25,900,000</u>
14	Total special funds	\$75,000,000	\$100,900,000

15 The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget
16 for the 2019-21 biennium. The state water commission shall report to the appropriations
17 committees of the sixty-seventh legislative assembly on the use of this one-time funding for the
18 period beginning with the effective date of this Act, and ending June 30, 2021.

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

20 **AUTHORITY.** Section 54-44.1-11 does not apply to funding for grants or water-related projects
21 included in the project carryover, water supply - grants, rural water supply - grants, Fargo area
22 flood control including the Fargo Moorhead diversion, Mouse River flood control, flood control
23 projects other than Fargo area flood control including the Fargo Moorhead diversion, and
24 general water - grants line items in section 1 of this Act. However, this exclusion is only in effect
25 for two years after June 30, 2021. Any unexpended funds appropriated from the resources trust
26 fund after that period has expired must be transferred to the resources trust fund and any
27 unexpended funds appropriated from the water development trust fund after that period has
28 expired must be transferred to the water development trust fund.

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

30 **APPROVAL.** In addition to the amounts appropriated in section 1 of this Act, any additional
31 amounts in the resources trust fund and water development trust fund which become available

are appropriated, subject to budget section approval, to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2019, and ending June 30, 2021. Before approving any request, the budget section shall determine:

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

SECTION 5. CONDITION ON FARGO AREA FLOOD CONTROL LINE ITEM. 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 for the period beginning with the effective date of this Act, and ending June 30, 2021, may be used only for Fargo area flood control projects including the Fargo Moorhead area diversion, and the appropriation of those funds is conditioned on having no other funds appropriated in section 1 being expended on Fargo area 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

1 only for project carryover, and the appropriation of those funds is conditioned on having no
2 more than the amount the state water commission approved for Fargo area flood control
3 including the Fargo Moorhead diversion by April 1, 2019, expended from the project carryover
4 funds on Fargo area flood control including the Fargo Moorhead diversion.

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

- 13 1. The federal court injunction on Plan B is modified to allow construction of Plan B to
14 continue;
- 15 2. The Congress of the United States appropriates federal funds for construction of
16 Plan B;
- 17 3. The state engineer approves the mitigation plan for Plan B;
- 18 4. The office of state engineer issues all necessary permits the state engineer requires
19 for Plan B; and
- 20 5. The Minnesota state legislature appropriates funds for construction of Plan B.

21 **SECTION 9. LEGISLATIVE INTENT - FARGO FLOOD CONTROL PROJECT FUNDING.** It
22 is the intent of the sixty-sixth legislative assembly that the state provide a portion of the local
23 cost-share of Fargo flood control projects, including constructing a federally authorized Fargo
24 flood control project, and that total Fargo flood control project funding to be provided by the
25 state not exceed \$703,000,000, which includes \$120,000,000 originally designated for Fargo
26 interior flood control. It is the intent of the sixty-sixth legislative assembly that the \$332,500,000
27 yet to be designated by the state for the Fargo flood control project be made available in equal
28 installments over the next five bienniums, beginning July 1, 2019.

29 **SECTION 10. FARGO FLOOD CONTROL PROJECT DOWNSTREAM IMPACT**
30 **MITIGATION.** The Fargo Moorhead metropolitan flood risk management project operations may
31 not cause a downstream federal emergency management agency accredited flood protection

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

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

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

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

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

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

2 It is the intent of the sixty-sixth legislative assembly that the state water commission provide no
3 more than \$30,000,000 to the Garrison Diversion Conservancy District for the Red River valley
4 water supply project during the 2019-21 biennium and 2021-23 biennium and that the state
5 funding be provided at a sixty percent state cost-share.

6 **SECTION 14. RED RIVER VALLEY WATER SUPPLY PROJECT - REPORT TO**

7 **LEGISLATIVE MANAGEMENT - BUDGET SECTION APPROVAL.** Any funding received by the
8 Garrison Diversion Conservancy District from the state water commission for the Red River
9 valley water supply project during the 2017-19 biennium and the biennium beginning July 1,
10 2019, and ending June 30, 2021, is subject to the following requirements:

- 11 1. Any funding received for the completion of the planning and permitting process of the
12 Red River valley water supply project must result in the following accomplishments:
 - 13 a. The completed Red River valley water supply plan document, which will be the
14 basis and justification for project construction, must include alternative selection,
15 water supply needs, projected project costs, easement acquisitions,
16 environmental regulation compliance to include issuance of a final national
17 pollutant discharge elimination system permit, and acquisition of all other state
18 and federal permits required for the construction of any project features intended
19 to be constructed with funding provided during the 2017-19 biennium and the
20 2019-21 biennium;
 - 21 b. A signed bureau of reclamation water service contract agreeing to a minimum of
22 one hundred sixty-five cubic feet per second over a minimum of forty years or
23 equivalent to ensure an adequate water source for the project's needs;
 - 24 c. Prioritized project features for phase one construction; and
 - 25 d. A recommendation of funding options for all phases of the Red River valley water
26 supply project.
- 27 2. The state water commission shall review any associated appeals or litigation before
28 releasing any funds for the project.
- 29 3. Any funding received to initiate construction of phase one prioritized project features
30 identified in subsection 1 may be spent and construction of phase one may begin only
31 after the budget section receives and approves certification from the state water

1 commission and the state engineer that all items listed in subsection 1 have been
2 accomplished.

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

6 **SECTION 15. AMENDMENT.** Section 61-02-79 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-02-79. Bank of North Dakota - Line of credit.**

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

17 **SECTION 16. EMERGENCY.** This Act is declared to be an emergency measure.