

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1020

Introduced by

Appropriations Committee

1 A BILL for an Act ~~to create and enact two new sections to chapter 61-02 of the North Dakota~~
 2 ~~Century Code, relating to industrial use of fresh water dispensed for oil and gas industry~~
 3 ~~users;~~to provide an appropriation for defraying the expenses of the state water commission; to
 4 provide an appropriation to the industrial commission; to amend and reenact ~~subsection 1 of~~
 5 section 57-51.1-07, subsection 10 of section 61-02-02, section 61-02-08, subsection 1 of
 6 section 61-02-78, ~~and sections~~section 61-02-79, the new section to chapter 61-03, as created
 7 by section 12 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, and
 8 sections 61-29-06, 61-40-05, and 61-40-11 of the North Dakota Century Code, relating to ~~the~~
 9 ~~allocation of moneys in~~ the oil extraction tax development fund, ~~definitions~~the definition of water
 10 conveyance project, the state water commission chairman and vice chairman, the infrastructure
 11 revolving loan fund, a Bank of North Dakota line of credit, economic analyses for certain water
 12 projects, management of the Little Missouri scenic river, the authority of the western area water
 13 supply authority, and water rates of the western area water supply authority; to provide for ~~a~~
 14 ~~legislative management study~~budget section approval; to provide for a state engineer study; to
 15 provide for an industrial commission study; to provide for a ~~to the~~ legislative management study
 16 ; to provide for reports; to provide a statement of legislative intent; to designate funding; ~~to~~
 17 ~~provide an appropriation for defraying the expenses of the state water commission; and to~~
 18 provide for a transfer; to provide exemptions; to provide a contingent effective date; to provide
 19 an effective date; to provide an expiration date; and to declare an emergency.

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

21 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
 22 as may be necessary, are appropriated from special funds derived from federal funds and other
 23 income, to the state water commission for the purpose of defraying the expenses of the state

1 water commission, for the biennium beginning July 1, 2017, and ending June 30, 2019, as
2 follows:

	Base Level	Adjustments or Enhancements	Appropriation
3			
4			
5	\$5,535,618	\$100,154	\$5,635,772
6	863,400,218	(127,322,401)	736,077,817
7	\$868,935,836	(\$127,222,247)	\$741,713,589
8	<u>\$5,535,618</u>	<u>\$97,568</u>	<u>\$5,633,186</u>
9	<u>863,400,218</u>	<u>(146,859,929)</u>	<u>716,540,289</u>
10	<u>\$868,935,836</u>	<u>(\$146,762,361)</u>	<u>\$722,173,475</u>
11	Full-time equivalent positions 97.00	(4.00)	93.00

12 **SECTION 2. HEALTH INSURANCE INCREASE.** The appropriation in section 1 of this Act
13 includes the sum of ~~\$277,612~~\$257,498 of other funds, for increases in employee health
14 insurance premiums from \$1,130 to ~~\$1,249~~\$1,241 per month.

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

20 **SECTION 3. ADDITIONAL INCOME - APPROPRIATION - BUDGET SECTION**

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

26 ~~**SECTION 5. OIL AND GAS INDUSTRY FRESH WATER ROYALTY INCOME**~~
27 ~~**APPROPRIATION - REPORT.** In addition to the amounts appropriated in section 1 of this Act,~~
28 ~~there is appropriated from oil and gas industry fresh water royalty income deposited in the~~
29 ~~resources trust fund, the sum of \$8,300,000, or so much of the sum as may be necessary, to~~
30 ~~the state water commission for the purpose of repaying state guaranteed loans, which were~~
31 ~~made to entities that sell fresh water to oil and gas industry users, for the biennium beginning~~

~~July 1, 2017, and ending June 30, 2019. The state water commission shall notify the legislative management's water topics overview committee of any funding made available and payments made pursuant to this section.~~

SECTION 4. GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY.

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

SECTION 5. STATE WATER COMMISSION PROJECT FUNDING DESIGNATIONS - TRANSFERS - BUDGET SECTION APPROVAL.

1. Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act from funds available in the resources trust fund and water development trust fund, ~~\$299,875,000~~\$298,875,000 is designated as follows:

- ~~a. \$30,000,000 for rural water supply projects;~~
- ~~b. \$44,125,000 for municipal water supply projects;~~
- ~~c. \$58,000,000 for regional water supply projects;~~
- ~~d. \$1,000,000 for water conveyance projects;~~
- ~~e. \$150,000,000 for flood control or protection projects;~~
- ~~f. \$750,000 for irrigation projects; and~~
- ~~g. \$16,000,000 for general water management.~~
- a. \$120,125,000 for water supply;
- b. \$27,000,000 for rural water supply;
- c. \$136,000,000 for flood control; and
- d. \$15,750,000 for general water.

2. The funding designated in this section is for the specific purposes identified; however, the state water commission may transfer funding among these items, subject to budget section approval and upon notification to the legislative management's water topics overview committee.

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

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

14 ~~— **SECTION 10. LEGISLATIVE INTENT – MINOT FLOOD CONTROL PROJECT FUNDING.**~~
15 ~~Except for the funding appropriated in section 9 of this Act, it is the intent of the sixty-fifth~~
16 ~~legislative assembly that the state water commission not provide any additional funding for flood~~
17 ~~control projects within the city limits of Minot during the 2019-21, 2021-23, and 2023-25~~
18 ~~bienniums.~~

19 **SECTION 6. LEGISLATIVE INTENT - MOUSE RIVER FLOOD CONTROL PROJECT**
20 **FUNDING.** Except for funding provided during bienniums prior to the 2017-19 biennium, it is the
21 intent of the sixty-fifth legislative assembly that the state provide no more than \$193,000,000 of
22 state funding for Mouse River flood control projects within the city limits of Minot. It is the intent
23 of the sixty-fifth legislative assembly that the \$193,000,000 be made available during the
24 2017-19, 2019-21, 2021-23, and 2023-25 bienniums.

25 **SECTION 7. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY PROJECT -**
26 **BUDGET SECTION APPROVAL.** It is the intent of the sixty-fifth legislative assembly that the
27 state water commission provide, in the form of a grant, up to \$30,000,000, of which
28 \$17,000,000 is for the completion of the planning and permitting process and \$13,000,000 is to
29 initiate construction of phase one prioritized project features identified in accordance with
30 subsection 2 of section 8 of this Act, to the Garrison diversion conservancy district for the Red
31 River valley water supply project, for the biennium beginning July 1, 2017, and ending June 30,

1 2019. The Garrison diversion conservancy district must receive budget section approval prior to
2 changing any funding between designations identified in this section.

3 **SECTION 8. RED RIVER VALLEY WATER SUPPLY PROJECT - REPORT TO**
4 **LEGISLATIVE MANAGEMENT - BUDGET SECTION APPROVAL.** Any funding received by the
5 Garrison diversion conservancy district from the state water commission for the Red River
6 valley water supply project during the biennium beginning July 1, 2017, and ending June 30,
7 2019, is subject to the following requirements:

- 8 1. Any funding received for the completion of the planning and permitting process of the
9 Red River valley water supply project must result in the following accomplishments:
 - 10 a. The completed Red River valley water supply plan document that will be the
11 basis and justification for project construction and must include alternative
12 selection, water supply needs, projected project costs, easement acquisitions,
13 environmental regulation compliance to include the Boundary Waters Treaty of
14 1909, and an implementation schedule;
 - 15 b. Acquisition of all state and federal permits required for the construction of any
16 project features intended to be constructed with funding provided during the
17 2017-19 biennium;
 - 18 c. A signed bureau of reclamation water service contract agreeing to a minimum of
19 one hundred sixty-five cubic feet per second over a minimum of forty years or
20 equivalent to ensure an adequate water source for the project's needs;
 - 21 d. Prioritized project features for phase one construction; and
 - 22 e. A recommendation for funding options for all phases of the Red River valley
23 water supply project.
- 24 2. Any funding received to initiate construction of phase one prioritized project features
25 identified in subsection 1 may be spent and construction of phase one may begin only
26 after the budget section receives and approves certification from the state water
27 commission and the state engineer that all items listed in subsection 1 have been
28 accomplished.
- 29 3. Quarterly progress reports on the Red River valley water supply project from the
30 Garrison diversion conservancy district to the water topics overview committee of the
31 legislative management, during the 2017-18 interim.

1 **SECTION 9. WESTERN AREA WATER SUPPLY AUTHORITY - BANK OF NORTH**

2 **DAKOTA LOAN - REPORTS.** ~~The~~Notwithstanding section 5 of chapter 500 of the 2011 Session
3 Laws, the Bank of North Dakota shall consolidate the \$40,000,000 loan to the western area
4 water supply authority authorized in section 5 of chapter 20 of the 2013 Session Laws, the
5 \$50,000,000 loan to the western area water supply authority authorized in section 2 of chapter
6 500 of the 2011 Session Laws, and the ~~\$19,500,000~~\$25,000,000 loan ~~from funds appropriated~~
7 ~~to the state water commission from the resources trust fund in section 1 of chapter 20 of the~~
8 ~~2013 Session Laws~~from the general fund to the western area water supply authority authorized
9 in section 3 of chapter 500 of the 2011 Session Laws. The terms and conditions of the
10 consolidation loan must be negotiated by the western area water supply authority and the Bank
11 of North Dakota. ~~If the authority defaults on its payment of principal or interest on the~~
12 ~~consolidation loan from the Bank of North Dakota authorized by this section, the authority is~~
13 ~~subject to the default provisions under section 61-40-09.~~The western area water supply
14 authority is not obligated to repay principal on loans from the resources trust fund for the period
15 beginning July 1, 2017, and ending June 30, 2018. The interest rate on the \$10,000,000 loan to
16 the western area water supply authority authorized in section 4 of chapter 500 of the 2011
17 Session Laws must be 2.5 percent on any outstanding balance remaining after the effective
18 date of this Act. The Bank of North Dakota shall report the terms of the consolidation loan upon
19 its completion to the legislative management's water topics overview committee during the
20 2017-18 interim. The western area water supply authority shall provide its ~~quarterly~~monthly
21 financial statements and industrial sales to the legislative council for the legislative
22 management's water topics overview committee's review during the 2017-18 interim.

23 **SECTION 10. WESTERN AREA WATER SUPPLY AUTHORITY DEBT SERVICE**

24 **SHORTFALL - BUDGET SECTION APPROVAL.** If the western area water supply authority
25 defaults on its payment of the principal or interest on the consolidation loan provided for in
26 section ~~449~~ of this Act or the revenue bonds or other financing provided for in section 12 of this
27 Act, the Bank of North Dakota shall notify the legislative council, and the state water
28 commission shall provide a payment, subject to budget section approval, to the Bank of North
29 Dakota in an amount of the default as certified to the budget section by the Bank of North
30 Dakota.

SECTION 11. APPROPRIATION - INDUSTRIAL COMMISSION STUDY - WESTERN

AREA WATER SUPPLY AUTHORITY - REPORT TO LEGISLATIVE MANAGEMENT. There is appropriated out of any moneys in the resources trust fund, in the state treasury, the sum of \$150,000, or so much of the sum as may be necessary, to the industrial commission for the purpose of conducting an independent study of the feasibility and desirability of the sale or lease of the industrial water supply assets of the western area water supply authority, for the period beginning with the effective date of this Act, and ending June 30, 2019. The study must provide information regarding the financial impact to the western area water supply authority, its members and customers, the financial viability of the authority, and options available to the authority for debt servicing. The industrial commission may form a nonvoting advisory committee chaired by the state engineer to provide input regarding the scope of the study and to receive reports on the status of the study. The industrial commission shall report to the legislative management's interim water topics overview committee on the results of the study by June 1, 2018.

SECTION 12. ACTIONS RESULTING FROM THE WESTERN AREA WATER SUPPLY AUTHORITY STUDY.

1. If the industrial commission determines, based on the study directed in section 11 of this Act, that it is feasible and desirable to lease or sell the industrial water supply assets of the western area water supply authority, the industrial commission shall develop a timeline to complete the lease or the sale of the industrial water assets of the western area water supply authority and report to the legislative management's interim water topics overview committee.
2. If the industrial commission determines, based on the study directed in section 11 of this Act, that it is not feasible and desirable to lease or sell the industrial water supply assets of the western area water supply authority, notwithstanding section 5 of chapter 500 of the 2011 Session Laws, the western area water supply authority shall, with the assistance of the industrial commission and the Bank of North Dakota, repay its obligations to the Bank of North Dakota through the issuance of revenue bonds or other financing options acceptable to the industrial commission and Bank of North Dakota.

1 **SECTION 13. STATE ENGINEER - FLOOD HAZARD RISK MANAGEMENT STUDY -**
2 **ADDITIONAL INCOME - APPROPRIATION.** The water and atmospheric resources line item in
3 section 1 of this Act includes ~~\$50,000~~, \$30,000 of which \$15,000 is from the resources trust fund
4 and \$15,000 of other funds received from Ward County, for the purpose of conducting a flood
5 hazard risk management framework study and demonstration in section 14 of this Act, for the
6 biennium beginning July 1, 2017, and ending June 30, 2019. The state engineer may seek
7 funding from federal, local, and private sector co-funding partnerships. Any fees collected from
8 data users and partners and any other funds from public or private sources, including federal
9 grants and county revenue contributions, are appropriated to the state engineer for the study
10 and for expanding the project to additional counties for the biennium beginning July 1, 2017,
11 and ending June 30, 2019.

12 **SECTION 14. LEGISLATIVE MANAGEMENT STUDY - FLOOD HAZARD RISK**
13 **MANAGEMENT.** During the 2017-18 interim, the legislative management shall study issues
14 related to the state's development of a statewide flood hazard risk management framework by
15 granting authority to the state engineer to perform a study and proof of concept demonstration
16 to implement statewide flood risk management capabilities for assessing, managing, and
17 reducing property-specific flood risk.

- 18 1. In performing the study and proof of concept demonstration, the state engineer may
19 leverage, coordinate, and partner with the North Carolina floodplain mapping program
20 and with ~~Cass, Ward, Richland, and Burleigh Counties and other counties~~ Ward
21 County to conduct the study and proof of concept demonstration. The state engineer
22 shall acquire and leverage data necessary to support the study and proof of concept
23 demonstration including:
- 24 a. Footprints and elevations from current and future light detection and ranging data
25 collections that meet federal emergency management agency risk mapping,
26 assessment, and planning standards;
 - 27 b. First floor elevations and elevation certificates from local planning and zoning
28 offices or light detection and ranging data;
 - 29 c. Parcel, address, and imagery data necessary for individual property flood hazard
30 identification, assessment, and reduction; and

- 1 d. Any other data the state engineer deems necessary to meet the objectives in
2 creating the database.
- 3 2. To complete the pilot project, the state engineer shall:
- 4 a. Construct and maintain flood hazard and risk data in a spatial, relational
5 database;
- 6 b. Disseminate flood hazard and risk data through a digital display environment
7 prompted through dynamic querying;
- 8 c. Coordinate, incentivize, and partner with a least one county to obtain the
9 necessary parcel data and other data needed for this study and serve as the
10 repository for the property flood risk dataset;
- 11 d. Establish a technical committee consisting of federal, state, local, and private
12 sector stakeholders and providers to the greatest extent possible to allow data
13 sharing, coordination, synergy, and partnering;
- 14 e. Work with the North Carolina floodplain mapping program to incorporate the
15 property risk dataset into the multistate flood risk information system maintained
16 by North Carolina, augment the dataset with federal emergency management
17 agency digital flood insurance data, and assess any data or other gaps
18 preventing this state's full use of the system;
- 19 f. Make the data publicly available on the state water commission's website in an
20 easily accessible and useable format;
- 21 g. Provide technical assistance to data users, including reports and analysis as
22 needed; and
- 23 h. Work with the federal emergency management agency and [the study](#)
24 [countiescounty](#) to enable the communities and property owners to use the
25 elevation, light detection and ranging, and other data provided on the website to
26 submit letters of map amendment or revision to the federal emergency
27 management agency.
- 28 3. The state engineer shall report to the legislative management as requested by the
29 legislative management. At the conclusion of the study, the state engineer shall
30 provide the following information to the legislative management:

- 1 a. A description of the engineer's current cooperative technical flood mapping
- 2 partnership with the federal emergency management agency and any additional
- 3 authority, staffing, and funding required to create a fully independent and
- 4 self-sustaining state flood mapping program in lieu of the federal emergency
- 5 management agency program, including the processing of letters of map change;
- 6 b. A detailed estimate of overall program costs and flood risk reductions of a
- 7 self-sustaining state flood mapping program; and
- 8 c. A ~~county-by-county~~county assessment of the private, county, state, and federal
- 9 data and resources that are currently available as compared to the resources that
- 10 would be required to fully use North Carolina's flood risk information system for
- 11 flood risk management, including recommendations for improvement or the
- 12 statewide expansion of the project established under this study and suggested
- 13 funding mechanisms and alternatives for data dissemination, which may include
- 14 a one-state online repository or the provision of data by local planning and zoning
- 15 offices.

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

18 ~~1. Twenty percent must be allocated and credited to the sinking fund established for~~
19 ~~payment of the state of North Dakota water development bonds, southwest pipeline~~
20 ~~series, and any moneys in excess of the sum necessary to maintain the accounts~~
21 ~~within the sinking fund and for the payment of principal and interest on the bonds must~~
22 ~~be credited to a special trust fund, to be known as the resources trust fund. The~~
23 ~~resources trust fund must be established in the state treasury and the funds therein~~
24 ~~must be deposited and invested as are other state funds to earn the maximum amount~~
25 ~~permitted by law which income must be deposited in the resources trust fund.~~
26 ~~Five~~Three percent of the amount credited to the resources trust fund must be
27 transferred no less than quarterly into the renewable energy development fund, not to
28 exceed three million dollars per biennium. One-half of one percent of the amount
29 credited to the resources trust fund must be transferred no less than quarterly into the
30 energy conservation grant fund not to exceed one million two hundred thousand

~~dollars per biennium. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:~~

~~a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and~~

~~b. The industrial commission for the funding of programs for development of renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.~~

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

SECTION 15. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07. Allocation of moneys in oil extraction tax development fund.

Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. ~~Five~~ ~~Three~~ percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the renewable energy development fund, not to exceed three million dollars per biennium. One-half of one percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the

1 energy conservation grant fund not to exceed ~~one million~~ two hundred thousand
2 dollars per biennium. The principal and income of the resources trust fund may be
3 expended only pursuant to legislative appropriation and are available to:

- 4 a. The state water commission for planning for and construction of water-related
5 projects, including rural water systems. These water-related projects must be
6 those which the state water commission has the authority to undertake and
7 construct pursuant to chapter 61-02; and
8 b. The industrial commission for the funding of programs for development of
9 renewable energy sources; for studies for development of cogeneration systems
10 that increase the capacity of a system to produce more than one kind of energy
11 from the same fuel; for studies for development of waste products utilization; and
12 for the making of grants and loans in connection therewith.
13 c. The department of commerce for the funding of programs for development of
14 energy conservation and for the making of grants and loans relating to energy
15 conservation.

- 16 2. Twenty percent must be allocated to the common schools trust fund and foundation
17 aid stabilization fund as provided in section 24 of article X of the Constitution of North
18 Dakota.
19 3. Thirty percent must be allocated to the legacy fund as provided in section 26 of
20 article X of the Constitution of North Dakota.
21 4. Thirty percent must be allocated and credited to the state's general fund.

22 **SECTION 16. AMENDMENT.** Section 57-51.1-07 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **57-51.1-07. Allocation of moneys in oil extraction tax development fund.**

25 Moneys deposited in the oil extraction tax development fund must be transferred monthly by
26 the state treasurer as follows:

- 27 1. Twenty percent must be allocated and credited to the sinking fund established for
28 payment of the state of North Dakota water development bonds, southwest pipeline
29 series, and any moneys in excess of the sum necessary to maintain the accounts
30 within the sinking fund and for the payment of principal and interest on the bonds must
31 be credited to a special trust fund, to be known as the resources trust fund. The

1 resources trust fund must be established in the state treasury and the funds therein
2 must be deposited and invested as are other state funds to earn the maximum amount
3 permitted by law which income must be deposited in the resources trust fund. Three
4 percent of the amount credited to the resources trust fund must be transferred no less
5 than quarterly into the renewable energy development fund, not to exceed three
6 million dollars per biennium. One-half of one percent of the amount credited to the
7 resources trust fund must be transferred no less than quarterly into the energy
8 conservation grant fund not to exceed one million two hundred thousand dollars per
9 biennium. The principal and income of the resources trust fund may be expended only
10 pursuant to legislative appropriation and are available to:

- 11 a. The state water commission for planning for and construction of water-related
12 projects, including rural water systems. These water-related projects must be
13 those which the state water commission has the authority to undertake and
14 construct pursuant to chapter 61-02; and
 - 15 b. The industrial commission for the funding of programs for development of
16 renewable energy sources; for studies for development of cogeneration systems
17 that increase the capacity of a system to produce more than one kind of energy
18 from the same fuel; for studies for development of waste products utilization; and
19 for the making of grants and loans in connection therewith.
 - 20 c. The department of commerce for the funding of programs for development of
21 energy conservation and for the making of grants and loans relating to energy
22 conservation.
- 23 2. Twenty percent must be allocated to the common schools trust fund and foundation
24 aid stabilization fund as provided in section 24 of article X of the Constitution of North
25 Dakota.
 - 26 3. Thirty percent must be allocated to the legacy fund as provided in section 26 of
27 article X of the Constitution of North Dakota.
 - 28 4. Thirty percent must be allocated and credited to the state's general fund.

29 ~~SECTION 13. AMENDMENT. Section 61-02-02 of the North Dakota Century Code is~~
30 ~~amended and reenacted as follows:~~

1 ~~61-02-02. Definitions.~~

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

3 ~~1. "Commission" means the state water commission.~~

4 ~~2. "Cost of works" includes:~~

5 ~~a. The cost of construction, the cost of all lands, property rights, water rights,~~
6 ~~easements, and franchises acquired which are deemed necessary for such~~
7 ~~construction;~~

8 ~~b. The cost of all water rights acquired or exercised by the commission in~~
9 ~~connection with such works;~~

10 ~~c. The cost of all machinery and equipment, financing charges, interest prior to and~~
11 ~~during construction and for a period not exceeding three years after the~~
12 ~~completion of construction;~~

13 ~~d. The cost of engineering and legal expenses, plans, specifications, surveys,~~
14 ~~estimates of cost, and other expenses necessary or incident to determining the~~
15 ~~feasibility or practicability of any project;~~

16 ~~e. Administrative expenses;~~

17 ~~f. The construction of the works and the placing of the same in operation; and~~

18 ~~g. Such other expenses as may be necessary or incident to the financing authorized~~
19 ~~in this chapter, including funding of debt service, repair and replacement~~
20 ~~reserves, capitalized interest, and the payment of bond issuance costs.~~

21 ~~3. "Fresh water" means fresh water of the state drawn from an underground or surface~~
22 ~~source in this state under an industrial use water permit, whether treated or untreated,~~
23 ~~and dispensed to an oil and gas industry user.~~

24 ~~4. "Oil and gas industry user" means an enterprise engaged in exploration, drilling, or~~
25 ~~production of oil and gas, and includes businesses that transport water for use in the~~
26 ~~enterprise.~~

27 ~~5. "Owner" includes all individuals, associations, corporations, limited liability companies,~~
28 ~~districts, municipalities, and other political subdivisions of this state having any title or~~
29 ~~interest in any properties, rights, water rights, easements, or franchises to be acquired.~~

~~4.6.~~ "Project" means any one of the works defined in subsection 5, or any combination of such works, which are physically connected or jointly managed and operated as a single unit.

~~5.7.~~ "Works" includes:

~~a.~~ All property rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation;

~~b.~~ All water rights acquired and exercised by the commission in connection with such works;

~~c.~~ All means of conserving and distributing water, including without limiting the generality of the foregoing two subdivisions, reservoirs, dams, diversion canals, distributing canals, channels, lateral ditches, pumping units, mains, pipelines, treatment plants, and waterworks systems; and

~~d.~~ All works for the conservation, control, development, storage, treatment, distribution, and utilization of water, including without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization.

SECTION 17. AMENDMENT. Subsection 10 to section 61-02-02 of the North Dakota Century Code as amended by section 3 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

10. "Water conveyance project" means any surface ~~or subsurface~~ drainage works, bank stabilization, or snagging an clearing of water courses.

SECTION 18. AMENDMENT. Section 61-02-08 of the North Dakota Century Code as amended by section 6 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

61-02-08. Meetings of commission.

The commission shall hold at least one meeting every two months at places as it, by resolution, may provide. The governor shall serve as chairman, and the commission shall select a member of the commission to serve as vice chairman. The chairman, or in the chairman's absence or disability, the vice chairman of the commission, may issue a call for any meeting at

1 any time. The governor, ~~as chairman,~~ or governor's appointed representative shall preside at all
2 meetings of the commission ~~and in case of the governor's,~~ and in case of the absence or
3 disability of the governor and governor's appointed representative, the vice chairman shall
4 preside. ~~The seven appointed members of the commission shall select an appointed member to~~
5 ~~serve as vice chairman of the commission.~~

6 **SECTION 19. AMENDMENT.** Subsection 1 of section 61-02-78 of the North Dakota
7 Century Code is amended and reenacted as follows:

- 8 1. An infrastructure revolving loan fund is established on January 1, 2015, within the
9 resources trust fund to provide loans for water supply, flood protection, or other water
10 development and water management projects. Ten percent of oil extraction moneys
11 deposited in the resources trust fund, not to exceed a total deposit from oil extraction
12 moneys of ~~twenty-five~~ twenty-six million dollars, are made available on a continuing
13 basis for making loans in accordance with this section. Accounts may be established
14 in the resources trust fund as necessary for its management and administration.

15 **SECTION 20. AMENDMENT.** Section 61-02-79 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **61-02-79. Bank of North Dakota - Line of credit.**

18 The Bank of North Dakota shall extend a line of credit not to exceed ~~two hundred~~ seventy-
19 five million dollars at a rate ~~that~~ of one and one-half percent over the three month London
20 interbank offered rate, but may not exceed ~~one and three-quarters~~ three percent to the state
21 water commission. The state water commission shall repay the line of credit from funds
22 available in the resources trust fund, water development trust fund, or other funds, as
23 appropriated by the legislative assembly. The state water commission may access the line of
24 credit, as necessary, to provide funding as authorized by the legislative assembly for ~~water-~~
25 ~~supply projects in suspense, water supply projects identified in section 19 of chapter 54 of the~~
26 ~~2015 session laws, and water supply projects approved before June 30, 2017~~ 2019, and flood
27 control projects that have approval for funding before June 30, ~~2017~~ 2019.

28 ~~—SECTION 15. Two new sections to chapter 61-02 of the North Dakota Century Code are~~
29 ~~created and enacted as follows:~~

1 ~~— **Oil and gas industry fresh water royalty.**~~

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

7 ~~— **Deposit of revenue.**~~

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

11 **SECTION 21.** The new section to chapter 61-03 of the North Dakota Century Code created
12 by section 12 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, is
13 amended and reenacted as follows:

14 **Economic analysis process required for certain projects.**

15 The state engineer shall develop an economic analysis process for water conveyance
16 projects and flood-related projects expected to cost more than ~~seven hundred fifty thousand~~
17 ~~one~~ million dollars, and a life cycle analysis process for municipal water supply projects. When the
18 state water commission is considering whether to fund a water conveyance project, flood-
19 related project, or water supply project, the state engineer shall review the economic analysis or
20 life cycle analysis, and inform the state water commission of the findings from the analysis and
21 review.

22 **SECTION 22. AMENDMENT.** Section 61-29-06 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-29-06. Management.**

25 Channelization, reservoir construction, or diversion other than for agricultural ~~or~~
26 ~~recreational, or temporary use~~ purposes and the dredging of waters within the confines of the
27 Little Missouri scenic river and all Little Missouri River tributary streams are expressly
28 prohibited. Flood control dikes may be constructed within the floodplain of the Little Missouri
29 River. Diking and riprapping for bank erosion control shall be permitted within the confines of
30 the Little Missouri scenic river. The construction of impoundments for any purpose on the Little
31 Missouri mainstream shall be prohibited.

1 This chapter shall in no way affect or diminish the rights of owners of the land bordering the
2 river to use the waters for domestic purposes, including livestock watering, or any other rights of
3 riparian landowners.

4 **SECTION 23. AMENDMENT.** Section 61-40-05 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-40-05. Authority of the western area water supply authority.**

7 In addition to authority declared under section 61-40-01, the board of directors of the
8 western area water supply authority may:

- 9 1. Sue and be sued in the name of the authority.
- 10 2. Exercise the power of eminent domain in the manner provided by title 32 or as
11 described in this chapter for the purpose of acquiring and securing any right, title,
12 interest, estate, or easement necessary or proper to carry out the duties imposed by
13 this chapter, and particularly to acquire the necessary rights in land for the
14 construction of an entire part of any pipeline, reservoir, connection, valve, pumping
15 installation, or other facility for the storage, transportation, or utilization of water and all
16 other appurtenant facilities used in connection with the authority. However, if the
17 interest sought to be acquired is a right of way for any project authorized in this
18 chapter, the authority, after making a written offer to purchase the right of way and
19 depositing the amount of the offer with the clerk of the district court of the county in
20 which the right of way is located, may take immediate possession of the right of way,
21 as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty
22 days after notice has been given in writing to the landowner by the clerk of the district
23 court that a deposit has been made for the taking of a right of way as authorized in this
24 subsection, the owner of the property taken may appeal to the district court by serving
25 a notice of appeal upon the acquiring agency, and the matter must be tried at the next
26 regular or special term of court with a jury unless a jury be waived, in the manner
27 prescribed for trials under chapter 32-15.
- 28 3. Accept funds, property, services, pledges of security, or other assistance, financial or
29 otherwise, from federal, state, and other public or private sources for the purpose of
30 aiding and promoting the construction, maintenance, and operation of the authority.

31 The authority may cooperate and contract with the state or federal government, or any

1 department or agency of state or federal government, or any city, water district, or
2 water system within the authority, in furnishing assurances and meeting local
3 cooperation requirements of any project involving treatment, control, conservation,
4 distribution, and use of water.

5 4. Cooperate and contract with the agencies or political subdivisions of this state or other
6 states, in research and investigation or other activities promoting the establishment,
7 construction, development, or operation of the authority.

8 5. Appoint and fix the compensation and reimbursement of expenses of employees as
9 the board determines necessary to conduct the business and affairs of the authority
10 and to procure the services of engineers and other technical experts, and to retain
11 attorneys to assist, advise, and act for the authority in its proceedings.

12 6. Operate and manage the authority to distribute water to authority members and others
13 within or outside the territorial boundaries of the authority and this state.

14 7. Hold, own, sell, or exchange any and all property purchased or acquired by the
15 authority. All money received from any sale or exchange of property must be deposited
16 to the credit of the authority and may be used to pay expenses of the authority.

17 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure,
18 bulk water sale or lease, which contracts may provide for payments to fund some or all
19 of the authority's costs of acquiring, constructing, or reconstructing one or more water
20 supply or infrastructure.

21 9. Acquire, construct, improve, and own water supply infrastructure, office and
22 maintenance space in phases, in any location, and at any time.

23 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial
24 use to persons within or outside the authority. The contracts may provide for payments
25 to fund some or all of the authority's costs of acquiring, constructing, or reconstructing
26 one or more water system projects, as well as the authority's costs of operating and
27 maintaining one or more projects, whether the acquisition, construction, or
28 reconstruction of any water supply project actually is completed and whether water
29 actually is delivered pursuant to the contracts. The contracts the cities, water districts,
30 and other entities that are members of the western area water supply authority are
31 authorized to execute are without limitation on the term of years.

- 1 11. Borrow money as provided in this chapter.
- 2 12. Make all contracts, execute all instruments, and do all things necessary or convenient
3 in the exercise of its powers or in the performance of its covenants or duties or in order
4 to secure the payment of its obligations, but an encumbrance, mortgage, or other
5 pledge of property of the authority may not be created by any contract or instrument.
- 6 13. Accept from any authorized state or federal agency loans or grants for the planning,
7 construction, acquisition, lease, or other provision of a project, and enter agreements
8 with the agency respecting the loans or grants. Other than state-guaranteed loans,
9 additional debt that may form the basis of a claim for territorial or franchise protection
10 for industrial water sales for oil and gas exploration and production may be acquired
11 by the authority or member entities only upon approval by the industrial commission
12 and the emergency commission.
- 13 14. Contract debts and borrow money, pledge property of the authority for repayment of
14 indebtedness, and provide for payment of debts and expenses of the authority.
- 15 15. Operate and manage the authority to distribute water to any out-of-state cities or water
16 systems that contract with the authority.
- 17 16. Accept, apply for, and hold water allocation permits.
- 18 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and
19 ratesetting regarding water sold by the authority. The authority may adopt a rate
20 structure with elevated rates set for project industrial water depot and lateral supplies
21 in recognition that a large component of the project expense is being incurred to meet
22 the demands of industrial users. The industrial water depot and lateral rate structure
23 must be approved in accordance with section 61-40-11.
- 24 18. Develop water supply systems; store and transport water; and provide, contract for,
25 and furnish water service for domestic, municipal, and rural water purposes; milling,
26 manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses;
27 and fix the terms and rates therefore. The authority may acquire, construct, operate,
28 and maintain dams, reservoirs, ground water storage areas, canals, conduits,
29 pipelines, tunnels, and any and all treatment plants, works, facilities, improvements,
30 and property necessary the same without any required public vote before taking
31 action.

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

6 20. Accept assignment by member entities of contracts that obligate member entities to
7 provide a water supply, contracts that relate to construction of water system
8 infrastructure, or other member entity contracts that relate to authorities transferred to
9 the authority under this chapter.

10 21. Issue revenue bonds to repay its loan obligations to the Bank of North Dakota. For the
11 purpose of issuing such revenue bonds, the provisions of chapters 40-35 and 40-36
12 apply to the extent necessary and consistent with section 12 of this Act.

13 **SECTION 24. AMENDMENT.** Section 61-40-11 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-40-11. Water rates.**

16 ~~The authority shall develop~~industrial commission shall provide an industrial water depot and
17 ~~lateral retail rate~~ and present the rate to the industrial commission for approval. Any industrial
18 water depot and lateral rate adjustment must have approval of the industrial commission before
19 going into effect~~for the authority which is a competitive, floating, market rate~~The industrial
20 commission may authorize the authority to contract at competitive, floating, market rates for
21 industrial water depot and lateral retail sales. The authority shall provide a report on the rates to
22 the commission and legislative management's water topics overview committee on a regular
23 basis. The authority shall develop domestic water rates that must include all costs for operation,
24 maintenance, and operating and capital reserves, and debt repayment of all infrastructure
25 managed or constructed by the authority, with the exception of the costs identified in section
26 61-40-10 which are paid for by industrial water depot and lateral sales.

27 **SECTION 25. TRANSFER - INFRASTRUCTURE REVOLVING LOAN FUND TO**

28 **RESOURCES TRUST FUND.** On July 1, 2017, the state treasurer shall transfer any oil

29 extraction moneys exceeding ~~\$25,000,000~~\$26,000,000 which have been deposited in the

30 infrastructure revolving loan fund from the infrastructure revolving loan fund to the resources

31 trust fund.

1 ~~—SECTION 19. LEGISLATIVE MANAGEMENT STUDY - WESTERN AREA WATER~~

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

11 **SECTION 26. LEGISLATIVE MANAGEMENT STUDY - OIL AND GAS INDUSTRIAL**

12 **WATER USE.** During the 2017-18 interim, the legislative management shall study industrial
13 water use of the oil and gas industry. The study must include the recapture of water used in
14 fracking, the recycling of water used in fracking, and other oil and gas activities, fracking
15 methods which do not require the use of water, and taxes or fees other states charge for water
16 used in the oil and gas industry.

17 **SECTION 27. STATE WATER COMMISSION - 2019-21 BIENNIUM BUDGET.** The state
18 water commission, in accordance with section 54-44.1-04, shall prepare its 2019-21 biennium
19 budget request and the office of management and budget shall prepare the draft appropriations
20 Act under section 54-44.1-16 for the state water commission for consideration by the sixty-sixth
21 legislative assembly with funding provided separately in a salaries and wages line item,
22 operating expenses line item, capital assets line item, project carryover line item, new projects
23 line item, and any additional line items as determined necessary by the commission or the office
24 of management and budget. The state water commission shall present funding for projects in a
25 manner consistent with the funding designations identified in section 5 of this Act, for the
26 2019-21 biennium.

27 **SECTION 28. EFFECTIVE DATE - EXPIRATION DATE.** Section 15 of this Act becomes
28 effective on August 1, 2017, is effective through July 31, 2019, and after that date is ineffective.
29 Section 16 of this Act becomes effective on August 1, 2019. Sections 17, 18, and 21 of this Act
30 become effective on August 1, 2017.

1 **SECTION 29. CONTINGENT EFFECTIVE DATE.** Section 23 of this Act is contingent on
2 certification by the industrial commission to the legislative council that the industrial commission
3 has determined the western area water supply authority shall, with the assistance of the
4 industrial commission and the Bank of North Dakota, repay its obligations to the Bank of North
5 Dakota through the issuance of revenue bonds, as provided under subsection 2 of section 12 of
6 this Act.

7 **SECTION 30. EMERGENCY.** Sections 9, 10, 11, 12, 22, 23, and 29 of this Act are declared
8 to be an emergency measure.