

**State Water Commission
Budget No. 770
Senate Bill No. 2020**

	FTE Positions	General Fund	Other Funds	Total
2011-13 executive budget (bills as introduced)	87.00	\$15,227,098	\$443,688,322	\$458,915,420
2011-13 legislative appropriations	87.00	14,995,199	444,420,221	459,415,420
Legislative increase (decrease) to executive budget	0.00	(\$231,899)	\$731,899	\$500,000
Legislative increase (decrease) to 2009-11 appropriations	1.00	\$871,300	\$132,334,412	\$133,205,712

ONGOING AND ONE-TIME GENERAL FUND APPROPRIATIONS

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2009-11 legislative appropriations	\$14,123,899	\$0	\$14,123,899
2011-13 legislative appropriations	14,995,199	0	14,995,199
2011-13 legislative increase (decrease) to 2009-11 appropriations	\$871,300	\$0	\$871,300
Percentage increase (decrease) to 2009-11 appropriations	6.2%	N/A	6.2%
2011-13 legislative increase (decrease) to executive budget	(\$231,899)	\$0	(\$231,899)
Percentage increase (decrease) to executive budget	(1.5%)	N/A	(1.5%)

SUMMARY OF LEGISLATIVE CHANGES TO THE EXECUTIVE BUDGET AND MAJOR FUNDING ITEMS

Salaries and Wages

The legislative action affecting the recommended appropriation for the State Water Commission is in accordance with legislative salary and fringe benefits guidelines as contained in Senate Bill No. 2015.

	Major Items FTE Positions	General Fund	Other Funds	Total
The legislative action:				
Changed the funding source of the Water Development Division director position added in the executive recommendation from the general fund to the resources trust fund.		(\$231,899)	\$231,899	\$0
Added funding from the resources trust fund for a remote metering device reimbursement program. Sections 9 and 15 of Senate Bill No. 2020 relating to the remote metering of water permits were vetoed by the Governor.			500,000	500,000
Total	0.00	(\$231,899)	\$731,899	\$500,000

FTE Changes

The Legislative Assembly did not change the executive recommendation which included funding for 87 FTE positions, an increase of 1 FTE position from the 2009-11 authorized level of 86 FTE positions. The Legislative Assembly did not change the executive recommendation to add 1 FTE Water Development Division director position.

One-Time Funding

In Section 2 of Senate Bill No. 2020, the Legislative Assembly identified \$7,771,773 of one-time funding from special funds, of which \$7,271,773 is from federal fiscal stimulus funding provided for the Southwest Pipeline Project's water treatment plant.

The 2009 Legislative Assembly in House Bill No. 1305 provided \$2,792,000 from the permanent oil tax trust fund for the following water project grants:

- \$864,000 to assist in the local cost-share of the Ray and Tioga Water Supply Project;
- \$985,000 to assist in the local cost-share of the Burke, Divide, and Williams Water District Water Supply Project;
- \$593,000 to assist in the local cost-share of the Wildrose Water Supply Project; and
- \$350,000 to assist in the repayment of outstanding bonds associated with the Stanley water pipeline construction project.

The 2011 Legislative Assembly identified \$500,000 of one-time funding from special funds to complete these projects during the 2011-13 biennium and provided the Office of Management and Budget transfer any unexpended funds appropriated from the permanent oil tax trust fund for these projects to the State Water Commission fund at the end of the 2009-11 biennium.

These amounts are not to be considered part of the agency's base budget for preparing the 2013-15 executive budget, and the State Water Commission is to report to the Appropriations Committees during the 2013 legislative session on the use of this funding.

Other Sections in Bill

Sovereign lands enforcement grant - Section 3 directs the State Water Commission to provide a grant of \$200,000 from the general fund to the Game and Fish Department for law enforcement activities on sovereign lands in the state.

Resources trust fund and water development trust fund - Section 4 provides that in addition to the amounts appropriated to the State Water Commission from the resources trust fund and the water development trust fund, any additional amounts that become available in those funds are appropriated to the State Water Commission for the purpose of defraying the expenses of the State Water Commission for the 2011-13 biennium (see the resources trust fund analysis and the water development trust fund analysis in the **Trust Fund Analyses** section of this report). However, the State Water Commission must receive Budget Section approval prior to the expenditure of any funds in excess of the \$448,413,774 of funding appropriated in the water and atmospheric resources line item of the bill.

Grant and water project carryover authority - Section 5 authorizes the State Water Commission to continue any unexpended 2011-13 appropriation authority for grants or water-related projects in the 2013-15 biennium.

Fargo flood control project funding 2009-11 biennium - Section 6 amends 2009 Session Laws Chapter 20, Section 7, relating to Fargo flood control project funding to provide that funds appropriated for Fargo flood control may be used for right-of-way acquisition costs, excluding the purchase of dwellings, in addition to land purchases and construction and to provide that no more than 10 percent of Fargo flood control project funds may be used for engineering, legal, planning, or other similar purposes. The amendment to 2009 Session Laws Chapter 20, Section 7, also provides that the City of Fargo, Cass County, and the Cass County Joint Water Resource District must approve any expenditures made under 2009 Session Laws Chapter 20, Section 7, and that costs incurred by nonstate entities for dwellings or other real property that are not paid by state funds are eligible for application by the nonstate entity for cost-sharing with the state. The amendments to the 2009 Session Laws are retroactive to January 1, 2011.

Fargo flood control project funding 2011-13 biennium - Section 7 provides that of the funds appropriated to the State Water Commission for grants and projects for the 2011-13 biennium, \$30 million is for Fargo flood control projects. The section also provides that any funds not spent by June 30, 2013, are not subject to North Dakota Century Code Section 54-44.1-11 and must be continued into the next or subsequent bienniums and may be expended only for Fargo flood control projects. These funds may be used only for land purchases and construction, including right-of-way acquisition costs, and may not be used for the

purchase of dwellings. No more than 10 percent of the funds may be used for engineering, legal, planning, or other similar purposes. The City of Fargo, Cass County, and the Cass County Joint Water Resource District must approve any expenditures made under this section. Costs incurred by nonstate entities for dwellings or other real property that are not paid by state funds are eligible for application by the nonstate entity for cost-sharing with the state. This funding is in addition to \$45 million provided for Fargo flood control by the 2009 Legislative Assembly for a total of \$75 million.

State Water Commission projects - Section 8 requires the State Water Commission to provide funding for a grant to Wildlife Services for animal control (\$250,000) and flood-related water projects in the Nelson County Water Resource District (\$250,000) during the 2011-13 biennium.

Remote metering of water permits funding - Section 9 provides legislative intent that of the funds appropriated from the resources trust fund in the water and atmospheric resources line item in Senate Bill No. 2020, the State Water Commission provide up to \$500,000 for a reimbursement program for the purchase and installation of remote water metering devices during the 2011-13 biennium. **This section was vetoed by the Governor.**

Conversion of existing joint powers entity to a commerce authority - Sections 10, 11, 12, 13, and 14 amend North Dakota Century Code to provide a procedure through which an existing joint powers entity may convert to a commerce authority for the purpose of achieving status as a political subdivision. Section 18 provides the process through which a joint powers entity may convert to a commerce authority is effective through July 31, 2013, but Section 17 provides that a commerce authority formed by the conversion of a joint powers agreement remains a valid commerce authority after the expiration date of the legislation. In addition, Section 17 provides Sections 10 through 14 do not grant any additional authority to exercise the power of eminent domain or issue general obligation bonds to a commerce authority formed by a conversion of a joint powers agreement.

Remote metering of certain water sources - Section 15 requires the State Engineer to develop rules relating to the remote metering of certain water sources and require permit holders to purchase and maintain remote metering devices for the metering of water used pursuant to a temporary, conditional, or perfected water permit and sold for oil and gas purposes. The metering requirement does not apply to water permits used exclusively for irrigation purposes or to temporary permits that have been returned to irrigation use. Except for nonpotable ground water used for enhanced oil recovery purposes and water uses of less than 15 acre-feet per year, all other permitted and temporarily permitted industrial water supplies sold for oil and gas purposes are subject to the metering requirements. The State Engineer is to provide up to \$500,000 for a program to reimburse permit holders for the purchase and installation of the remote terminal water metering devices, up to \$5,000 per metering device. **This section was vetoed by the Governor.**

Permanent oil tax trust fund transfer - Section 16 requires the Office of Management and Budget transfer any unexpended funds appropriated from the permanent oil tax trust fund in the 2009 Session Laws Chapter 25 to the State Water Commission fund at the end of the 2009-11 biennium to allow the State Water Commission to complete projects funded from the permanent oil tax trust fund by the 2009 Legislative Assembly and included in the 2011-13 biennium appropriation by the 2011 Legislative Assembly as one-time funding.

Conversion of joint powers application - Section 17 provides that a commerce authority formed by the conversion of a joint powers agreement remains a valid commerce authority after the expiration date of the legislation. In addition, Section 17 provides the amendments contained in Sections 10 through 14 do not grant any additional authority to exercise the power of eminent domain or issue general obligation bonds to a commerce authority formed by a conversion of a joint powers agreement.

Conversion of joint powers expiration - Section 18 provides the process through which a joint powers entity may convert to a commerce authority is effective through July 31, 2013.

Grand Forks Corporate Center - Section 19 repeals 1999 Session Laws Chapter 535, Section 5, relating to the pledge of revenues from the Grand Forks Corporate Center. The State Water Commission reported on the fiscal note for this bill that an analysis prepared when Senate Bill No. 2188 (1999) was enacted, an estimated \$12.2 million in corporate center revenues would be available to partially repay the water development trust fund over 21 years beginning in 2018.

Related Legislation

Informational and adjudicative proceedings on water permit applications - House Bill No. 1107 provides that a person filing written comments regarding a proposed appropriation may also request an informational hearing on the application. If a request for an informational hearing is made and if the State Engineer determines an informational hearing is necessary to obtain additional information to evaluate the application or to receive public input, the State Engineer is

required to designate a time and place for the informational hearing and serve a copy of the notice of hearing upon the applicant and person who filed written comments.

Western Area Water Supply Authority - House Bill No. 1206 establishes the Western Area Water Supply Authority to treat, store, and distribute water to western North Dakota and to provide for the supply and distribution of water to the people of western North Dakota for domestic, rural water, municipal, livestock, industrial, oil and gas development, and other purposes. The authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities; water districts; and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. The bill provides that the Bank of North Dakota provide a loan of \$50 million to the authority for the construction of the project. The State Water Commission is required to make available, from funding appropriated to the commission, \$25 million as a zero interest loan to the authority. The bill also appropriates \$25 million from the general fund to the Bank to provide a loan to the authority for a maximum term of eight years from the completion of the \$50 million loan from the Bank at 5 percent interest per year. The bill appropriates \$10 million from the resources trust fund to the Bank for the purpose of providing a loan to the authority for a maximum term of two years from the completion of the \$25 million loan from the general fund at 5 percent interest per year. The bill provides that this funding must be structured so that funding is provided, as needed, first from the \$25 million zero interest loan from the State Water Commission, second from the \$50 million loan from the Bank, third from the \$25 million loan from the general fund, and last from the \$10 million loan from the resources trust fund. Repayment of loans must be structured in the following order:

1. The \$50 million loan from the Bank;
2. The \$25 million loan from the general fund with deposit of the principal in the general fund and interest in the resources trust fund;
3. The \$10 million loan from the resources trust fund for deposit in the resources trust fund; and
4. The \$25 million zero interest loan from the State Water Commission for deposit in the resources trust fund.

The authority is required to repay the loans from revenues from the project. Upon repayment of the State Water Commission zero interest loan, the authority is required to provide 5 percent of the net profits to the State Water Commission for deposit by the State Treasurer in the resources trust fund until June 30, 2040. At the request of the authority, the State Water Commission is required to consider a loan of \$40 million from the resources trust fund for inclusion in the State Water Commission's budget for second phase funding. The bill includes an emergency clause and became effective upon the bill's filing with the Secretary of State.

Garrison Diversion Conservancy District - House Bill No. 1318 authorizes the board of directors of the Garrison Diversion Conservancy District to establish special assessment districts for irrigation works.

Control flooding transfer exemption - House Bill No. 1335 exempts water transfers used to control flooding from actions that may be brought under either Chapter 32-40 or 61-28 against an owner or operator of a water transfer used to control flooding for violation of the state's water pollution control laws if the water transfer does not require a national pollutant discharge elimination system permit and complies with the conditions in the state's water quality standards established to protect aquatic life.

Execution of contracts - Senate Bill No. 2068 provides that the State Engineer or the State Engineer's authorized designee may execute contracts approved by the State Water Commission.

State Board of Water Well Contractors - Senate Bill No. 2101 increases the fees the State Board of Water Well Contractors may charge for a certification examination from \$10 to \$100 and for a certificate renewal from a maximum of \$50 to a maximum of \$200 and repeals the grandfather provisions for the certification of water well contractors, water well pump and pitless unit installers, well contracting monitoring, and geothermal system drillers.

State Water Commission compensation - Senate Bill No. 2282 increases compensation for the appointed members of the State Water Commission and the members of the North Dakota Atmospheric Resource Board from \$62.50 per day to the amount provided for members of the Legislative Management under Section 54-35-10.