

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2020

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 create and enact a new subsection to section 11-37-02 and a new section to
3 chapter 61-04 of the North Dakota Century Code, relating to joint powers entities and
4 commerce authorities and metering certain water sources; to amend and reenact subsection 2
5 of section 11-37-03, section 11-37-04, subsection 8 of section 11-37-06, and subsection 1 of
6 section 11-37-08 of the North Dakota Century Code and section 7 of chapter 20 of the 2009
7 Session Laws, relating to conversion of joint powers entities to commerce authorities and
8 additional powers of commerce authorities and Fargo flood control project funding; to provide
9 exemptions; to provide a transfer; to repeal section 5 of chapter 535 of the 1999 Session Laws,
10 relating to pledge of revenues from the Grand Forks corporate center; to provide legislative
11 intent; to provide for retroactive application; to provide for application; to provide an expiration
12 date; and to declare an emergency.

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

14 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
15 as may be necessary, are appropriated out of any moneys in the general fund in the state
16 treasury, not otherwise appropriated, and from special funds derived from federal funds and
17 other income, to the state water commission for the purpose of defraying the expenses of that
18 agency, for the biennium beginning with the effective date of this Act, and ending June 30, 2013,
19 as follows:

		Adjustments or	
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
22 Grants local cost-share	\$0	\$500,000	\$500,000
23 Beaver bay feasibility study	342,000	(342,000)	0
24 Administrative and support services	2,977,674	252,199	3,229,873

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1	Water and atmospheric resources	307,768,034	140,145,740	447,913,774
2	Federal stimulus funds	<u>0</u>	<u>7,271,773</u>	<u>7,271,773</u>
3	Total all funds	\$311,087,708	\$147,827,712	\$458,915,420
4	Less estimated income	<u>297,263,809</u>	<u>146,656,412</u>	<u>443,920,221</u>
5	Total general fund	\$13,823,899	\$1,171,300	\$14,995,199
6	Full-time equivalent positions	86.00	1.00	87.00

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

8 **SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding
 9 items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13
 10 one-time funding items included in the appropriation in section 1 of this Act:

11	<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
12	Federal stimulus funds	\$12,000,000	\$7,271,773
13	Ray/Tioga, Burke/Divide/Williams, Wildrose	<u>2,792,000</u>	<u>500,000</u>
14	and Stanley water projects		
15	Total special funds	\$14,792,000	\$7,771,773

16 The 2011-13 one-time funding amounts are not part of the entity's base budget for the 2013-15
 17 biennium. The state water commission shall report to the appropriations committees of the
 18 sixty-third legislative assembly on the use of the one-time funding for the biennium beginning
 19 July 1, 2011, and ending June 30, 2013.

20 **SECTION 3. SOVEREIGN LANDS ENFORCEMENT GRANT.** The administrative and
 21 support services line item in section 1 of this Act includes \$200,000 from the general fund that
 22 the state water commission shall provide as a grant to the game and fish department for law
 23 enforcement activities on sovereign lands in the state, for the biennium beginning July 1, 2011,
 24 and ending June 30, 2013.

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

26 **APPROVAL.** In addition to the amounts included in the estimated income line item in section 1
 27 of this Act, any additional amounts in the resources trust fund and water development trust fund
 28 that become available are appropriated to the state water commission for the purpose of
 29 defraying the expenses of that agency, for the biennium beginning July 1, 2011, and ending
 30 June 30, 2013. The state water commission shall request and receive budget section approval.

1 prior to the expenditure of any funds in excess of the \$447,913,774 of funding appropriated in
2 the water and atmospheric resources line item in section 1 of this Act.

3 **SECTION 5. GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY.**

4 Section 54-44.1-11 does not apply to funding for grants or water-related projects included in the
5 water and atmospheric resources line item in section 1 of this Act. However, this exclusion is
6 only in effect for two years after June 30, 2013. Any unexpended funds appropriated from the
7 resources trust fund after that period has expired must be transferred to the resources trust fund
8 and any unexpended funds appropriated from the water development trust fund after that period
9 has expired must be transferred to the water development trust fund.

10 **SECTION 6. AMENDMENT.** Section 7 of chapter 20 of the 2009 Session Laws is amended
11 and reenacted as follows:

12 **SECTION 7. FARGO FLOOD CONTROL PROJECT FUNDING - EXEMPTION.**

13 Of the funds appropriated in the water and atmospheric resources line item in
14 section 1 of this Act, \$45,000,000 is for Fargo flood control projects, for the biennium
15 beginning July 1, 2009, and ending June 30, 2011. Any funds not spent by June 30,
16 2011, are not subject to section 54-44.1-11 and must be continued into the next or
17 subsequent bienniums and may be expended only for Fargo flood control projects.
18 ~~These~~Except as otherwise provided, these funds may be used only for land purchases
19 and construction; including right-of-way acquisition costs and may not be used for the
20 purchase of dwellings. No more than ten percent of these funds may not be used for
21 administration, engineering, legal, planning, or other similar purposes; and are not
22 subject to the sixty-five percent funding requirement contained in Senate Bill No. 2316
23 (2009). The city of Fargo, Cass County, and the Cass County joint water resource
24 district must approve any expenditures made under this section. Costs incurred by
25 nonstate entities for dwellings or other real property that are not paid by state funds
26 are eligible for application by the nonstate entity for cost-sharing with the state.

27 **SECTION 7. FARGO FLOOD CONTROL PROJECT FUNDING - EXEMPTION.** Of the
28 funds appropriated in the water and atmospheric resources line item in section 1 of this Act,
29 \$30,000,000 is for Fargo flood control projects, for the biennium beginning July 1, 2011, and
30 ending June 30, 2013. Any funds not spent by June 30, 2013, are not subject to section
31 54-44.1-11 and must be continued into the next or subsequent bienniums and may be

1 expended only for Fargo flood control projects. Except as otherwise provided, these funds may
2 be used only for land purchases and construction, including right-of-way acquisition costs and
3 may not be used for the purchase of dwellings. No more than ten percent of these funds may be
4 used for engineering, legal, planning, or other similar purposes. The city of Fargo, Cass County,
5 and the Cass County joint water resource district must approve any expenditures made under
6 this section. Costs incurred by nonstate entities for dwellings or other real property that are not
7 paid by state funds are eligible for application by the nonstate entity for cost-sharing with the
8 state.

9 **SECTION 8. LEGISLATIVE INTENT - STATE WATER COMMISSION PROJECTS AND**
10 **GRANTS.** It is the intent of the sixty-second legislative assembly that of the funds appropriated
11 in the water and atmospheric resources line item in section 1 of this Act, the state water
12 commission provide funding for the following grants and projects, for the biennium beginning
13 with the effective date of this Act, and ending June 30, 2013:

14	Grant to wildlife services for animal control	\$250,000
15	Flood-related water projects in the	\$250,000
16	Nelson County water resource district	

17 ~~**SECTION 9. LEGISLATIVE INTENT - GARRISON DIVERSION CONSERVANCY**~~
18 ~~**DISTRICT.** It is the intent of the sixty-second legislative assembly that of the funds appropriated~~
19 ~~in the water and atmospheric resources line item in section 1 of this Act, the state water~~
20 ~~commission allocate no more than \$1,000,000 to the Garrison Diversion Conservancy District.~~

21 **SECTION 9.** A new subsection to section 11-37-02 of the North Dakota Century Code is
22 created and enacted as follows:

23 Provide a method to convert an existing joint powers entity to a commerce authority for
24 the purpose of achieving status as a political subdivision.

25 **SECTION 10. AMENDMENT.** Subsection 2 of section 11-37-03 of the North Dakota Century
26 Code is amended and reenacted as follows:

- 27 2. Two or more political subdivisions, whether in this state or in an adjoining state
28 provided that at least one political subdivision is in this state, may create by execution
29 of a joint agreement authorized by resolution of the governing body of each
30 participating subdivision, a commerce authority that may exercise its functions upon
31 the issuance by the secretary of state of a certificate of incorporation. Two or more

1 political subdivisions, that are parties to a joint powers agreement under chapter 54-40
2 or 54-40.3, may convert an existing joint powers entity to a commerce authority by
3 execution of a joint agreement authorized by resolution of the governing body of each
4 participating political subdivision. The governing bodies of the participating political
5 subdivisions shall appoint, pursuant to the joint agreement, no fewer than five persons
6 as commissioners of the commerce authority.

7 **SECTION 11. AMENDMENT.** Section 11-37-04 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **11-37-04. Filing of agreement and resolutions - Certificate of incorporation -**
10 **Beginning of corporate existence.**

11 The joint agreement, if applicable, and a certified copy of the resolution of each political
12 subdivision creating or agreeing to participate in a commerce authority, or converting an existing
13 joint powers entity to a commerce authority, must be filed with the secretary of state. If the
14 agreement and resolutions conform to the requirements of section 11-37-03, the secretary of
15 state shall issue a certificate of incorporation that states the name of the commerce authority
16 and the date of incorporation. The existence of the commerce authority as a political subdivision
17 of this state begins upon the issuance of the certificate of incorporation. The certificate of
18 incorporation is conclusive evidence of the existence of the commerce authority.

19 **SECTION 12. AMENDMENT.** Subsection 8 of section 11-37-06 of the North Dakota Century
20 Code is amended and reenacted as follows:

- 21 8. Establish the geographical boundaries of the commerce authority within or
22 coextensive with the geographical boundaries of one or more of the participating
23 political subdivisions, or coextensive with the geographical boundaries of the area to
24 be served by the commerce authority.

25 **SECTION 13. AMENDMENT.** Subsection 1 of section 11-37-08 of the North Dakota Century
26 Code is amended and reenacted as follows:

- 27 1. A commerce authority may borrow money and issue bonds, including refunding bonds,
28 in the form and upon the terms as it may determine, payable out of any revenues of
29 the commerce authority. If a commerce authority is formed by conversion of a joint
30 powers entity to a commerce authority under subsection 2 of section 11-37-03, the
31 commerce authority may borrow money and issue bonds to refinance existing

obligations of the participating political subdivisions without the provisions of subsection 8 as long as the existing obligations were incurred by the participating political subdivision for the benefit of the converted joint powers entity.

SECTION 14. A new section to chapter 61-04 of the North Dakota Century Code is created and enacted as follows:

Metering of certain water sources required - Rules.

The state engineer shall require permit holders to purchase and maintain remote metering devices for the metering of water used pursuant to a temporary, conditional, or perfected water permit and sold for oil and gas purposes. Except for nonpotable ground water used for enhanced oil recovery purposes and water uses of less than fifteen acre-feet per year, all other permitted and temporarily permitted industrial water supplies sold for oil and gas purposes are subject to the metering requirements of this section. The state engineer shall develop rules to provide:

1. The specifications for remote terminal water metering devices;
2. That metering be operational by July 1, 2012;
3. That meters be available for inspection by state water commission staff on a daily basis;
4. That meters be sealed and tamperproof;
5. That meters may be replaced only under supervision of the state engineer;
6. That the penalty for circumventing the provisions of this section must be a thirty-day suspension of the noncompliant permit; and
7. That subsequent violations within a year result in a doubling of the penalty for the prior violation.

SECTION 15. TRANSFER - PERMANENT OIL TAX TRUST FUND - 2009-11 BIENNIUM.

The office of management and budget shall transfer any unexpended funds appropriated from the permanent oil tax trust fund in chapter 25 of the 2009 Session Laws to the water commission fund at the end of the biennium beginning July 1, 2009, and ending June 30, 2011. For the purposes of this section, "end of the biennium" means thirty days after the close of the biennial period but prior to the cancellation of unexpended appropriations under section 54-44.1-11.

1 **SECTION 16. APPLICATION.** A commerce authority formed by the conversion of a joint
2 powers agreement under this Act remains a valid commerce authority after the expiration date
3 of this Act. Sections 9 through 13 of this Act do not grant any additional authority to exercise the
4 power of eminent domain or issue general obligation bonds to a commerce authority formed by
5 a conversion of a joint powers agreement under this Act.

6 **SECTION 17. EXPIRATION DATE.** Sections 9 through 13 of this Act are effective through
7 July 31, 2013, and after that date are ineffective.

8 **SECTION 18. REPEAL.** Section 5 of chapter 535 of the 1999 Session Laws is repealed.

9 **SECTION 19. RETROACTIVE APPLICATION.** Section 6 of this Act applies retroactively to
10 January 1, 2011.

11 **SECTION 20. EMERGENCY.** This Act is declared to be an emergency measure.