

**FIRST ENGROSSMENT  
with House Amendments  
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 provide exemptions; to create and enact three new sections to chapter 61-02 of  
3 the North Dakota Century Code, relating to a Bank of North Dakota line of credit, to the state  
4 water commission cost-share policy, and to North Dakota outdoor heritage fund grants and cost-  
5 share; to amend and reenact section 54-35-02.7 of the North Dakota Century Code, relating to  
6 the water topics overview committee; to provide legislative intent; to allocate funding; to provide  
7 contingent allocations; to provide for reports to the legislative assembly; to provide for legislative  
8 management reports; to provide for a state water commission study; and to declare an  
9 emergency.

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

11 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds  
12 as may be necessary, are appropriated from special funds derived from federal funds and other  
13 income, to the state water commission for the purpose of defraying the expenses of the state  
14 water commission, for the period beginning with the effective date of this Act, and ending  
15 June 30, 2017, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
18 Accrued leave payments	\$325,774	(\$325,774)	\$0
19 Administrative and support services	4,716,665	818,953	5,535,618
20 Water and atmospheric resources	<u>822,365,166</u>	<u>296,834,597</u>	<u>1,119,199,763</u>
21 Total all funds	\$827,407,605	\$297,327,776	\$1,124,735,381
22 Full-time equivalent positions	90.00	6.00	96.00

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

2       **SIXTY-FIFTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding  
3 items approved by the sixty-third legislative assembly for the 2013-15 biennium:

4	<u>One-Time Funding Description</u>	<u>2013-15</u>	<u>2015-17</u>
5	Excavator	\$243,200	\$0
6	Southwest water pipeline project	21,000,000	0
7	Grants for water	10,350,000	0
8	Office space renovation	<u>45,000</u>	<u>0</u>
9	Total all funds	\$31,638,200	\$0
10	Total special funds	<u>31,638,200</u>	<u>0</u>
11	Total general fund	\$0	\$0

12       **SECTION 3. SOVEREIGN LANDS ENFORCEMENT GRANT.** The administrative and  
13 support services line item in section 1 of this Act includes \$135,000 from the resources trust  
14 fund the state water commission shall provide as a grant to the game and fish department for  
15 law enforcement activities on sovereign lands in the state, for the biennium beginning July 1,  
16 2015, and ending June 30, 2017.

17       **SECTION 4. SOVEREIGN LANDS RECREATION USE GRANT.** The water and  
18 atmospheric resources line item in section 1 of this Act includes \$1,000,000 from the resources  
19 trust fund which the state water commission shall provide as a grant to the parks and recreation  
20 department for developing recreation opportunities on sovereign lands in the state, for the  
21 biennium beginning July 1, 2015, and ending June 30, 2017.

22       **SECTION 5. ADDITIONAL INCOME - APPROPRIATION - BUDGET SECTION**

23       **APPROVAL.** In addition to the amounts included in the estimated income line item in section 1  
24 of this Act, any additional amounts in the resources trust fund and water development trust fund  
25 which become available are appropriated, subject to budget section approval, to the state water  
26 commission for the purpose of defraying the expenses of that agency, for the biennium  
27 beginning July 1, 2015, and ending June 30, 2017.

28       **SECTION 6. GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY.**

29 Section 54-44.1-11 does not apply to funding for grants or water-related projects included in the  
30 water and atmospheric resources line item in section 1 of this Act. However, this exclusion is  
31 only in effect for two years after June 30, 2017. Any unexpended funds appropriated from the

1 resources trust fund after that period has expired must be transferred to the resources trust fund  
2 and any unexpended funds appropriated from the water development trust fund after that period  
3 has expired must be transferred to the water development trust fund.

4 **SECTION 7. BANK OF NORTH DAKOTA LOAN - BOND PAYMENTS.** The state water  
5 commission shall obtain a loan from the Bank of North Dakota in an amount that may not  
6 exceed \$56,000,000 for the purpose of paying off or defeasing outstanding bond issues, for the  
7 period beginning with the effective date of this Act, and ending June 30, 2017.

8 **SECTION 8. FARGO FLOOD CONTROL PROJECT FUNDING.** Funds designated by the  
9 sixty-first legislative assembly, the sixty-second legislative assembly, the sixty-third legislative  
10 assembly, and the sixty-fourth legislative assembly for Fargo flood control are available only for  
11 levee and dike protection until the Fargo flood control project receives federal authorization, a  
12 project partnership agreement is executed, a federal appropriation is provided for project  
13 construction, and the budget for the Fargo flood control project is approved by the state water  
14 commission.

15 **SECTION 9. FARGO FLOOD CONTROL PROJECT FUNDING AGREEMENT.** Prior to the  
16 state water commission expending any state cost-sharing funds, an advance funding  
17 agreement between the United States army corps of engineers and the local Fargo flood control  
18 sponsor must precede any state funding used to advance construction work considered to be a  
19 federal responsibility.

20 **SECTION 10. LEGISLATIVE INTENT - FARGO FLOOD CONTROL PROJECT FUNDING.**  
21 It is the intent of the sixty-fourth legislative assembly that the state provide one-half of the local  
22 cost-share of constructing a federally authorized Fargo flood control project and that total Fargo  
23 flood control project funding to be provided by the state not exceed \$450,000,000. It is further  
24 the intent of the sixty-fourth legislative assembly that state funding of \$120,000,000 be provided  
25 for Fargo interior flood control projects and that any funds spent for Fargo interior flood control  
26 projects after July 1, 2017, require fifty percent matching funds from the F-M area diversion  
27 authority. It is further the intent of the sixty-fourth legislative assembly that the \$266,000,000 yet  
28 to be designated by the state for the Fargo flood control projects be made available in equal  
29 installments over the next three bienniums.

30 **SECTION 11. APPROPRIATION - FARGO INTERIOR FLOOD PROTECTION - STATE**  
31 **DISASTER RELIEF FUND - FUNDING REQUIREMENTS.** There is appropriated out of any

1 moneys in the state disaster relief fund in the state treasury, the sum of \$30,000,000, or so  
2 much of the sum as may be necessary, for the purpose of providing funding for flood protection  
3 projects within city limits of Fargo for the period beginning with the effective date of this Act and  
4 ending June 30, 2017. The city of Fargo must apply for flood protection funding, but the state  
5 water commission may not deny an application unless the funds are not intended to be used in  
6 accordance with provisions of this section. The city of Fargo may use the funds for costs directly  
7 associated with completion of interior flood protection projects within its city limits, including  
8 engineering and legal fees, right-of-way acquisition costs, land purchases, home buyouts, and  
9 construction costs. Funds may not be used for general operations or administrative costs. Any  
10 funds designated by the sixty-fourth legislative assembly for Fargo interior flood control projects  
11 may be expended only for Fargo interior flood control projects, including levees and dikes until a  
12 federal appropriation is provided for project construction for the Fargo flood control project at  
13 which time it may be used for a federally authorized Fargo flood control project.

14 **SECTION 12. FARGO FLOOD CONTROL PROJECT FUNDING - EXEMPTION.** Of the  
15 funds appropriated in the water and atmospheric resources line item in section 1 of this Act,  
16 \$69,000,000 is for Fargo flood control projects, for the biennium beginning July 1, 2015, and  
17 ending June 30, 2017. Any funds not spent by June 30, 2017, are not subject to  
18 section 54-44.1-11 and must be continued into the next or subsequent bienniums and may be  
19 expended only for Fargo flood control projects, including levees and dikes. Except as otherwise  
20 provided, these funds may be used only for land purchases and construction, including  
21 right-of-way acquisition costs and may not be used for the purchase of dwellings. No more than  
22 ten percent of these funds may be used for engineering, legal, planning, or other similar  
23 purposes. The city of Fargo, Cass County, and the Cass County joint water resource district  
24 must approve any expenditures made under this section. Costs incurred by nonstate entities for  
25 dwellings or other real property which are not paid by state funds are eligible for application by  
26 the nonstate entity for cost-sharing with the state.

27 **SECTION 13. RED RIVER VALLEY WATER SUPPLY PROJECT FUNDING.** The 2013-15  
28 unobligated funding of \$7,359,000 designated by the state water commission for the Red River  
29 valley water supply project in the water and atmospheric resources line item in section 1 of this  
30 Act and an additional \$5,000,000 in the water and atmospheric resources line item in section 1  
31 of this Act is designated for a grant to the Garrison diversion conservancy district to plan and

1 design the Red River valley water supply project for the biennium beginning July 1, 2015, and  
2 ending June 30, 2017. The Garrison diversion conservancy district shall report on a regular  
3 basis to the legislative management's water topics overview committee to review its progress in  
4 planning and designing the Red River valley water supply project.

5 **SECTION 14. APPROPRIATION - MISSOURI RIVER CORRECTIONAL CENTER LEVEE -**

6 **FOX ISLAND LEVEE - STATE DISASTER RELIEF FUND.** There is appropriated out of any  
7 moneys in the state disaster relief fund in the state treasury, the sum of \$5,000,000, or so much  
8 of the sum as may be necessary, to the state water commission, for the purpose of providing  
9 funding for levee projects for the biennium beginning July 1, 2015, and ending June 30, 2017.

10 Of the funds the state water commission shall make available \$1,700,000 for a levee for the  
11 Missouri River correctional center, and \$3,300,000, for a levee for Lincoln township's Fox Island  
12 area.

13 **SECTION 15. 2013-15 BIENNIUM CARRYOVER FUNDING - FLOOD CONTROL**

14 **PROJECT FUNDING.** The 2013-15 unobligated funding of \$4,543,679 designated by the state  
15 water commission for the irrigation development and 2013-15 unobligated funding of  
16 \$5,198,663 designated by the state water commission for general water management in the  
17 water and atmospheric resources line item in section 1 of this Act is designated for providing  
18 \$9,742,342 for grants to flood control projects that pose an imminent threat to loss of life and  
19 property for the biennium beginning July 1, 2015, and ending June 30, 2017.

20 **SECTION 16. FUNDING DESIGNATION - REIMBURSEMENTS FOR 2013-15 BIENNIUM**

21 **RURAL AND MUNICIPAL WATER SYSTEMS AFFECTED BY LOCAL COST-SHARE**

22 **CHANGE.** Of the funds appropriated in the water and atmospheric resources line item in  
23 section 1 of this Act, the state water commission shall make available \$8,000,000 from funds  
24 available from the line of credit for reimbursing rural and municipal water systems affected by  
25 local cost-share changes during the 2013-15 biennium. Rural and municipal water systems  
26 must be reimbursed up to an amount, which makes the state share 65 percent in lieu of the 75  
27 percent which was approved by the state water commission.

28 **SECTION 17. STATE WATER COMMISSION PROJECT FUNDING DESIGNATIONS.** Of

29 the funds appropriated in the water and atmospheric resources line item in section 1 of this Act  
30 from funds available in the resources trust fund, water development trust fund, and the line of  
31 credit available from the Bank of North Dakota, \$501,000,000 is designated as follows:

- 1        1.    \$69,000,000 for a grant for Fargo flood control project;
- 2        2.    \$40,000,000 for a grant for Minot flood control project;
- 3        3.    \$10,000,000 for a grant for northwest area water supply project;
- 4        4.    \$3,000,000 for reimbursing rural and municipal water systems affected by local cost-
- 5        share changes during the 2013-15 biennium;
- 6        5.    \$11,000,000 for a grant for operation of the Devils Lake outlet;
- 7        6.    \$30,000,000 for a grant for Sheyenne River flood control;
- 8        7.    \$40,000,000 capital repayment loan for southwest pipeline project;
- 9        8.    \$7,000,000 for a grant for Williston flood control project;
- 10       9.    \$20,000,000 for a grant for Grafton flood control project;
- 11       10.   \$20,000,000 for a grant and \$40,000,000 for a loan for western area water supply
- 12       authority projects;
- 13       11.   \$30,000,000 for a grant for Grand Forks water treatment plant;
- 14       12.   \$30,000,000 for a grant for Fargo interior flood control;
- 15       13.   \$40,000,000 for providing grants and \$11,000,000 for providing loans from the
- 16       infrastructure revolving loan fund for general water management;
- 17       14.   \$50,000,000 for the purpose of providing grants for rural water supply projects for all
- 18       project costs;
- 19       15.   \$25,000,000 for the purpose of providing grants for municipal water supply projects for
- 20       all project costs;
- 21       16.   \$25,000,000 for providing loans from the infrastructure revolving loan fund for the
- 22       purposes identified in subsections 14 and 15.

23        **SECTION 18. FUNDING DESIGNATIONS - TRANSFERS - BUDGET SECTION**

24        **APPROVAL.** The funding designated for the items in section 15 of this Act and subsections 14,  
25        15, and 16 of section 17 of this Act, are designated for the specific purposes identified; however,  
26        the state water commission may transfer funding among these items, subject to budget section  
27        approval.

28        **SECTION 19. CENTRAL DAKOTA WATER SUPPLY STUDY.** The state water commission  
29        shall conduct a study on the feasibility and desirability of the central Dakota water supply project  
30        for the biennium beginning July 1, 2015, and ending June 30, 2017. The study must include a

1 cost-benefit analysis as well as a detailed business plan for the project, including projected  
2 operational costs and projected water supply needs for the area to be served.

3 **SECTION 20. CONTINGENT ALLOCATION - WATER AND ATMOSPHERIC**

4 **RESOURCES.** Of the funds appropriated in the water and atmospheric resources line item in  
5 section 1 of this Act, \$70,000,000, is designated as follows, contingent on the state water  
6 commission entering into a written agreement that a fertilizer or chemical processing facility will  
7 be constructed in Stutsman County:

- 8 1. \$10,000,000 for a grant and \$40,000,000 for a loan for a water reuse facility;
- 9 2. \$20,000,000 for the central Dakota water supply project.

10 **SECTION 21. STUTSMAN COUNTY WATER REUSE FACILITY - EXEMPTION.** For

11 purposes of a project for a water reuse facility the Stutsman rural water district is granted an  
12 exemption from the aggregate total outstanding limit of \$50,000,000 of revenue bonds under  
13 section 61-35-15 and is instead limited to an aggregate total outstanding limit of \$100,000,000  
14 of revenue bonds for purposes of section 61-35-15.

15 **SECTION 22. STUTSMAN COUNTY WATER REUSE FACILITY PROJECT - USER**

16 **BONDING.** Any agreement entered into by the state water commission relating to the Stutsman  
17 County water reuse facility project must include requirements that the users of the water from  
18 the plant are responsible for repayment of the loans or revenue bonds authorized by the  
19 sixty-fourth legislative assembly for the Stutsman County water reuse facility and the users  
20 must be bonded in an amount equal to each user's proportionate share of any outstanding debt  
21 of the project.

22 **SECTION 23. LEGISLATIVE MANAGEMENT STUDY.** During the 2015-16 interim, the  
23 legislative management shall study options available for providing a sustainable water supply to  
24 central and eastern North Dakota. The study must compile and review studies that have been  
25 completed relating to the project options and prepare a report that evaluates each option's  
26 ability to meet projected water demands to central North Dakota as well as eastern North  
27 Dakota. The report must also include a cost-benefit analysis, and a feasibility analysis of the  
28 options as well as a detailed business plan for the project, including projected operational costs,  
29 and projected water costs to the end users. The legislative management shall report its findings  
30 and recommendations, together with any legislation required to implement the  
31 recommendations, to the sixty-fifth legislative assembly.

1       **SECTION 24. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY PROJECT.**

2       It is the intent of the sixty-fourth legislative assembly that the state, over the next four  
3       bienniums, provide \$150,000,000 per biennium of state funds to implement the selected  
4       alternative for the Red River valley water supply project.

5       **SECTION 25. LEGISLATIVE INTENT - LOWER HEART RIVER, MORTON COUNTY,**  
6       **ENHANCED FLOOD CONTROL PROJECT.** It is the intent of the sixty-fourth legislative

7       assembly that state funding be provided for a share of the nonfederal or local cost for  
8       construction of the lower Heart River, Morton County, flood control project.

9       **SECTION 26. WESTERN AREA WATER SUPPLY AUTHORITY MEMBER ENTITIES -**  
10      **DEBT.** A western area water supply authority member entity may incur debt as authorized by  
11      law, except that an entity may not use any income from industrial water sales relating to oil and  
12      gas exploration or production to repay any debt or as collateral to secure debt beginning July 1,  
13      2015.

14      **SECTION 27. STATE WATER COMMISSION PRIORITY PROJECTS LIST - REPORTS TO**  
15      **THE WATER TOPICS OVERVIEW COMMITTEE.** The state water commission shall report to  
16      the legislative management's water topics overview committee every six months during the  
17      2015-16 interim regarding any changes made to the state water commission priority projects list  
18      presented to the sixty-fourth legislative assembly for the biennium beginning July 1, 2015, and  
19      ending June 30, 2017.

20      **SECTION 28. FARGO FLOOD CONTROL - REPORTS TO THE WATER TOPICS**  
21      **OVERVIEW COMMITTEE.** During the 2015-16 interim, the F-M area diversion authority board  
22      shall report to the legislative management's water topics overview committee biannually  
23      regarding an update on congressional authorization of the diversion project and the status of  
24      the self-insured crop insurance pool; mitigation efforts, alternatives, and costs; easements; and  
25      the project budget. The MNDak upstream coalition shall report to the legislative management's  
26      water topics overview committee biannually regarding an update on the impacts of the Fargo  
27      flood control project and mitigation efforts, alternatives, and costs.

28      **SECTION 29. INDEPENDENT WATER PROVIDERS AND WESTERN AREA WATER**  
29      **SUPPLY AUTHORITY - REPORT TO THE WATER TOPICS OVERVIEW COMMITTEE.** During  
30      the 2015-16 interim, the independent water providers and the western area water supply  
31      authority shall report to the legislative management's water topics overview committee on a



1 regular basis and collaborate with the committee and the state water commission to monitor  
2 water usage, rates, engineering contract procedures, and market share. The water topics  
3 overview committee shall report to the legislative management with recommendations to ensure  
4 western area water supply authority's ability to maintain its payment schedule of the state's  
5 loan.

6 **SECTION 30. REPORT TO LEGISLATIVE ASSEMBLY - SOUTHWEST PIPELINE**

7 **PROJECT.** The state water commission and the southwest water authority shall continue the  
8 process of reviewing capital repayment and revenues being returned to the resources trust  
9 fund; payments necessary to meet obligations of existing bonds and other loans; ownership of  
10 land and associated facilities; existing construction documents; liabilities; contracts with cities,  
11 bulk users, companies, and other users; and other items; and shall report to the sixty-fifth  
12 legislative assembly on the actions necessary for the transfer of ownership and responsibility of  
13 the southwest pipeline project from the state water commission to the southwest water authority.

14 **SECTION 31. STATE WATER COMMISSION STUDY OF FARGO DIVERSION PROJECT.**

15 The state water commission shall contract with North Dakota state university to expand the  
16 scope of the current agricultural impacts study of the F-M area diversion project at a cost that  
17 may not exceed \$80,000. The expanded study is contingent upon hydraulic modeling performed  
18 by the diversion authority and supplied to the state water commission and North Dakota state  
19 university research team. The hydraulic modeling performed by the diversion authority is eligible  
20 for cost share by the state water commission. The expanded study must focus on:

- 21 1. The area determined by hydrology modeling to be affected by project conditions in  
22 excess of six inches, and outside the area recognized by the army corps of engineers  
23 for which mitigation is required upstream of the proposed dam, which is consistent  
24 with current floodplain designation by the federal emergency management agency for  
25 the studied flood event.
- 26 2. The impacts on agricultural production income due to operation of the diversion  
27 project.

28 The study must be completed by September 1, 2016.

29 **SECTION 32. AMENDMENT.** Section 54-35-02.7 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1           **54-35-02.7. Water topics overview committee - Duties.**

2           The legislative management, during each interim, shall appoint a water topics overview  
3 committee in the same manner as the legislative management appoints other interim  
4 committees. The committee must meet quarterly and is responsible for legislative overview of  
5 water topics and related matters, the Garrison diversion project, and for any necessary  
6 discussions with adjacent states on water topics. The committee shall work collaboratively with  
7 the state water commission to develop and review policies and update as necessary to further  
8 define the state role in major flood control projects. The committee shall prepare a schedule of  
9 priorities with respect to water projects. The state water commission and state engineer shall  
10 assist the committee in developing the schedule of priorities, and the committee may seek input  
11 from stakeholders within the state regarding water project priorities. The committee shall report  
12 on the committee's project prioritization process, provide updates on allocated program  
13 expenditures, and report on the fund balances of projects, grants, and contracts. The committee  
14 also shall study policies regarding the development and financing of municipal projects,  
15 including water treatment plants; pipelines, including pipeline expansion, public and industrial  
16 use of water, cost analysis of future project development, and ongoing maintenance cost of  
17 current and future projects; and technology, including the use of technology for permitting and  
18 electronic metering. ~~During the 2013-14 interim, the committee shall review water supply routes~~  
19 ~~and alternatives for the Red River valley water supply project.~~ The legislative management shall  
20 designate the chairman of the committee. The committee shall operate according to the statutes  
21 and procedure governing the operation of other legislative management interim committees.

22           **SECTION 33.** A new section to chapter 61-02 of the North Dakota Century Code is created  
23 and enacted as follows:

24           **Bank of North Dakota - Line of credit.**

25           The Bank of North Dakota shall extend a line of credit not to exceed two hundred million  
26 dollars at a rate that may not exceed one and three-quarters percent to the state water  
27 commission. The state water commission shall repay the line of credit from funds available in  
28 the resources trust fund, water development trust fund, or other funds, as appropriated by the  
29 legislative assembly. The state water commission may access the line of credit, as necessary,  
30 to provide funding as authorized by the legislative assembly up to the amounts designated for  
31 the following projects:

- 1       1. Sixty-nine million dollars for Fargo flood control;
- 2       2. Forty million dollars for Minot flood control;
- 3       3. Ten million dollars for northwest area water supply;
- 4       4. Three million dollars for Rice Lake flood control;
- 5       5. Fifty million dollars for a water reuse facility in Stutsman County;
- 6       6. Twenty million dollars for central Dakota water supply;
- 7       7. Eight million dollars for reimbursement for 2013-15 biennium rural and municipal water
- 8             systems affected by the local cost-share change.

9       **SECTION 34.** A new section to chapter 61-02 of the North Dakota Century Code is created  
10 and enacted as follows:

11       **State water commission cost-share policy.**

12       The state water commission shall adopt a cost-share policy for the financing of water  
13 projects. The policy:

- 14       1. Must provide a water supply project is eligible for grants up to seventy-five percent of  
15             the total project cost with the remaining cost of the project financed through loans. The  
16             commission shall set the terms of the loan at one and one-half percent interest per  
17             year for up to forty years.
- 18       2. May not prioritize water supply projects based on population growth factor.
- 19       3. Must provide all project costs are eligible for reimbursement except the commission  
20             may exclude operations expense and regular maintenance. The commission may  
21             require a water project sponsor to maintain a capital improvement fund from the rates  
22             charged customers for future extraordinary maintenance projects as condition of  
23             funding an extraordinary maintenance project.
- 24       4. May not use affordability in a service area as a factor in determining the priority of a  
25             project or a loan amount. However, affordability may be used as a factor in  
26             determining the amount of a grant.

27       **SECTION 35.** A new section to chapter 61-02 of the North Dakota Century Code is created  
28 and enacted as follows:

29       **North Dakota outdoor heritage fund grants - Effect on local cost-share.**

30       For projects involving the repair of an existing flood control or recreation structure, the state  
31 water commission may not deduct North Dakota outdoor heritage fund moneys provided from

1 the cost of the project before determining the local cost-share. The state water commission shall  
2 include those provided moneys as part of the local cost-share, however, the local entity may not  
3 receive funding in excess of the total project cost.

4       **SECTION 36. EMERGENCY.** Sections 1, 7, 11, and 17 of this Act are declared to be an  
5 emergency measure.