

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 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; ~~and to provide conditions on appropriations;~~ to provide a  
6 ~~statement~~statements of 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 ~~biennium period~~ beginning ~~July 1, 2019~~with the effective date of this  
12 Act, and ending June 30, 2021, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
15 <del>Salaries and wages</del>	<del>\$19,659,298</del>	<del>\$173,833</del>	<del>\$19,833,131</del>
16 <del>Operating expenses</del>	<del>58,044,691</del>	<del>(14,188,938)</del>	<del>43,855,753</del>
17 <del>Capital assets</del>	<del>124,819,442</del>	<del>23,119,316</del>	<del>147,938,758</del>
18 <del>Project carryover</del>	<del>274,867,897</del>	<del>33,465,921</del>	<del>308,333,818</del>
19 <del>New projects</del>	<del>169,782,147</del>	<del>(169,782,147)</del>	<del>0</del>
20 <del>Water supply grants</del>	<del>0</del>	<del>115,000,000</del>	<del>115,000,000</del>
21 <del>Rural water supply grants</del>	<del>0</del>	<del>30,000,000</del>	<del>30,000,000</del>
22 <del>Flood control grants</del>	<del>0</del>	<del>145,000,000</del>	<del>145,000,000</del>
23 <del>General water grants</del>	<del>0</del>	<del>35,255,000</del>	<del>35,255,000</del>
24 <del>Total special funds</del>	<del>\$647,173,475</del>	<del>\$198,042,985</del>	<del>\$845,216,460</del>

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

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

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

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

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

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

- 29 1. The federal court injunction on Plan B is modified to allow construction of Plan B to  
30 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, 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 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.

~~**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 systems, existing as of April 1, 2019, located in North Dakota bordering the Red River resulting from the operations of the Fargo Moorhead diversion. For purposes of this section, negative

1 downstream impacts to accredited flood protection systems are caused when the water surface  
2 profile passing through such systems is raised by more than one-tenth of one foot for the one  
3 hundred year event or when the ability of the accredited flood protection system to protect  
4 against a two hundred year or five hundred year event is compromised. The metropolitan flood  
5 diversion authority shall collaborate with the state engineer and accredited flood protection  
6 systems in North Dakota to implement this requirement.

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

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

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

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

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

29 It is the intent of the sixty-sixth legislative assembly that the state water commission provide no  
30 more than \$30,000,000 to the Garrison Diversion Conservancy District for the Red River valley

1 water supply project during the 2019-21 biennium and 2021-23 biennium and that the state  
2 funding be provided at a sixty percent state cost-share.

3 **SECTION 14. RED RIVER VALLEY WATER SUPPLY PROJECT - REPORT TO**  
4 **LEGISLATIVE MANAGEMENT - BUDGET SECTION APPROVAL.** Any funding received by the  
5 Garrison Diversion Conservancy District from the state water commission for the Red River  
6 valley water supply project during the 2017-19 biennium and the biennium beginning July 1,  
7 2019, and ending June 30, 2021, is subject to the following requirements:

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

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

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

6           **61-02-79. Bank of North Dakota - Line of credit.**

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

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