

FISCAL NOTE
Requested by Legislative Council
04/16/2019

Amendment to: HB 1320

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$0	\$0	\$0	\$0
Expenditures			\$0	\$0	\$0	\$500
Appropriations			\$0	\$0	\$0	\$15,000,000

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

House Bill 1320 relates to the Theodore Roosevelt presidential library and museum endowment fund; to provide a continuing appropriation; to provide for a transfer; to authorize a loan; and to declare an emergency.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 allows for the creation and enactment of the Theodore Roosevelt Presidential Library and Museum Endowment Fund (Endowment) in the amount of \$50 million. The Board will hold and manage assets in the Endowment in trust for the purposes outlined in Section 1 of HB 1320. The Board of University and School Lands (Board) will invest the funds based upon a determined time horizon and risk tolerance.

The amount available for annual distribution to pay interest expenses on a loan from the Bank of North Dakota and to provide grants pursuant to section 1 of House Bill 1320 will be based upon a distribution policy determined by the Governor. Assuming a long time-horizon and low risk tolerance, the Endowment can expect an annual rate of return of 6.3%.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The amount available for annual distribution to pay interest expenses on a loan from the Bank of North Dakota and to provide grants pursuant to section 1 of House Bill 1320 will be based upon a distribution policy determined by the Governor. Assuming a long time-horizon and low risk tolerance, the Endowment can expect an annual rate of return of 6.3%.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Board will incur expenses in managing the Endowment. The Board must be reimbursed for these costs and expenses and may collect its reimbursement from income earned by assets in the Endowment. Based upon a current fee schedule that is used with the Indian Cultural Education Trust, the anticipated expenses will be \$500 per year.

Investment related expenses (investment manager fees, custodial expenses, and general consultant expenses) will be paid from income earned by assets in the Endowment.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Section 2 appropriates \$15 million from the general fund.

Section 3 authorizes a \$35 million loan from the Bank of North Dakota.

Name: Jodi Smith

Agency: Department of Trust Lands

Telephone: 701-328-2807

Date Prepared: 04/15/2019

FISCAL NOTE
Requested by Legislative Council
04/12/2019

Amendment to: HB 1320

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$0		\$0	
Expenditures			\$0		\$0	
Appropriations			\$0		\$0	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

House Bill 1320 relates to determinations of navigability and State Engineer's review of those determinations.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 5 of House Bill 1320 relates to navigability determinations by the State Engineer. Costs of implementing the navigability determinations, include:

1. Water Commission employee salaries in researching and preparing the navigability determinations;
2. Water Commission's costs of public hearings regarding the preliminary findings, including publishing and advertising costs;
3. Cost of legal challenges to the navigability determinations, which costs would be incurred by both the North Dakota Board of University and School Lands and the State Water Commission. Legal costs could be estimated at \$100,000+ per lawsuit per water body for each agency.
4. For determinations made by the State Engineer before the effective date and not revisited under Section 5 of the bill, those determinations would be vacated resulting in a loss of sovereign land management authority and sovereign land mineral assets by the State. This would include both surface and subsurface acreage, with resulting mineral losses to the State. The amount of these losses cannot be determined at this time.
5. The State of North Dakota may be required to repay bonus and royalties received if a water body previously determined to be navigable by the Water Commission is now found to no longer be navigable or if the Water Commission does not complete the review within the proposed time frame. The value of this cannot be determined at this time but could be significant.
6. Department of Trust Lands employee salaries to issue refunds and update department records. Potentially an additional FTE will be needed to carry out any asset adjustments.
7. Once a water body is determined navigable, the State would need to conduct ordinary high water mark surveys for leasing purposes.
8. The Water Commission could incur additional project costs. For example, if the Red River is determined to be non-navigable, the Red River Valley Water Supply Project could incur additional costs of \$20 million dollars for increased easements, surveys, and title work.

These costs are unknown at this time but are anticipated to be significant.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department cannot determine the impact on revenues at this time; however, the loss of future revenue from any reduction in ownership of sovereign land mineral assets, including hydrocarbons, may be significant.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Department cannot determine the impact on expenditures until the navigability determinations are made, but expenditures are anticipated to be significant. The expenditures resulting from the implementation of HB 1320 will likely include costs associated with technical and legal expenditures, additional staffing, and collaboration with the Water Commission to determine navigability and ordinary high water mark which could result in the need for additional FTE for the Water Commission.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Continuing appropriation authority (N.D.C.C. sections 15-05-19 and 15-07-22) is used for pending authority to manage, preserve, and enhance the value of the SIIF; it is unknown if this same authority can be used for any expenditures used for this bill.

Name: Jodi Smith

Agency: Department of Trust Lands

Telephone: 701-328-2807

Date Prepared: 04/15/2019

2019 HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

HB 1320

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau A Room, State Capitol

HB 1320
2/1/2019
31973

- Subcommittee
 Conference Committee

Committee Clerk	Kathleen Davis
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Explanation or reason for introduction of bill/resolution:

Relating to Red River Valley Water Supply Project contract terms and elimination of voter approval requirements

Minutes:

Attachment 1 , 2

Chairman Porter opened the hearing on HB 1320.

Rep. Chet Pollert, presented Attachment 1.

Merri Mooridan, administrative officer for Garrison Diversion and deputy program administrator for RRVWSP, presented Attachment 2.

Rep. Anderson: What happens if a rural water district has several cities on their system and then the cities drop out of this district and go to this other source of water and you don't have the rural water system involved?

Mooridan: We don't see that happening. Most are nominating under their rule of water district or working in conjunction with each other. Many cities do joint water, they've all nominated and share water. We don't currently have a city that's nominated to be part of the project that only gets their water only from a rural water system.

Rep. Keiser: Home Rule charters could do it IF it's currently in their charter. But they would need to add it to their charter if it is not there and that requires a vote, is that not correct?

Mooridan: I will take that back to our attorney.

Rep. Keiser: They would be able to, but if you look at Bismarck's home rule charter, it is very specific what's included in the authority and it's there by a vote of the citizens.

Chairman Porter: So they couldn't add to it without an additional vote of saying this specific language is now added to our charter. They can't just add and subtract out of that charter, the voters have to do it.

Rep. Keiser: That's critical because your argument is we have say one that doesn't need to it, so we need to correct this. You're correcting it for everyone and I don't think it will work for the home rule cities.

Rep Heinert: The payment for this new water, will it involve property taxes for the people living in these communities?

Mooridan: We don't see that happening. Most of the cities will put it on their user's monthly water bill. Cities would have flexibility; most are talking putting it on their water bill. Some might use their utility fund or part of a sales tax.

Chairman Porter: When they sign up they sign up for 40 years.

Mooridan: 40 years is max.

Chairman Porter: Currently is there an out language that allows them to get out but they still have the general obligation for their 40 years, or is there no out language? Once they're in for 40 years, they're in.

Mooridan: Once you sign up you don't have an out unless we breach the contract.

Chairman Porter: Questions? Further support? Opposition? Closed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau A Room, State Capitol

HB 1320
2/7/2019
32353

- Subcommittee
 Conference Committee

Committee Clerk	Kathleen Davis
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Explanation or reason for introduction of bill/resolution:

Relating to Red River Valley Water Supply Project contract terms and elimination of voter approval requirements

Minutes:

Attachment 1

Chairman Porter opened the hearing. Reviewed the conclusion of Attachment 1.

Rep. Keiser: There's nothing the city has ever done that's had more debate than the home rule charter and an addition or deletion of an item to the home rule charter. I believe the answer is you're going to go city by city if they have a home rule charter, and get the authority, and the authority can only be granted by the citizens through a vote.

Rep. Zubke: Move a Do Pass on HB 1320.

Rep. Lefor: Second.

Chairman Porter: We have a motion and a second for a Do Pass on HB 1320. Discussion? This is just opening up the ability for them to offer backup systems on the route of the pipeline. The pipeline runs from, depending on where the plant gets built, for geographical purposes, from Washburn to Ball Hill Dam north of Valley City. In between if there's a hookup for emergency purposes, they can enter into contracts to do that.

Clerk called the roll. 9 yes 1 no 4 absent. Motion carried. Rep. Roers Jones is carrier.

Date: 2-7-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1320**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Zubke Seconded By Rep Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall		AB
Rep. Anderson	✓		Rep. Roers Jones	✓	AB
Rep. Bosch		AB	Rep. Ruby		AB
Rep. Devlin		✓	Rep. Zubke	✓	
Rep. Heinert	✓				
Rep. Keiser		AB	Rep. Mitskog	✓	
			Rep. Eidson	✓	

Total (Yes) 9 No 1

Absent 4

Floor Assignment Rep Roers Jones

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1320: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO PASS** (9 YEAS, 1 NAYS, 4 ABSENT AND NOT VOTING).
HB 1320 was placed on the Eleventh order on the calendar.

2019 SENATE ENERGY AND NATURAL RESOURCES

HB 1320

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

HB1320
3/1/2019
Job Number 33044

- Subcommittee
 Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to Red River Valley Water Supply Project contract terms and elimination of voter approval requirements.

Minutes:

1 Attachment

Chair Unruh: Opened the public hearing.

Merri Mooridian, Deputy Program Manager, RRVWSP (0:30-4:15) Testified in favor, please see attachment #1.

Senator Piepkorn: What is your confidence that city councils will be more apt to agree to this than the voters?

Merri Mooridian: Back in 2016, we were directed by the legislature to go out and talk to rural systems and cities from the Missouri River to the Minnesota border and from South Dakota up to Canada. In that, we met with every water system and city to see if they were interested in the project. In the first step we did meet with city councils; in the 35 systems that we talked about that are cities and rural water systems are the ones who signed a project development agreement, which in that they were bound for two years to pay a part of supporting the project and to say, if they continue to stay in project, how much water they would need, so we could size the project. In answer to your question, we are looking at those cities and rural water systems that are already nominated.

Senator Roers: When this project started I believe it was like \$660 million, now it is over \$1 billion; the 35 communities and water systems that you are talking to are still in the game, did we lose any?

Merri Mooridian: We haven't lost any, because we haven't gone for the long term agreements, which we plan to do this summer. I do think that of those systems, some will decrease the amount they nominated, one system is the Stutsman and Jamestown area, they had nominated for 15 cubic feet per second, which is a large amount, back when they thought that the nitrogen plant was coming in. I still think that they will nominate, it will just be a smaller nomination.

Senator Roers: Could you supply us with the list of counties and water districts?

Merri Mooridian: I will send those along.

Senator Cook: Is it clear that the city of Fargo will not need to go to a vote? Are there still some questions that a bond attorney might suggest that they have to do a vote?

Merri Mooridian: My understanding is that the city of Fargo, theirs is one of the Home Rule Charters, would not have to take it to a vote, that their city council, because of the authority of the Home Rule Charter, would be able to sign up for this project.

Senator Cook: Is there still concern that bond council might disagree with that opinion?

Merri Mooridian: Being a non-attorney and the little bit I worked with bond council, they are very conservative, I don't know with Fargo's, if they would or would not. I'm not quite able to answer that.

Senator Cook: This \$1.14 billion cost of the project, that is financed by all 35 of these cities if they elect to stay in it?

Merri Mooridian: Every city that signs up for the long term participation agreement will be paying their portion of that project.

Senator Cook: I assume the portion is paid by how much water they are asking to take?

Merri Mooridian: Correct.

Senator Piepkorn: They are paying in case they need it as an emergency?

Merri Mooridian: Yes, they will be paying for a capacity within that pipeline, for when they need the water to be there during a drought.

Senator Piepkorn: How many cities along the system are not included?

Merri Mooridian: I think it is 20 cities and 15 rural water systems that are signed up. A lot of the rural water systems serve small towns; they are being included in the rural water system nomination. Of the cities we talked to, there were five that decided not to participate.

Senator Piepkorn: There has been some debate, you say it is going to be an underground pipe?

Merri Mooridian: As we are currently looking at this, it will be an intake on the Missouri River near Washburn, it will be a pipeline going into Sheyenne River just above Lake Ashtabula. I've been working on this project for 15 years, and working with the federal government has been very difficult. We did an environmental impact statement that the Bureau of Reclamation led that was to get the water out of the McClusky canal, the federal government never issued a record of decision, we couldn't move forward with that federal project. State and local

leaders, for about 5 years kept working with the federal government, trying to get them to issue a record of decision, they did not. We all got together and we have this state project. As a caveat to that, we are requesting water out of the McClusky canal, it's the most favorable that it has been, it's still a really heavy lift. I don't think it's going to happen, but that is my personal opinion. But we are actively pursuing that. If we were able to do that, then the water would come out of the McClusky canal, it would still be a pipeline from the canal to the Sheyenne River, we wouldn't go all the way to Washburn

Senator Piepkorn: There's language in here that is conjecture?

Merri Mooridian: For the number of cities and what the actual nomination turns out to be, is based on what we had for development agreements, but there is nothing that is signed long term. Lake Agassiz water authority represents the local water users, they hold meetings every other month with the system, so we have a lot of systems that are very involved in project and are helping us. We have a group of attorneys that will help us develop those long term agreements. There are still a lot of systems actively involved, but there is not anybody on the hook.

Vice-Chair Kreun: Senator Cook asked how this would be paid for, you indicated through water usage and payment. The community and water systems would use multiple variation of financing. The cost will be dedicated by nomination; the payment will be various methods of funding. It will provide more than drought water. In some cases, it will supplement so they don't have to go through add on to their water treatment plants or some of their wells and industries.

Merri Mooridian: You are correct; we have some systems that nominated as a backup water supply; knowing that their water treatment plant might run out of its useful life in the future, and they might do more of a regional water supply, in that case, that water could come through this project.

Senator Cook: Without limitation to the amount of years you can sign a contract, what are you thinking will be the number of years?

Merri Mooridian: In our financing packages and models, we've been looking at 30-40 year bond payments.

Senator Cook: I thought from your testimony you were looking at something longer than 40 years.

Merri Mooridian: We would like to have that ability to, some models talk about 50 years.

No opposition or natural testimony.

Chair Unruh: Closed the hearing.

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

HB 1320
4/12/2019
Job Number 34705

- Subcommittee
 Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to determinations of navigability; relating to sovereign land management definitions and Red River valley water supply project contract terms and elimination of voter approval requirements; and to provide for a state engineer review of determinations of navigability.

Minutes:

1 Attachment

Chair Unruh: We've been working with folks on these amendments, **please see attachment #1.** The amendments add on some new sections to address the designation of navigability for our streams in North Dakota. We had some conversation about navigable waters in another hearing, and some concerns were brought up after that, to the point of how streams are designated as navigable in the state of North Dakota. There's a thorough process to doing so. The designation right now doesn't have any public input, no public hearing or comment period. The State Engineer's Office just designates something as navigable, and that could potentially put into question ownership of land along our rivers that are deemed navigable up to the ordinary high water mark, which can be a significant amount of land. These amendments provide a process for the State Engineer's Office to deem something as navigable. They allow for public input, public hearing, public notices within the newspapers in the county where these streams are located. The process is kind of filtered through out State Water Commission so that the information is all presented at a public meeting when the designation would begin. It also allows the ability for somebody to challenge that designation as navigable and take to court.

Senator Cook: What would cause the need for water that is not determined as navigable today to all of a sudden bring the issue before the Engineer to determine it is navigable? What's happening out there to determine that need?

Chair Unruh: From what I understand, there have not been any new navigability determinations in the past few years. There is a list of 11 streams that are designated as navigable. That brings ownership into question. The determination of navigability on the state's behalf, I would think the state would be the only one who would bring forth a determination to want something to be navigable. It could be for a lot of different purposes, one use that I've talked to the State Engineer's Office about is the ability to pump water down

a channel, for instance the Sheyenne, the state pumps water into the Sheyenne, if it is navigable, then it is public and they can utilize that stream for that purpose. Their purpose is one of items that we do list here for the public hearing process, the public can comment on the need of the state to designate something as navigable and the state needs to demonstrate what that need is. Navigability is determined based on the time of statehood. You have to do a lot of research to figure out what kind of commerce was happening on which channels at the time of state hood to deem something as navigable.

Senator Cook: Ultimately, it's who owns it then.

Senator Schaible: I move to adopt the amendment.

Senator Roers: I second.

A voice vote was taken.

Motion carries.

Senator Roers: I move a Do Pass as amended.

Senator Schaible: I second.

A roll call vote was taken.

Motion passes 6-0-0.

Chair Unruh will carry.

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

HB 1320
4/16/2019
Job Number 34759

- Subcommittee
 Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to the Theodore Roosevelt presidential library and museum endowment fund; to provide a continuing appropriation; to provide for a transfer; to authorize a loan; and to declare an emergency.

Minutes:

1 Attachment

Chair Unruh: Opened committee work.

Senator Cook: I move to reconsider our actions.

Vice-Chair Kreun: I second.

A voice vote was taken.
Motion carries.

Chair Unruh: We've got HB 1320 in front of us, with the two piece, half is now on HB 1202, the other half will be addressed in another bill. I have some hoghouse amendments that deal with the Teddy Roosevelt presidential library. **Please see attachment #1.**

Senator Wardner: The Roosevelt presidential library amendment is currently on a budget bill, HB 1001, we are working with the House so they can have a vote on the library, they wanted to divide the question. They thought they had it figured out, but it's very difficult to bring a budget bill and divide the question. In our deliberations on Friday, we decided we were going to use these two bills. The amendments on how we are going to do this for the presidential library and set aside the \$50 million has changed also. If you look at the amendment on HB 1001, and this one, they are different, because there was a lot of negotiation with the Governor's Office and others to get to this point.

On page 2, section 2, it talks about \$15 million, made up of \$9.8 million, money that was returned from the old project, that was supposed to be on the campus of Dickinson State University, there was \$12 million to start with. What is not returned was used for planning. Another \$5.2 million was taken out of the ending fund balance of this biennium, 2017-2019. You have these two pots of money, that would have ended up in the budget stabilization fund. We used all of that up during the last biennium. We're trying to get it filled up. We're going to put that \$15 million in the University and School Trust Lands as an endowment.

Section 3 has an authority for an appropriation for \$35 million over at the Bank of North Dakota. It can stay there until needed, we will pay interest on it when we do take it, the running rate. We have this money dedicated to the Theodore Roosevelt presidential library, \$15 million sitting in the University and School Lands Trust, endowed and earning interest, and \$35 million over at the Bank of North Dakota with the authority for the governor to bring it over at any point.

Senator Roers: When you talk about the \$35 million, we'll be paying interest on it, the purpose of that, the earnings of that was to be used for operations. What's it help if you're paying interest at the going rate and you are trying to use those earnings to pay for operations?

Senator Wardner: We're going to leaving it over there, yes, when we do bring it over, we need to pay the interest back, but I'm hoping at that point, we would probably pay it off with legacy fund. That \$15 million is earning interest, that could pay, but you are right when you end up with that \$35 million moving over, we want to accumulate the earnings to pay operation and maintenance of the Theodore Roosevelt Library. That is the purpose of the \$50 million, to pay operation and maintenance. That's our contribution to the project.

Senator Piepkorn: We're taking from ending fund balance, what is your take on restoring that fund, how is it looking at this stage of the game?

Senator Wardner: If I were a betting man, I would tell you that our budget stabilization fund will probably be full at the end of this biennium, it's looking good.

We now have this fund, there are some mechanics to deal with, if it's earning interest, remember, this will take a while to build, it's not going to be used until they have operational maintenance. They will have to raise \$100 million to match this \$50 million which is endowed, but is going to be providing operation and maintenance dollars for the library. It states here, 'there is created in the state treasury the Theodore Roosevelt presidential library and museum endowment.' I want to go to sub section 1, 'the private entity has received the sum of \$100 million.' In order for that presidential library foundation to get use of this \$50 million, which is in the custody of the state, they have to raise \$100 million. It can be in cash and binding pledge donations for the construction of the presidential library and museum. 'The governor has entered an agreement with a private entity in subsection 1 which includes the following provisions:

a) The grant funds will be spent only for operation and maintenance costs.'

Yes, we have to make sure there is enough there if we are ending up paying interest back to the bank, we could have two obligations, when the time comes we address it and make sure they are getting the full amount that they need.

'b) any unused grant funds will be returned to the state and deposited in the general fund if the presidential library has not been constructed within the period of time specified in the agreement, or if the library ceases operations, c) The private entity agrees to donate \$10 million out of the \$100 million to a higher education institution foundation in North Dakota.' That foundation would be the Heritage Foundation at Dickinson State University, it will be endowed and used for the digitization of the Theodore Roosevelt papers and records, plus the Theodore Roosevelt conservation scholars program. It will be endowed there; I think it's only fair that that is taken care of.

Senator Roers: Is that \$10 million indefinite, or is it only until it pays for the digitization process?

Senator Wardner: That is indefinite, the Theodore Roosevelt presidential scholarships will continue on as long as the school is there, plus the fact that the digitization has to manage the records, even if they are done digitizing, they have all kinds of people contacting them, they have to have an office maintaining and managing the records.

Senator Roers: You said digitization and scholarship fund. Explain the scholarship fund and what it means in North Dakota.

Senator Wardner: Dickinson State has the Theodore Roosevelt scholars. They have 30 scholarships every year. They have another program for that where they collect moneys and have scholarships for them, going forward, some of these dollars could be used to help with the scholarships. We want smart kids there too.

Senator Roers: These 30 scholarship opportunities are only for Dickinson State?

Senator Wardner: Just for Dickinson. Other universities have their own scholarships. It's flexible, but the main thing is digitization, it will take a while to get that done. they are 35% done. That will be endowed, then \$300,000 out of the \$100 million will go back to the city of Dickinson. They put up \$3 million, \$300,000 was used in consultation fees; this is to pay them back for their efforts.

Senator Piepkorn: I don't think the general understanding was that \$100 million pledged, that \$10 million of that would be used for the digitization. I think the general understanding of those not closely associated assumed that that would all go towards construction of the library.

Senator Wardner: This was negotiated, those that want this, this is probably the way they are going to get it.

Senator Piepkorn: HB 1320 has been vacated, the Red River Valley water supply and the navigability pieces are where?

Chair Unruh: The second half of HB 1320 was what we put on HB 1202. These amendments are hoghouse, the Red River valley water supply will be dealt with in conference.

Senator Roers: Could we have a little time to digest this?

Chair Unruh: Recessed committee work.

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

HB 1320
4/16/2019
Job Number 34773

- Subcommittee
 Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to the Theodore Roosevelt presidential library and museum endowment fund; to provide a continuing appropriation; to provide for a transfer; to authorize a loan; and to declare an emergency.

Minutes:

No attachments

Chair Unruh: Opened committee work. We have reconsidered our previous actions, we have some hoghouse amendments in front of us that had some clarifications that Senator Roers was looking for on page 1, under subsection 2, section c.

Senator Roers: After reviewing section c, it does do what is intended to be done. Under that section where it talks about to create the Theodore Roosevelt conservation scholarship program and related academic missions at a North Dakota higher education institution, in collaboration with a private entity. It does do one thing that was probably not clear in the presentation, it does provide this scholarship for all of the higher education institutions, not just one. I think it's good, I am in support.

Senator Roers: I move to adopt the amendment ending in .01009.

Vice-Chair Kreun: I second.

A voice vote was taken.

Motion carries.

Chair Unruh: We have a new version of HB 1320, Senator Schaible said something about little pigs in his floor speech, I think this is a lost pig.

Senator Roers: I moved a Do Pass as amended.

Senator Piepkorn: I second.

A roll call vote was taken.

Motion carries 4-2-0.

Chair Unruh will carry.

Chair Unruh: Closed committee work.

April 11, 2019

SAL
1203
4/12

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1320

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability;"

Page 1, line 2, after the first comma insert "section 61-33-01, subdivision e of subsection 3 of section 61-33.1-03,"

Page 1, line 3, after "to" insert "sovereign land management definitions and"

Page 1, line 4, after "requirements" insert "; and to provide for a state engineer review of determinations of navigability"

Page 3, after line 2, insert:

"SECTION 4. AMENDMENT. Section 61-33-01 of the North Dakota Century Code is amended and reenacted as follows:

61-33-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.
2. "Board of university and school lands" means that entity created by section 15-01-01.
3. "Navigable waters" means waters that were in fact navigable at the time of statehood, and that are used, were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water.
4. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.
- 4-5. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

SECTION 5. A new section to chapter 61-33 of the North Dakota Century Code is created and enacted as follows:

Navigability determinations.

1. Before making a determination that a body of water or portion of a body of water is navigable, the state engineer shall:

- a. Develop and deliver to the state water commission a preliminary finding regarding the navigability of the body of water or portion of a body of water and the legal rationale for the preliminary finding; and
 - b. Consult with the state water commission in an open meeting and demonstrate the public need and purpose for the determination to be made.
2. After completing the requirements of subsection 1, the state engineer may proceed with making a final determination of navigability by:
- a. Providing reasonable public notice of the preliminary finding, legal rationale for the preliminary finding, and opportunity for the public to provide comments for no less than sixty days. The notice must:
 - (1) Include the address and electronic mail address to which public comments may be sent and the deadline by which public comments must be received;
 - (2) Clearly identify the specific body of water or portion of a body of water for which the finding of navigability is sought;
 - (3) State the state engineer will hold a public hearing regarding the preliminary finding before a final determination of navigability is made, and provide the date, time, and location of the public hearing;
 - (4) Be provided to the governing body of each soil conservation district, water resource district, and county adjacent to the body of water or portion of a body of water for which the preliminary finding was made;
 - (5) Be published in the official county newspaper for each county adjacent to the body of water or portion of a body of water for which the preliminary finding was made; and
 - (6) Briefly state the purpose of the hearing and describe the impact or effect a determination of navigability will have on the property rights of persons who own property adjacent to the body of water or portion of a body of water for which the determination of navigability may be made; and
 - b. Holding a public hearing regarding the preliminary finding.
3. After completing the requirements of subsection 2 and making a determination of navigability, the state engineer shall prepare a report regarding the determination, including summaries of the information provided to the state water commission, the public hearings held, and the public comments received. The state engineer shall provide the report to the state water commission, send the report by certified mail to any person that appeared at the public hearing required under subsection 2 or provided written comments by the deadline, make the report available to the public, including on the website for the office of the secretary of state, and provide public notice of the report's availability. The report is final on the date it is provided to the state water commission.

20/3

4. A determination of navigability may be appealed directly to a court of competent jurisdiction in accordance with sections 28-32-42 through 28-32-46 and sections 28-32-50 and 28-32-51.

SECTION 6. AMENDMENT. Subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- e. ~~Subsection 3 of section~~Section 61-33-01 and section 47-06-05, which provide all accretions are presumed to be above the ordinary high water mark and are not sovereign lands. Accreted lands may be determined to be within the ordinary high water mark of the historical Missouri riverbed channel based on clear and convincing evidence. Areas of low-lying and flat lands where the ordinary high water mark may be impracticable to determine due to inconclusive aerial photography or inconclusive vegetation analysis must be presumed to be above the ordinary high water mark and owned by the riparian landowner."

Page 3, after line 18, insert:

"SECTION 8. REVIEWS OF NAVIGABILITY DETERMINATIONS DURING 2019-20 INTERIM. During the 2019-20 interim, the state engineer may review any determinations of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act. However, if a court of competent jurisdiction has determined a body of water or portion of a body of water is navigable or non-navigable, the state engineer does not need to review any state agency determination regarding the body of water or portion of a body of water. If the state engineer elects not to review any determinations of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act during the 2019-20 interim, those determinations must be vacated without prejudice to a subsequent determination of navigability under section 5 of this Act. In conducting the reviews under this section, the state engineer shall comply with the requirements in section 5 of this Act."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1320

In lieu of the amendments as printed on page 1527-1530 of the Senate Journal, House Bill No. 1320 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 54-07 of the North Dakota Century Code, relating to the Theodore Roosevelt presidential library and museum endowment fund; to provide a continuing appropriation; to provide for a transfer; to authorize a loan; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-07 of the North Dakota Century Code is created and enacted as follows:

Theodore Roosevelt presidential library and museum endowment fund - Continuing appropriation.

There is created in the state treasury the Theodore Roosevelt presidential library and museum endowment fund. The governor may provide for the fund to be invested under the supervision of the board of university and school lands. The interest and earnings of the fund are appropriated to the governor on a continuing basis to pay interest expenses on a loan from the Bank of North Dakota and to provide grants pursuant to this section. The governor may provide grants to a private entity subject to the following:

1. The private entity has certified to the governor the entity has received the sum of one hundred million dollars in cash donations and binding pledged donations for the construction of a presidential library and museum in North Dakota and for grants to affected entities; and
2. The governor has entered an agreement with the private entity in subsection 1 which includes the following provisions:
 - a. The grant funds will be spent only for operating and maintenance costs of the presidential library located in North Dakota;
 - b. Any unused grant funds will be returned to the state and deposited in the general fund if the presidential library has not been constructed within the period of time specified in the agreement or if the library ceases operations;
 - c. The private entity agrees to donate ten million dollars from the one hundred million dollars identified in subsection 1 to a higher education institution foundation in North Dakota for the purpose of creating an endowment to digitize documents relating to Theodore Roosevelt and for the creation of a Theodore Roosevelt conservation scholars

program and related academic mission at a North Dakota higher education institution in collaboration with the private entity; and

- d. The private entity agrees to donate three hundred thousand dollars to a city in North Dakota for prior costs incurred related to planning for a presidential library.

SECTION 2. APPROPRIATION - TRANSFER. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$15,000,000, or so much of the sum as may be necessary, which the director of the office of management and budget shall transfer to the Theodore Roosevelt presidential library and museum endowment fund during the period beginning with the effective date of this Act, and ending June 30, 2019. Of the funds appropriated in this section, \$9,800,000 is from unexpended funds previously appropriated by the legislative assembly for grants related to the Theodore Roosevelt presidential library.

SECTION 3. LOAN AUTHORIZATION. The governor may obtain a loan from the Bank of North Dakota in an amount not to exceed \$35,000,000. The term of the loan may not exceed six years and the interest rate must be set at the prevailing interest rate charged by the Bank of North Dakota to governmental entities. The governor shall repay the loan authorized in this section from funds appropriated by the legislative assembly. The governor shall deposit the proceeds of the loan in the Theodore Roosevelt presidential library and museum endowment fund.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 4/12
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1320

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 19.0300.01007

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Refer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Schaible Seconded By Sen. Roers

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh			Senator Merrill Piepkorn		
Senator Curt Kreun					
Senator Donald Schaible					
Senator Dwight Cook					
Senator Jim Roers					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote
Motion carries

Date: 4/12
 Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1320**

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 19.0300.01007

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Sen. Proess Seconded By Sen. Schaible

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh	X		Senator Merrill Piepkorn	X	
Senator Curt Kreun	X				
Senator Donald Schaible	X				
Senator Dwight Cook	X				
Senator Jim Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Chair Unruh

If the vote is on an amendment, briefly indicate intent:

Date: 4/16
Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1320**

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Cook Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh			Senator Merrill Piepkorn		
Senator Curt Kreun					
Senator Donald Schaible					
Senator Dwight Cook					
Senator Jim Roers					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
Voice Vote
Motion Carries

Date: 4/16
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1320

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 19.0300.01009

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Hoers Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh			Senator Merrill Piepkorn		
Senator Curt Kreun					
Senator Donald Schaible					
Senator Dwight Cook					
Senator Jim Roers					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
Voice Vote
Motion Carries

Date: 4/16
 Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1320**

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 19.0300.01009

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Roers Seconded By Sen. Piepkorn

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh	X		Senator Merrill Piepkorn	X	
Senator Curt Kreun	X				
Senator Donald Schaible		X			
Senator Dwight Cook		X			
Senator Jim Roers	X				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Sen. Unruh

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1320: Energy and Natural Resources Committee (Sen. Unruh, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1320 was placed on the Sixth order on the calendar.

In lieu of the amendments as printed on page 1527-1530 of the Senate Journal, House Bill No. 1320 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 54-07 of the North Dakota Century Code, relating to the Theodore Roosevelt presidential library and museum endowment fund; to provide a continuing appropriation; to provide for a transfer; to authorize a loan; and to declare an emergency.

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1. The private entity has certified to the governor the entity has received the sum of one hundred million dollars in cash donations and binding pledged donations for the construction of a presidential library and museum in North Dakota and for grants to affected entities; and
2. The governor has entered an agreement with the private entity in subsection 1 which includes the following provisions:
 - a. The grant funds will be spent only for operating and maintenance costs of the presidential library located in North Dakota;
 - b. Any unused grant funds will be returned to the state and deposited in the general fund if the presidential library has not been constructed within the period of time specified in the agreement or if the library ceases operations;
 - c. The private entity agrees to donate ten million dollars from the one hundred million dollars identified in subsection 1 to a higher education institution foundation in North Dakota for the purpose of creating an endowment to digitize documents relating to Theodore Roosevelt and for the creation of a Theodore Roosevelt conservation scholars program and related academic mission at a North Dakota higher education institution in collaboration with the private entity; and
 - d. The private entity agrees to donate three hundred thousand dollars to a city in North Dakota for prior costs incurred related to planning for a presidential library.

SECTION 2. APPROPRIATION - TRANSFER. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$15,000,000, or so much of the sum as may be necessary, which the director of the office of management and budget shall transfer to the Theodore Roosevelt presidential library and museum endowment fund during the period beginning with the effective date of this Act, and ending June 30, 2019. Of the funds appropriated in this section, \$9,800,000 is from unexpended funds previously appropriated by the legislative assembly for grants related to the Theodore Roosevelt presidential library.

SECTION 3. LOAN AUTHORIZATION. The governor may obtain a loan from the Bank of North Dakota in an amount not to exceed \$35,000,000. The term of the loan may not exceed six years and the interest rate must be set at the prevailing interest rate charged by the Bank of North Dakota to governmental entities. The governor shall repay the loan authorized in this section from funds appropriated by the legislative assembly. The governor shall deposit the proceeds of the loan in the Theodore Roosevelt presidential library and museum endowment fund.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2019 TESTIMONY

HB 1320

9:00 AM / Coteau A / 2-1-19

HB 1320 Attachment 1 2.1.19

RRWS


House Bill 1320

There are two important reasons for the amendments proposed in HB 1320.

First, municipal water supply contracts are limited by state law to 40-year periods. With the Red River Valley Water Supply Project estimated to cost \$1.14 billion. Garrison Diversion and Lake Agassiz Water Authority request the flexibility to extend contracts beyond 40 years in order to make the payments affordable. The Red River Valley Water Supply Project is a multi-generational project that may need a financing package that extends beyond 40 years. Garrison Diversion and Lake Agassiz Water Authority request the flexibility to have user contracts that will match a longer repayment term.

Second, if bonding is utilized for a portion of the project, bond counsel will thoroughly ~~consequently~~ review the project's compliance with state law. Bond counsel may question whether a vote of various cities' citizens is required to contract for this supplemental, emergency water system pursuant to 40-33-16.

Most cities, within the Project area are home rule cities, whose city councils are able to pass an ordinance authorizing a water supply contract without a public vote, such as Fargo and Grand Forks. Many other small cities get their water supplies from a regional water service provider, and should not be subject to a vote under this section.

Garrison Diversion doesn't think a vote on a supplemental, emergency water supply is within what was contemplated for this statute, so the amendment is proposed to avoid doubt, clarify and simplify the process for bond counsel and the contract development for Lake Agassiz Water Authority.

There could be difficult timing if numerous cities would have to vote on the contracts. Once the contracts are ready to be signed (in 6-8 month), there may need to be elections in some cities. It takes time and money to plan and carry out a public election. If an election were to fail, it would impact all other stakeholders because the stakeholders must all share responsibility to pay the local share of the project. Perhaps a city felt strongly about being included but the citizens did not get the message adequately and voted it down, compromising the long term ability of the city to protect its citizens in the case of a need for emergency water supply.

Western Area Water Supply Authority incorporated a similar waiver of the public voting requirements given the timeframes involved in building out that system to meet public water needs. There weren't concerns over this waiver.

**Testimony of Merri Mooridian, Deputy Program Manager of RRVWSP Administration
House Bill 1320
House Energy and Natural Resources Committee
Bismarck, North Dakota – February 1, 2019**

Good morning, Chairman Porter and members of the House Energy and Natural Resources Committee. Thank you for this opportunity to testify in support of House Bill 1320. My name is Merri Mooridian and I am the Deputy Program Manager for Administration for the Red River Valley Water Supply Project, as well as the Administrative Officer of the Garrison Diversion Conservancy District (Garrison Diversion). Garrison Diversion is a cosponsor of the Red River Valley Water Supply Project along with the Lake Agassiz Water Authority (Lake Agassiz).

I am here to testify today in support of amendments to the North Dakota Century Code, relating to Red River Valley Water Supply Project contract terms and the elimination of voter approval requirements.

The Red River Valley Water Supply Project is a drought mitigation project that will benefit roughly half the population of North Dakota, including 35 cities and rural water systems. The Project will deliver an emergency water supply from the Missouri River to users from central to eastern North Dakota, via underground pipelines.

There are two important reasons for the amendments proposed in House Bill 1320.

Number one: Municipal water supply contracts are limited to 40-year periods by North Dakota State law. The Red River Valley Water Supply Project is a multi-generational project that may need a financing package that extends beyond 40 years. Garrison Diversion and Lake Agassiz are requesting the flexibility to extend contracts beyond 40 years to make the payments affordable, as the Red River Valley Water Supply Project is projected to cost \$1.14 billion.

Number two: If bonding is utilized for a portion of the Red River Valley Water Supply Project, bond counsel will thoroughly and conservatively review the Project's compliance with State law. Bond counsel may question whether a vote of cities' citizens is required to contract

for this emergency water supply, as it is currently written in 40-33-16 of the North Dakota Century Code.

Garrison Diversion doesn't believe a vote on an emergency water supply is what was originally intended for this statute. The amendment in House Bill 1320 is proposed to clarify and simplify the process for bond counsel and contract development for Lake Agassiz.

Most of the cities expected to contract with Lake Agassiz for an emergency water supply from the Red River Valley Water Supply Project are home rule charter cities, such as Fargo and Grand Forks. These cities will not need to put a potential contract to a public vote, as the city councils will bind the city to contracts. Smaller cities, such as Tuttle which is not a home rule charter city, should not be forced into a vote. It takes time and money to plan and carry out a public election.

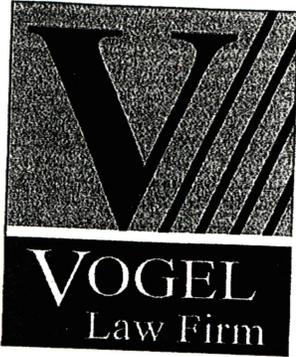
In addition, many small cities affiliated with the Red River Valley Water Supply Project receive a water supply through their local rural water districts. As such, they will not need a vote to change a water source since it is the rural water district who will be entering into a water supply contract with Lake Agassiz.

I want to be clear that this amendment is not an effort to avoid public input by voters. This is not a situation where citizens would be voting to choose a new primary water supply. This amendment is proposed to avoid possible future bond counsel questions. Garrison Diversion and Lake Agassiz are concerned that as we attempt to bond for portions of the Red River Valley Water Supply Project, the bond counsel will see that a few municipalities need – according to State law as it's currently written - a public vote to receive an emergency water supply.

Therefore, we wish to clarify this with this amendment to avoid delay if bond counsel seeks clarification.

Thank you, Chairman Porter and members of the House Energy and Natural Resources Committee, for hearing my testimony this morning.

HB 1320
2.7.19
Attachment 1



MEMO

To: Merri Mooridian
Garrison Diversion Conservancy District

From: Tami Norgard and Bennett Johnson
Vogel Law Firm

Date: February 6, 2019

Re: Municipal Water Supply Voting Requirements under NDCC § 40-33-16 and Home
Rule Cities

INTRODUCTION

The Garrison Diversion Conservancy District ("GDCD") is in the process of constructing the \$1.14 billion Red River Water Supply Project ("Project"). As part of this project, GDCD will sell a bulk water supply to Lake Agassiz Water Authority ("LAWA"), who will act as a regional water distributor and sell water to cities and rural water systems central and eastern North Dakota who need a supplemental and emergency water supply system in the case of severe drought.

Pursuant to state statute, N.D.C.C. § 40-33-16, the cities that change to a new water source are limited to 40 year contracts and any agreement must be authorized by an ordinance submitted to the voters for approval. The LAWA legislation includes the authority for LAWA to enter into contracts with Garrison Diversion and individual LAWA water user members that exceed 40 years. NDCC 61-39-05, Sub. 8 & 9. The proposed legislation seeks to add that same authority in Chapter 40-33 as well.

With regard to the requirement for cities to submit a contract to change water sources to a vote of the citizens pursuant to N.D.C.C. § 40-33-16, cities that are home rule cities as provided for in N.D. Const., art. VII, § 6 and N.D.C.C. ch. 40-05.1, do not necessarily need to hold a public election to submit the contract to a vote. The requirements of N.D.C.C. § 40-33-16 may superseded by

adopting an ordinance, pursuant to home rule authority, specifically rejecting such requirements. N.D.A.G. 2005-L-43, 1 n.2.

The comment arose at a legislative hearing that home rule cities need to have that specific ability written into their charter, or else they are required to hold a public vote to add that amendment into their charter in order to waive public votes on water contracts. That is correct, that a city's charter needs to authorize the city to avail itself of the ability to dispense with a public vote for this purpose. That said, most home rule city charters include a broad inclusion of all authorities allowed pursuant to NDCC. We pulled a sample of several home rule charters from cities wishing to seek a water supply from GDCD or LAWA, all include the powers enumerated by N.D.C.C. § 40-05.1-06, along with a statement that "[t]he city shall have all powers granted to municipal corporations by the Constitution and laws of this state and by this charter, together with all implied powers necessary to carry into execution all powers granted." Following this statement and the enumerated powers, the charter states the enumerated powers "shall not be deemed exclusive [and] it is intended that the city shall have and may exercise all powers which under the Constitution and laws of this state, it would be competent for this charter to specifically enumerate." Such language covers any discrepancy between a city's home rule charter and the specific powers listed in N.D.C.C. § 40-05.1-06. So absent a particular city that may have specifically limited their rights in their charter, the typical format for city charters appears to provide broad authority.

ANALYSIS

The North Dakota Legislature has provided for the establishment of home rule in cities. See N.D. Const., art. VII, § 6 and N.D.C.C. ch. 40-05.1. State statutes specify those certain powers a city acquires if such powers are included within a city's home rule charter and the charter has been approved by a majority of a city's voters. See N.D.C.C. §§ 40-05.1-06 and 40-05.1-05. "Home rule authority gives the people of a home rule city the full right of self-government in all matters that fall within the powers enumerated in the home rule charter." N.D.A.G. 2008-L-02, 1 (citing N.D.C.C. § 40-05.1-06). "The charter, and the ordinances made pursuant to the charter, in local and city matters, supersede any state law in conflict with the charter and the ordinances, and must be liberally construed for such purposes." Id. (citing N.D.C.C. §§ 40-05.1-05 and 40-05.1-06).

Powers specifically enumerated under N.D.C.C. § 40-05.1-06 which touch on a city's right to enter into water supply contracts include:

2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services; and to establish debt limitations.

16. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.

If powers such as these, as provided by statute, are included within a city's charter, which is typical of home rule charters adopted throughout North Dakota, a city need only adopt an ordinance pursuant to these powers which specifically rejects the requirements of N.D.C.C. § 40-33-16 and outlines the terms under which the water will be purchased. N.D.A.G. 2005-L-43, 1 n.2. If, however, in the rare event a home rule city's charter does not contain such authority or some encompassing language, that power would need to be added to the charter pursuant to the amendment procedures governed by N.D.C.C. § 40-05.1-07. After the amendment proceedings, a city may enact an ordinance pursuant to the home rule authority to supersede the state's requirements of municipal water supply contracts.

It is noteworthy that the North Dakota Legislature provided for such a waiver of the requirements of N.D.C.C. § 40-33-16 in the enabling act of the Western Area Water Supply Authority ("WAWSA"). See § N.D.C.C. 61-40-05(19).

WAWSA's enabling act provides that WAWSA may:

Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.

N.D.C.C. § 61-04-05(19).

GDCD is requesting a change to both the GDCD and LAWA enabling act that simply allows both entities to enter into water contracts for over 40 years and without a vote of the public before a municipality enters into a contract. The amendment to GDCD's and LAWA's enabling acts will provide consistency between the two water authorities and other North Dakota regional water systems, and will work to appease bond counsel in the event they deem it to be relevant in their analysis of the Project. At the present time, it is contemplated that LAWA will be the party contracting with municipalities, and LAWA will have a bulk water contract with GDCD. That said, GDCD has the ability to contract with cities in its enabling legislation, and for consistency and to address currently unforeseen circumstances, we are adding legislation to add an identical waiver of vote requirements to the GDCD legislation as well as LAWA.

CONCLUSION

In conclusion, if a home rule city has adopted the enumerated powers provided to it under state statute, a home rule city need only enact an ordinance specifically rejecting the requirements of

N.D.C.C. §40-33-16 and outlining the terms under which the water will be purchased. Home rule cities without such authority, however, must either amend its home rule charter, or comply with state law.

Such a waiver of the time and voting requirements of N.D.C.C. § 40-33-16 will allow GDCD and LAWA to enter into contracts with the various municipalities seeking supplemental and emergency water supplies in a similar manner as another major water authority in North Dakota.

HB 1320
3.1.19
#1
Pg.1

**Testimony of Merri Mooridian, Deputy Program Manager of RRVWSP Administration
House Bill 1320
Senate Energy and Natural Resources Committee
Bismarck, North Dakota – March 1, 2019**

Good morning, Chairman Unruh and members of the Senate Energy and Natural Resources Committee. Thank you for this opportunity to testify in support of House Bill 1320. My name is Merri Mooridian and I am the Deputy Program Manager for Administration for the Red River Valley Water Supply Project, as well as the Administrative Officer of the Garrison Diversion Conservancy District (Garrison Diversion). Garrison Diversion is a cosponsor of the Red River Valley Water Supply Project along with the Lake Agassiz Water Authority (Lake Agassiz).

The Red River Valley Water Supply Project is a drought mitigation project that will benefit roughly half the population of North Dakota, including 35 cities and rural water systems. The Project will deliver an emergency water supply from the Missouri River to users in central and eastern North Dakota, via underground pipelines.

There are two important reasons for the amendments proposed in House Bill 1320.

Number one: Municipal water supply contracts are limited to 40-year periods by North Dakota State law. The Red River Valley Water Supply Project is a multi-generational project. We are requesting the flexibility to extend contracts beyond 40 years to make the payments affordable, as the Red River Valley Water Supply Project is projected to cost \$1.14 billion.

Number two: If bonding is utilized for the Red River Valley Water Supply Project, bond counsel will thoroughly and conservatively review the Project's compliance with State law. Bond counsel may question whether a vote of cities' citizens is required to contract for this emergency back up water supply, as it is currently written in 40-33-16 of the North Dakota Century Code.

The amendment in House Bill 1320 is proposed to clarify and simplify the process for bond counsel and contract development for Lake Agassiz.

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All but one of the cities expected to contract for an emergency water supply from the Red River Valley Water Supply Project are home rule charter cities, such as Fargo and Grand Forks. We pulled a half dozen Home Rule City Charters adopted by cities involved with this project, finding that the language of those Home Rule Charters would be broad enough to allow a city council to pass an ordinance dispensing with a public vote on a water contract. These cities will not need to put a potential contract to a public vote, as the city councils will bind the city to contracts. The one non-home rule city, Tuttle, should not be forced to hold a public vote for its city council to obtain a backup water supply for times of emergency.

This is not a situation where citizens would be voting to choose a new primary water supply. This amendment is proposed to avoid possible future bond counsel questions. Garrison Diversion and Lake Agassiz are concerned that as we attempt to bond for portions of the Red River Valley Water Supply Project, bond counsel will conclude that a few municipalities need – according to State law as it’s currently written - a public vote to receive an emergency water supply.

I'll note that there is statutory precedent to exempt large regional water systems from holding a municipal vote requirement, as was done with Western Area Water Supply Authority at North Dakota Century Code 61-40-05, Sub. 19 and the Southwest Pipeline Project at 61-24.3-19.

Therefore, we wish to clarify this with this amendment to avoid any questions that may be raised by bond counsel, including a request that we seek clarification in a future legislative session, delaying the project.

Thank you, Chairman Unruh and members of the Senate Energy and Natural Resources Committee, for hearing my testimony this morning.

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1320

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability;"

Page 1, line 2, after the first comma insert "section 61-33-01,"

Page 1, line 3, after "to" insert "sovereign land management definitions and"

Page 1, line 4, after "requirements" insert "; and to provide for a state engineer review of determinations of navigability"

Page 3, after line 2, insert:

"SECTION 4. AMENDMENT. Section 61-33-01 of the North Dakota Century Code is amended and reenacted as follows:

61-33-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.
2. "Board of university and school lands" means that entity created by section 15-01-01.
3. "Navigable waters" means waters that were in fact navigable at the time of statehood, and that are used, were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water.
4. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.
- 4.5. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

SECTION 5. A new section to chapter 61-33 of the North Dakota Century Code is created and enacted as follows:

Navigability determinations.

1. Before making a determination that a body of water or portion of a body of water is navigable, the state engineer shall:
 - a. Develop and deliver to the state water commission a preliminary finding regarding the navigability of the body of water or portion of a body of water and the legal rationale for the preliminary finding; and

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- b. Consult with the state water commission in an open meeting and demonstrate the public need and purpose for the determination to be made.
2. After completing the requirements of subsection 1, the state engineer may proceed with making a final determination of navigability by:
- a. Providing reasonable public notice of the preliminary finding, legal rationale for the preliminary finding, and opportunity for the public to provide comments for no less than sixty days. The notice must:
 - (1) Include the address and electronic mail address to which public comments may be sent and the deadline by which public comments must be received;
 - (2) Clearly identify the specific body of water or portion of a body of water for which the finding of navigability is sought;
 - (3) State the state engineer will hold a public hearing regarding the preliminary finding before a final determination of navigability is made, and provide the date, time, and location of the public hearing;
 - (4) Be provided to the governing body of each soil conservation district, water resource district, and county adjacent to the body of water or portion of a body of water for which the preliminary finding was made;
 - (5) Be published in the official county newspaper for each county adjacent to the body of water or portion of a body of water for which the preliminary finding was made; and
 - (6) Briefly state the purpose of the hearing and describe the impact or effect a determination of navigability will have on the property rights of persons who own property adjacent to the body of water or portion of a body of water for which the determination of navigability may be made; and
 - b. Holding a public hearing regarding the preliminary finding.
3. After completing the requirements of subsection 2 and making a determination of navigability, the state engineer shall prepare a report regarding the determination, including summaries of the information provided to the state water commission, the public hearings held, and the public comments received. The state engineer shall provide the report to the state water commission, send the report by certified mail to any person who appeared at the public hearing required under subsection 2 or provided written comments by the deadline, make the report available to the public, including on the website for the office of the secretary of state, and provide public notice of the report's availability. The report is final on the date it is provided to the state water commission.
4. A determination of navigability may be appealed directly to a court of competent jurisdiction in accordance with sections 28-32-42 through 28-32-46 and sections 28-32-50 and 28-32-51."

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"SECTION 7. REVIEWS OF NAVIGABILITY DETERMINATIONS DURING 2019-20 INTERIM. During the 2019-20 interim, the state engineer may review any determinations of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act. However, if a court of competent jurisdiction has determined a body of water or portion of a body of water is navigable or non-navigable, the state engineer does not need to review any state agency determination regarding the body of water or portion of a body of water. If the state engineer elects not to review any determinations of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act during the 2019-20 interim, those determinations must be vacated without prejudice to a subsequent determination of navigability under section 5 of this Act. In conducting the reviews under this section, the state engineer shall comply with the requirements in section 5 of this Act."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1320

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 54-07 of the North Dakota Century Code, relating to the Theodore Roosevelt presidential library and museum endowment fund; to provide for a transfer; to authorize a loan; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-07 of the North Dakota Century Code is created and enacted as follows:

Theodore Roosevelt presidential library and museum endowment fund - Continuing appropriation.

There is created in the state treasury the Theodore Roosevelt presidential library and museum endowment fund. The governor may provide for the fund to be invested under the supervision of the board of university and school lands. The interest and earnings of the fund are appropriated to the governor on a continuing basis to pay interest expenses on a loan from the Bank of North Dakota and to provide grants pursuant to this section. The governor may provide grants to a private entity subject to the following:

1. The private entity has certified to the governor the entity has received the sum of one hundred million dollars in cash donations and binding pledged donations for the construction of a presidential library and museum in North Dakota and for grants to affected entities; and
2. The governor has entered an agreement with the private entity in subsection 1 which includes the following provisions:
 - a. The grant funds will be spent only for operating and maintenance costs of the presidential library located in North Dakota;
 - b. Any unused grant funds will be returned to the state and deposited in the general fund if the presidential library has not been constructed within the period of time specified in the agreement or if the library ceases operations;
 - c. The private entity agrees to donate ten million dollars from the one hundred million dollars identified in subsection 1 to a higher education institution foundation in North Dakota for the purpose of creating an endowment to digitize documents relating to Theodore Roosevelt and for the creation of a Theodore Roosevelt conservation scholars program and related academic mission at a North Dakota higher education institution in collaboration with the private entity; and

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- d. The private entity agrees to donate three hundred thousand dollars to a city in North Dakota for prior costs incurred related to planning for a presidential library.

SECTION 2. APPROPRIATION - TRANSFER. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$15,000,000, or so much of the sum as may be necessary, which the director of the office of management and budget shall transfer to the Theodore Roosevelt presidential library and museum endowment fund during the period beginning with the effective date of this Act, and ending June 30, 2019. Of the funds appropriated in this section, \$9,800,000 is from unexpended funds previously appropriated by the legislative assembly for grants related to the Theodore Roosevelt presidential library.

SECTION 3. LOAN AUTHORIZATION. The governor may obtain a loan from the Bank of North Dakota in an amount not to exceed \$35,000,000. The term of the loan may not exceed six years and the interest rate shall be set at the prevailing interest rate charged by the Bank of North Dakota to governmental entities. The governor shall repay the loan authorized in this section from funds appropriated by the legislative assembly. The governor shall deposit the proceeds of the loan in the Theodore Roosevelt presidential library and museum endowment fund.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly