

**Sixty-second Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2011**

SENATE BILL NO. 2020  
(Appropriations Committee)  
(At the request of the Governor)

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

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

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

|                                     | <u>Base Level</u>  | <u>Adjustments or<br/>Enhancements</u> | <u>Appropriation</u> |
|-------------------------------------|--------------------|--|----------------------|
| Grants local cost-share             | \$0                | \$500,000                              | \$500,000            |
| Beaver bay feasibility study        | 342,000            | (342,000)                              | 0                    |
| Administrative and support services | 2,977,674          | 252,199                                | 3,229,873            |
| Water and atmospheric resources     | 307,768,034        | 140,645,740                            | 448,413,774          |
| Federal stimulus funds              | <u>0</u>           | <u>7,271,773</u>                       | <u>7,271,773</u>     |
| Total all funds                     | \$311,087,708      | \$148,327,712                          | \$459,415,420        |
| Less estimated income               | <u>297,263,809</u> | <u>147,156,412</u>                     | <u>444,420,221</u>   |
| Total general fund                  | \$13,823,899       | \$1,171,300                            | \$14,995,199         |
| Full-time equivalent positions      | 86.00              | 1.00                                   | 87.00                |

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

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

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

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

**SECTION 4. ADDITIONAL INCOME - APPROPRIATION - BUDGET SECTION APPROVAL.** In addition to the amounts included in the estimated income line item in section 1 of this Act, any additional amounts in the resources trust fund and water development trust fund that become available are appropriated to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013. The state water commission shall request and receive budget section approval prior to the expenditure of any funds in excess of the \$448,413,774 of funding appropriated in the water and atmospheric resources line item in section 1 of this Act.

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

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

**SECTION 7. FARGO FLOOD CONTROL PROJECT FUNDING - EXEMPTION.** Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act, \$45,000,000 is for Fargo flood control projects, for the biennium beginning July 1, 2009, and ending June 30, 2011. Any funds not spent by June 30, 2011, are not subject to section 54-44.1-11 and must be continued into the next or subsequent bienniums and may be expended only for Fargo flood control projects. ~~These~~Except as otherwise provided, these funds may be used only for land purchases and construction; including right-of-way acquisition costs and may not be used for the purchase of dwellings. No more than ten percent of these funds may not be used for administration, engineering, legal, planning, or other similar purposes; and are not subject to the sixty-five percent funding requirement contained in Senate Bill No. 2316 (2009). The city of Fargo, Cass County, and the Cass County joint water resource district must approve any expenditures made under this section. Costs incurred by nonstate entities for dwellings or other real property that are not paid by state funds are eligible for application by the nonstate entity for cost-sharing with the state.

**SECTION 7. FARGO FLOOD CONTROL PROJECT FUNDING - EXEMPTION.** Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act, \$30,000,000 is for Fargo flood control projects, for the biennium beginning July 1, 2011, and ending June 30, 2013. Any funds not spent by June 30, 2013, are not subject to section 54-44.1-11 and must be continued into the next or subsequent bienniums and may be expended only for Fargo flood control projects. Except as otherwise provided, these funds may be used only for land purchases and construction, including right-of-way acquisition costs and may not be used for the purchase of dwellings. No more than ten percent of these funds may be used for engineering, legal, planning, or other similar purposes. The city of Fargo, Cass County, and the Cass County joint water resource district must approve any expenditures made under this section. Costs incurred by nonstate entities for dwellings or other real property that are not paid by state funds are eligible for application by the nonstate entity for cost-sharing with the state.

**SECTION 8. LEGISLATIVE INTENT - STATE WATER COMMISSION PROJECTS AND GRANTS.** It is the intent of the sixty-second legislative assembly that of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act, the state water commission provide funding for

the following grants and projects, for the biennium beginning with the effective date of this Act, and ending June 30, 2013:

|  |           |
|--|-----------|
| Grant to wildlife services for animal control                                | \$250,000 |
| Flood-related water projects in the<br>Nelson County water resource district | \$250,000 |

**SECTION 9. LEGISLATIVE INTENT - REMOTE METERING OF WATER PERMITS - FUNDING.** It is the intent of the sixty-second legislative assembly that of the funds appropriated from the resources trust fund in the water and atmospheric resources line item in section 1 of this Act, the state water commission provide up to \$500,000 for a reimbursement program for the purchase and installation of remote water metering devices, for the biennium beginning with the effective date of this Act and ending June 30, 2013.

**SECTION 10.** A new subsection to section 11-37-02 of the North Dakota Century Code is created and enacted as follows:

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

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

- Two or more political subdivisions, whether in this state or in an adjoining state provided that at least one political subdivision is in this state, may create by execution of a joint agreement authorized by resolution of the governing body of each participating subdivision, a commerce authority that may exercise its functions upon the issuance by the secretary of state of a certificate of incorporation. Two or more political subdivisions, which are parties to a joint powers agreement under chapter 54-40 or 54-40.3, may convert an existing joint powers entity to a commerce authority by execution of a joint agreement authorized by resolution of the governing body of each participating political subdivision. The governing bodies of the participating political subdivisions shall appoint, pursuant to the joint agreement, no fewer than five persons as commissioners of the commerce authority.

**SECTION 12. AMENDMENT.** Section 11-37-04 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 13. AMENDMENT.** Subsection 8 of section 11-37-06 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 14. AMENDMENT.** Subsection 1 of section 11-37-08 of the North Dakota Century Code is amended and reenacted as follows:

1. A commerce authority may borrow money and issue bonds, including refunding bonds, in the form and upon the terms as it may determine, payable out of any revenues of the commerce authority. If a commerce authority is formed by conversion of a joint powers entity to a commerce authority under subsection 2 of section 11-37-03, the 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 15.** 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 permitholders 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. The metering requirement must not apply to water permits used exclusively for irrigation purposes or to temporary permits that have been returned to irrigation use. 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.

The state engineer shall establish a reimbursement policy for the purchase and installation of the remote terminal water metering devices. Permitholders may apply to the state engineer for reimbursement of one-half of the cost of a qualifying metering device, including installation, up to a total reimbursement of five thousand dollars per metering device installed.

**SECTION 16. 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.

**SECTION 17. APPLICATION.** A commerce authority formed by the conversion of a joint powers agreement under this Act remains a valid commerce authority after the expiration date of this Act. Sections 10 through 14 of this Act do not grant any additional authority to exercise the power of eminent domain or issue general obligation bonds to a commerce authority formed by a conversion of a joint powers agreement under this Act.

**SECTION 18. EXPIRATION DATE.** Sections 10 through 14 of this Act are effective through July 31, 2013, and after that date are ineffective.

**SECTION 19. REPEAL.** Section 5 of chapter 535 of the 1999 Session Laws is repealed.

**SECTION 20. RETROACTIVE APPLICATION.** Section 6 of this Act applies retroactively to January 1, 2011.

**SECTION 21. EMERGENCY.** This Act is declared to be an emergency measure.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2020 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:        Yeas 43                      Nays 4                      Absent 0

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:        Yeas 83                      Nays 2                      Absent 9

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2011,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State