

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1020

Introduced by

Appropriations Committee

1 A BILL for an Act to create and enact two new sections to chapter 61-02 of the North Dakota
2 Century Code, relating to industrial use of fresh water dispensed for oil and gas industry users;
3 to amend and reenact subsection 1 of section 57-51.1-07, section 61-02-02, subsection 1 of
4 section 61-02-78, and sections 61-02-79 and 61-40-11 of the North Dakota Century Code,
5 relating to the allocation of moneys in the oil extraction tax development fund, definitions, the
6 infrastructure revolving loan fund, a Bank of North Dakota line of credit, and water rates of the
7 western area water supply authority; to provide for a legislative management study; to provide
8 for a state engineer study; to provide for a report to the legislative management; to provide
9 legislative intent; to designate funding; to provide an appropriation for defraying the expenses of
10 the state water commission; and to provide exemptions.

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

12 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
13 as may be necessary, are appropriated from special funds derived from federal funds and other
14 income, to the state water commission for the purpose of defraying the expenses of the state
15 water commission, for the biennium beginning July 1, 2017, and ending June 30, 2019, as
16 follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>	
17				
18				
19	Administrative and support services	\$5,535,618	\$100,154	\$5,635,772
20	Water and atmospheric resources	<u>863,400,218</u>	<u>(127,322,401)</u>	<u>736,077,817</u>
21	Total all funds	\$868,935,836	(\$127,222,247)	\$741,713,589
22	Full-time equivalent positions	97.00	(4.00)	93.00

1 **SECTION 2. HEALTH INSURANCE INCREASE.** The appropriation in section 1 of this Act
2 includes the sum of \$277,612 of other funds, for increases in employee health insurance
3 premiums from \$1,130 to \$1,249 per month.

4 **SECTION 3. SOVEREIGN LANDS ENFORCEMENT GRANT.** The administrative and
5 support services line item in section 1 of this Act includes \$135,000 from the resources trust
6 fund which the state water commission shall provide as a grant to the game and fish
7 department for law enforcement activities on sovereign lands in the state for the biennium
8 beginning July 1, 2017, and ending June 30, 2019.

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

10 **APPROVAL.** In addition to the amounts appropriated in section 1 of this Act, any additional
11 amounts in the resources trust fund and water development trust fund which become available
12 are appropriated, subject to budget section approval, to the state water commission for the
13 purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2017, and
14 ending June 30, 2019.

15 **SECTION 5. OIL AND GAS INDUSTRY FRESH WATER ROYALTY INCOME -**

16 **APPROPRIATION - REPORT.** In addition to the amounts appropriated in section 1 of this Act,
17 there is appropriated from oil and gas industry fresh water royalty income deposited in the
18 resources trust fund, the sum of \$8,300,000, or so much of the sum as may be necessary, to
19 the state water commission for the purpose of repaying state-guaranteed loans, which were
20 made to entities that sell fresh water to oil and gas industry users, for the biennium beginning
21 July 1, 2017, and ending June 30, 2019. The state water commission shall notify the legislative
22 management's water topics overview committee of any funding made available and payments
23 made pursuant to this section.

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

25 Section 54-44.1-11 does not apply to funding for grants or water-related projects included in the
26 water and atmospheric resources line item in section 1 of this Act. However, this exclusion is
27 only in effect for two years after June 30, 2019. Any unexpended funds appropriated from the
28 resources trust fund after that period has expired must be transferred to the resources trust fund
29 and any unexpended funds appropriated from the water development trust fund after that period
30 has expired must be transferred to the water development trust fund.

1 **SECTION 7. STATE WATER COMMISSION PROJECT FUNDING DESIGNATIONS -**
2 **TRANSFERS - BUDGET SECTION APPROVAL.**

- 3 1. Of the funds appropriated in the water and atmospheric resources line item in section
4 1 of this Act from funds available in the resources trust fund and water development
5 trust fund, \$299,875,000 is designated as follows:
- 6 a. \$30,000,000 for rural water supply projects;
 - 7 b. \$44,125,000 for municipal water supply projects;
 - 8 c. \$58,000,000 for regional water supply projects;
 - 9 d. \$1,000,000 for water conveyance projects;
 - 10 e. \$150,000,000 for flood control or protection projects;
 - 11 f. \$750,000 for irrigation projects; and
 - 12 g. \$16,000,000 for general water management.
- 13 2. The funding designated in this section is for the specific purposes identified; however,
14 the state water commission may transfer funding among these items, subject to
15 budget section approval and upon notification to the legislative management's water
16 topics overview committee.

17 **SECTION 8. NORTHWEST AREA WATER SUPPLY PROJECT FUNDING.** Any funding
18 provided by the state water commission for the northwest area water supply project must be
19 from funds made available through the line of credit authorized in section 18 of this Act before
20 any other funds may be provided by the state water commission for the project during the
21 biennium beginning July 1, 2017, and ending June 30, 2019.

22 **SECTION 9. LOAN AUTHORIZATION - APPROPRIATION - MINOT FLOOD CONTROL**
23 **PROJECT FUNDING.** The state water commission may obtain a loan from the Bank of North
24 Dakota in an amount not to exceed \$110,000,000, the sum of which is appropriated to the state
25 water commission for the purpose of defraying the expenses of the construction of phase one
26 through phase four of the Minot flood control project, for the biennium beginning July 1, 2017,
27 and ending June 30, 2019. The terms and conditions of the loan must be negotiated by the
28 state water commission and the Bank of North Dakota, and the repayment of principal and
29 interest on the loan must be from revenues deposited in the resources trust fund.

30 **SECTION 10. LEGISLATIVE INTENT - MINOT FLOOD CONTROL PROJECT FUNDING.**
31 Except for the funding appropriated in section 9 of this Act, it is the intent of the sixty-fifth

1 legislative assembly that the state water commission not provide any additional funding for flood
2 control projects within the city limits of Minot during the 2019-21, 2021-23, and 2023-25
3 bienniums.

4 **SECTION 11. WESTERN AREA WATER SUPPLY AUTHORITY - BANK OF NORTH**

5 **DAKOTA LOAN - REPORTS.** The Bank of North Dakota shall consolidate the \$40,000,000 loan
6 to the western area water supply authority authorized in section 5 of chapter 20 of the 2013
7 Session Laws, the \$50,000,000 loan to the western area water supply authority authorized in
8 section 2 of chapter 500 of the 2011 Session Laws, and the \$19,500,000 loan from funds
9 appropriated to the state water commission from the resources trust fund in section 1 of
10 chapter 20 of the 2013 Session Laws. The terms and conditions of the consolidation loan must
11 be negotiated by the western area water supply authority and the Bank of North Dakota. If the
12 authority defaults on its payment of principal or interest on the consolidation loan from the Bank
13 of North Dakota authorized by this section, the authority is subject to the default provisions
14 under section 61-40-09. The Bank of North Dakota shall report the terms of the consolidation
15 loan upon its completion to the legislative management's water topics overview committee
16 during the 2017-18 interim. The western area water supply authority shall provide its quarterly
17 financial statements and industrial sales to the legislative council for the legislative
18 management's water topics overview committee's review during the 2017-18 interim.

19 **SECTION 12. WESTERN AREA WATER SUPPLY AUTHORITY DEBT SERVICE**

20 **SHORTFALL - BUDGET SECTION APPROVAL.** If the western area water supply authority
21 defaults on its payment of the principal or interest on the consolidation loan provided for in
22 section 11 of this Act, the Bank of North Dakota shall notify the legislative council, and the state
23 water commission shall provide a payment, subject to budget section approval, to the Bank of
24 North Dakota in an amount of the default as certified to the budget section by the Bank of North
25 Dakota.

26 **SECTION 13. STATE ENGINEER - FLOOD HAZARD RISK MANAGEMENT STUDY -**

27 **ADDITIONAL INCOME - APPROPRIATION.** The water and atmospheric resources line item in
28 section 1 of this Act includes \$50,000, for the purpose of conducting a flood hazard risk
29 management framework study and demonstration in section 14 of this Act, for the biennium
30 beginning July 1, 2017, and ending June 30, 2019. The state engineer may seek funding from
31 federal, local, and private sector co-funding partnerships. Any fees collected from data users

1 and partners and any other funds from public or private sources, including federal grants and
2 county revenue contributions, are appropriated to the state engineer for the study and for
3 expanding the project to additional counties for the biennium beginning July 1, 2017, and
4 ending June 30, 2019.

5 **SECTION 14. LEGISLATIVE MANAGEMENT STUDY - FLOOD HAZARD RISK**

6 **MANAGEMENT.** During the 2017-18 interim, the legislative management shall study issues
7 related to the state's development of a statewide flood hazard risk management framework by
8 granting authority to the state engineer to perform a study and proof of concept demonstration
9 to implement statewide flood risk management capabilities for assessing, managing, and
10 reducing property-specific flood risk.

- 11 1. In performing the study and proof of concept demonstration, the state engineer may
12 leverage, coordinate, and partner with the North Carolina floodplain mapping program
13 and with Cass, Ward, Richland, and Burleigh Counties and other counties to conduct
14 the study and proof of concept demonstration. The state engineer shall acquire and
15 leverage data necessary to support the study and proof of concept demonstration
16 including:
 - 17 a. Footprints and elevations from current and future light detection and ranging data
18 collections that meet federal emergency management agency risk mapping,
19 assessment, and planning standards;
 - 20 b. First floor elevations and elevation certificates from local planning and zoning
21 offices or light detection and ranging data;
 - 22 c. Parcel, address, and imagery data necessary for individual property flood hazard
23 identification, assessment, and reduction; and
 - 24 d. Any other data the state engineer deems necessary to meet the objectives in
25 creating the database.
- 26 2. To complete the pilot project, the state engineer shall:
 - 27 a. Construct and maintain flood hazard and risk data in a spatial, relational
28 database;
 - 29 b. Disseminate flood hazard and risk data through a digital display environment
30 prompted through dynamic querying;

- 1 c. Coordinate, incentivize, and partner with a least one county to obtain the
2 necessary parcel data and other data needed for this study and serve as the
3 repository for the property flood risk dataset;
- 4 d. Establish a technical committee consisting of federal, state, local, and private
5 sector stakeholders and providers to the greatest extent possible to allow data
6 sharing, coordination, synergy, and partnering;
- 7 e. Work with the North Carolina floodplain mapping program to incorporate the
8 property risk dataset into the multistate flood risk information system maintained
9 by North Carolina, augment the dataset with federal emergency management
10 agency digital flood insurance data, and assess any data or other gaps
11 preventing this state's full use of the system;
- 12 f. Make the data publicly available on the state water commission's website in an
13 easily accessible and useable format;
- 14 g. Provide technical assistance to data users, including reports and analysis as
15 needed; and
- 16 h. Work with the federal emergency management agency and study counties to
17 enable the communities and property owners to use the elevation, light detection
18 and ranging, and other data provided on the website to submit letters of map
19 amendment or revision to the federal emergency management agency.
- 20 3. The state engineer shall report to the legislative management as requested by the
21 legislative management. At the conclusion of the study, the state engineer shall
22 provide the following information to the legislative management:
 - 23 a. A description of the engineer's current cooperative technical flood mapping
24 partnership with the federal emergency management agency and any additional
25 authority, staffing, and funding required to create a fully independent and
26 self-sustaining state flood mapping program in lieu of the federal emergency
27 management agency program, including the processing of letters of map change;
 - 28 b. A detailed estimate of overall program costs and flood risk reductions of a
29 self-sustaining state flood mapping program; and
 - 30 c. A county-by-county assessment of the private, county, state, and federal data and
31 resources that are currently available as compared to the resources that would

1 be required to fully use North Carolina's flood risk information system for flood
2 risk management, including recommendations for improvement or the statewide
3 expansion of the project established under this study and suggested funding
4 mechanisms and alternatives for data dissemination, which may include a
5 one-state online repository or the provision of data by local planning and zoning
6 offices.

7 **SECTION 15. AMENDMENT.** Subsection 1 of section 57-51.1-07 of the North Dakota
8 Century Code is amended and reenacted as follows:

- 9 1. Twenty percent must be allocated and credited to the sinking fund established for
10 payment of the state of North Dakota water development bonds, southwest pipeline
11 series, and any moneys in excess of the sum necessary to maintain the accounts
12 within the sinking fund and for the payment of principal and interest on the bonds must
13 be credited to a special trust fund, to be known as the resources trust fund. The
14 resources trust fund must be established in the state treasury and the funds therein
15 must be deposited and invested as are other state funds to earn the maximum amount
16 permitted by law which income must be deposited in the resources trust fund.
17 ~~Five~~Three percent of the amount credited to the resources trust fund must be
18 transferred no less than quarterly into the renewable energy development fund, not to
19 exceed three million dollars per biennium. ~~One-half of one percent of the amount~~
20 ~~credited to the resources trust fund must be transferred no less than quarterly into the~~
21 ~~energy conservation grant fund not to exceed one million two hundred thousand~~
22 ~~dollars per biennium.~~ The principal and income of the resources trust fund may be
23 expended only pursuant to legislative appropriation and are available to:
- 24 a. The state water commission for planning for and construction of water-related
25 projects, including rural water systems. These water-related projects must be
26 those which the state water commission has the authority to undertake and
27 construct pursuant to chapter 61-02; ~~and~~.
- 28 b. The industrial commission for the funding of programs for development of
29 renewable energy sources; for studies for development of cogeneration systems
30 that increase the capacity of a system to produce more than one kind of energy

1 from the same fuel; for studies for development of waste products utilization; and
2 for the making of grants and loans in connection therewith.

3 c. The department of commerce for the funding of programs for development of
4 energy conservation and for the making of grants and loans relating to energy
5 conservation.

6 **SECTION 16. AMENDMENT.** Section 61-02-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-02-02. Definitions.**

9 In this chapter, unless the context or subject matter otherwise requires:

- 10 1. "Commission" means the state water commission.
- 11 2. "Cost of works" includes:
- 12 a. The cost of construction, the cost of all lands, property rights, water rights,
13 easements, and franchises acquired which are deemed necessary for such
14 construction;
- 15 b. The cost of all water rights acquired or exercised by the commission in
16 connection with such works;
- 17 c. The cost of all machinery and equipment, financing charges, interest prior to and
18 during construction and for a period not exceeding three years after the
19 completion of construction;
- 20 d. The cost of engineering and legal expenses, plans, specifications, surveys,
21 estimates of cost, and other expenses necessary or incident to determining the
22 feasibility or practicability of any project;
- 23 e. Administrative expenses;
- 24 f. The construction of the works and the placing of the same in operation; and
- 25 g. Such other expenses as may be necessary or incident to the financing authorized
26 in this chapter, including funding of debt service, repair and replacement
27 reserves, capitalized interest, and the payment of bond issuance costs.
- 28 3. "Fresh water" means fresh water of the state drawn from an underground or surface
29 source in this state under an industrial use water permit, whether treated or untreated,
30 and dispensed to an oil and gas industry user.

- 1 4. "Oil and gas industry user" means an enterprise engaged in exploration, drilling, or
2 production of oil and gas, and includes businesses that transport water for use in the
3 enterprise.
- 4 5. "Owner" includes all individuals, associations, corporations, limited liability companies,
5 districts, municipalities, and other political subdivisions of this state having any title or
6 interest in any properties, rights, water rights, easements, or franchises to be acquired.
- 7 4.6. "Project" means any one of the works defined in subsection 5, or any combination of
8 such works, which are physically connected or jointly managed and operated as a
9 single unit.
- 10 5.7. "Works" includes:
- 11 a. All property rights, easements, and franchises relating thereto and deemed
12 necessary or convenient for their operation;
- 13 b. All water rights acquired and exercised by the commission in connection with
14 such works;
- 15 c. All means of conserving and distributing water, including without limiting the
16 generality of the foregoing two subdivisions, reservoirs, dams, diversion canals,
17 distributing canals, channels, lateral ditches, pumping units, mains, pipelines,
18 treatment plants, and waterworks systems; and
- 19 d. All works for the conservation, control, development, storage, treatment,
20 distribution, and utilization of water, including without limiting the generality of the
21 foregoing subdivisions, works for the purpose of irrigation, flood control, watering
22 stock, supplying water for public, domestic, industrial, and recreational use, fire
23 protection, and the draining of lands injured or in danger of injury as a result of
24 such water utilization.

25 **SECTION 17. AMENDMENT.** Subsection 1 of section 61-02-78 of the North Dakota
26 Century Code is amended and reenacted as follows:

- 27 1. An infrastructure revolving loan fund is established on January 1, 2015, within the
28 resources trust fund to provide loans for water supply, flood protection, or other water
29 development and water management projects. Ten percent of oil extraction moneys
30 deposited in the resources trust fund, not to exceed a total deposit from oil extraction
31 moneys of twenty-five million dollars, are made available on a continuing basis for

1 making loans in accordance with this section. Accounts may be established in the
2 resources trust fund as necessary for its management and administration.

3 **SECTION 18. AMENDMENT.** Section 61-02-79 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-02-79. Bank of North Dakota - Line of credit.**

6 The Bank of North Dakota shall extend a line of credit not to exceed ~~two hundredseventy-~~
7 five million dollars at a rate that may not exceed one and three-quarters percent to the state
8 water commission. The state water commission shall repay the line of credit from funds
9 available in the resources trust fund, water development trust fund, or other funds, as
10 appropriated by the legislative assembly. The state water commission may access the line of
11 credit, as necessary, to provide funding as authorized by the legislative assembly for ~~water-~~
12 supply projects in suspense, water supply projects identified in section 19 of chapter 54 of the
13 2015 session laws, and water supply projects approved before June 30, 2017~~2019~~, and flood
14 control projects that have approval for funding before June 30, ~~2017~~2019.

15 **SECTION 19.** Two new sections to chapter 61-02 of the North Dakota Century Code are
16 created and enacted as follows:

17 **Oil and gas industry fresh water royalty.**

18 A royalty of seventy-five cents per one thousand gallons [3785.41 liters] is imposed on fresh
19 water dispensed to an oil and gas industry user at a privately owned water depot or
20 water-dispensing point in the state. For each privately owned water depot or water-dispensing
21 point in this state which dispenses fresh water to an oil and gas industry user, the commission
22 shall maintain water-metering devices in compliance with rules adopted by the commission.

23 **Deposit of revenue.**

24 The state water commission shall collect and transfer royalty payments collected under this
25 chapter to the resources trust fund for the sole purpose of repaying state-guaranteed loans
26 made to entities that sell fresh water to oil and gas industry users.

27 **SECTION 20. AMENDMENT.** Section 61-40-11 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **61-40-11. Water rates.**

30 The ~~authority shall develop~~industrial commission shall provide an industrial water depot and
31 lateral retail rate and ~~present the rate to the industrial commission for approval. Any industrial~~

1 ~~water depot and lateral rate adjustment must have approval of the industrial commission before-~~
2 ~~going into effect~~for the authority which is a competitive, floating, market rate. The authority shall
3 develop domestic water rates that must include all costs for operation, maintenance, and
4 operating and capital reserves, and debt repayment of all infrastructure managed or constructed
5 by the authority, with the exception of the costs identified in section 61-40-10 which are paid for
6 by industrial water depot and lateral sales.

7 **SECTION 21. TRANSFER - INFRASTRUCTURE REVOLVING LOAN FUND TO**

8 **RESOURCES TRUST FUND.** On July 1, 2017, the state treasurer shall transfer any oil
9 extraction moneys exceeding \$25,000,000 which have been deposited in the infrastructure
10 revolving loan fund from the infrastructure revolving loan fund to the resources trust fund.

11 **SECTION 22. LEGISLATIVE MANAGEMENT STUDY - WESTERN AREA WATER**

12 **SUPPLY AUTHORITY.** During the 2017-18 interim, the legislative management shall study
13 whether allowing private persons to lease the western area water supply industrial infrastructure
14 and privatizing industrial sales will maximize industrial sales or otherwise be commensurate
15 with repaying the western area water supply authority's debt to the state. The study must
16 include identification and consideration of the collateral for the debt, the authority's cashflow and
17 revenue, the current loan structure and financing stream, the equipment that may be privatized,
18 and any other factors that are relevant and necessary to accomplish the objective of the study.
19 The legislative management shall report its findings and recommendations, together with any
20 legislation required to implement the recommendations, to the sixty-sixth legislative assembly.