Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

SENATE BILL NO. 2020
(Appropriations Committee)
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to provide exemptions; to create and enact three new sections to chapter 61-02 of the North Dakota Century Code, relating to a Bank of North Dakota line of credit, to the state water commission cost-share policy, and to North Dakota outdoor heritage fund grants and cost-share; to amend and reenact section 54-35-02.7 of the North Dakota Century Code, relating to the water topics overview committee; to provide legislative intent; to designate funding; to provide contingent allocations; to provide for a report to the legislative assembly; to provide for legislative management reports; to provide for a legislative management study; to provide for a state water commission study; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

	Base Level	Adjustments or Enhancements	Appropriation
Accrued leave payments	$325,774	($325,774)	$0
Administrative and support services	4,716,665	818,953	5,535,618
Water and atmospheric resources	822,365,166	297,035,052	1,119,400,218
Total all funds	$827,407,605	$297,528,231	$1,124,935,836
Full-time equivalent positions	90.00	7.00	97.00

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIFTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-third legislative assembly for the 2013-15 biennium:

One-Time Funding Description	2013-15	2015-17
Excavator	$243,200	$0
Southwest water pipeline project	21,000,000	0
Grants for water	10,350,000	0
Office space renovation	45,000	0
Total all funds	$31,638,200	$0
Total special funds	31,638,200	0
Total general fund	$0	$0

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

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

SECTION 5. ADDITIONAL INCOME - APPROPRIATION - BUDGET SECTION APPROVAL. In addition to the amounts included in the estimated income line item in section 1 of this Act, any additional amounts in the resources trust fund and water development trust fund which become available are appropriated, subject to budget section approval, to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2015, and ending June 30, 2017.

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

SECTION 8. FARGO FLOOD CONTROL PROJECT FUNDING - EXEMPTION. Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act, $69,000,000 is for Fargo flood control projects, for the biennium beginning July 1, 2015, and ending June 30, 2017. Any funds not spent by June 30, 2017, are not subject to 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, including levees and dikes. Except as otherwise provided, 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 ten percent of these 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 which are not paid by state funds are eligible for application by the nonstate entity for cost-sharing with the state.

SECTION 9. LEGISLATIVE INTENT - FARGO FLOOD CONTROL PROJECT FUNDING. It is the intent of the sixty-fourth legislative assembly that the state provide one-half of the local cost-share of Fargo flood control projects, including constructing a federally authorized Fargo flood control project, and that total Fargo flood control project funding to be provided by the state not exceed $570,000,000. It is the intent of the sixty-fourth legislative assembly that $120,000,000 of the $570,000,000, be used for Fargo interior flood control projects and that any funds spent for Fargo interior flood control projects after July 1, 2017, require 50 percent matching funds from the Fargo flood authority. It is the intent of the sixty-fourth legislative assembly that the $266,000,000 yet to be designated by the state for the Fargo flood control project be made available in equal installments over the next four bienniums, beginning July 1, 2017. It is the intent of the sixty-fourth legislative assembly that funding for the Fargo flood control project will end June 30, 2021, if a federal appropriation for project construction has not been provided by June 30, 2021.

SECTION 10. FARGO INTERIOR FLOOD CONTROL - FUNDING REQUIREMENTS. The city of Fargo shall apply for flood protection funding, but the state water commission may not deny an application unless the funds are not intended to be used in accordance with provisions of this section. The city of Fargo may use the funds for costs directly associated with completion of interior flood protection projects within its city limits, including engineering and legal fees, right-of-way acquisition costs, land purchases, home buyouts, and construction costs. No more than ten percent of these funds may be used for engineering and legal fees. Funds may not be used for general operations or administrative costs. Any funds designated by the sixty-fourth legislative assembly for Fargo interior flood control projects may be expended only for Fargo interior flood control projects, including levees and dikes until a federal appropriation is provided for project construction for the Fargo flood control project at which time it may be used for a federally authorized Fargo flood control project.

SECTION 11. APPROPRIATION - FARGO INTERIOR FLOOD CONTROL - STATE DISASTER RELIEF FUND - FUNDING REQUIREMENTS. There is appropriated out of any moneys in the state disaster relief fund in the state treasury, the sum of $30,000,000, or so much of the sum as may be necessary, for the purpose of providing funding for flood protection projects within city limits of Fargo, for the period beginning with the effective date of this Act, and ending June 30, 2017. The city of Fargo shall apply for flood protection funding, but the state water commission may not deny an application unless the funds are not intended to be used in accordance with provisions of this section. The city of Fargo may use the funds for costs directly associated with completion of interior flood protection projects within its city limits, including engineering and legal fees, right-of-way acquisition costs, land purchases, home buyouts, and construction costs. No more than ten percent of these funds may be used for engineering and legal fees. Funds may not be used for general operations or administrative costs. Any funds designated by the sixty-fourth legislative assembly for Fargo interior flood control projects may be expended only for Fargo interior flood control projects, including levees and dikes until a federal appropriation is provided for project construction for the Fargo flood control project at which time it may be used for a federally authorized Fargo flood control project.

SECTION 12. FARGO INTERIOR FLOOD CONTROL PROJECT FUNDING - EXEMPTION. Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act, $30,000,000 is for Fargo interior flood control projects, for the period beginning with the effective date of this Act, and ending June 30, 2017. Any funds not spent by June 30, 2017, are not subject to section 54-44.1-11 and must be continued into the next or subsequent bienniums and may be expended only for Fargo interior flood control projects. The city of Fargo shall apply for flood protection funding, but the state water commission may not deny an application unless the funds are not intended to be used in accordance with provisions of this section. The city of Fargo may use the funds for costs directly associated with completion of interior flood protection projects within its city limits, including engineering and legal fees, right-of-way acquisition costs, land purchases, home buyouts, and construction costs. Funds may not be used for general operations or administrative costs. Any funds designated by the sixty-fourth legislative assembly for Fargo interior flood control projects may be expended only for Fargo interior flood control projects, including levees and dikes until a federal appropriation is provided for project construction for the Fargo flood control project at which time it may be used for a federally authorized Fargo flood control project.

SECTION 13. LEGISLATIVE INTENT - GRAND FORKS WATER TREATMENT PLANT PROJECT FUNDING. It is the intent of the sixty-fourth legislative assembly that the state provide grants for one-half of the cost to construct the Grand Forks water treatment plant project and provide a $30,000,000 grant for the project during the 2015-17 biennium and a $30,000,000 grant for the project during the 2017-19 biennium.

SECTION 14. RED RIVER VALLEY WATER SUPPLY PROJECT FUNDING - REPORT TO WATER TOPICS OVERVIEW COMMITTEE. The 2013-15 unobligated funding of $7,359,000 designated by the state water commission for the Red River valley water supply project in the water and atmospheric resources line item in section 1 of this Act and an additional $5,000,000 in the water and atmospheric resources line item in section 1 of this Act is designated for a grant to the Garrison diversion conservancy district to plan and design the Red River valley water supply project for the biennium beginning July 1, 2015, and ending June 30, 2017. The state water commission shall transfer funds upon request of the Garrison diversion conservancy district. The Garrison diversion conservancy district shall report on a regular basis to the legislative management's water topics overview committee to review its progress in planning and designing the Red River valley water supply project.

SECTION 15. APPROPRIATION - MISSOURI RIVER CORRECTIONAL CENTER LEVEE - FOX ISLAND LEVEE - STATE DISASTER RELIEF FUND. There is appropriated out of any moneys in the state disaster relief fund in the state treasury, the sum of $4,000,000, or so much of the sum as may be necessary, to the state water commission, for the purpose of providing funding for levee projects for the biennium beginning July 1, 2015, and ending June 30, 2017. Of the funds the state water commission shall make available $1,200,000 for a levee for the Missouri River correctional center, and $2,800,000, for a levee for Lincoln township's Fox Island area.

SECTION 16. FUNDING DESIGNATION - REIMBURSEMENTS FOR 2013-15 BIENNIUM RURAL AND MUNICIPAL WATER SYSTEMS AFFECTED BY LOCAL COST-SHARE CHANGE. Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act, the state water commission shall make available $11,000,000 from funds available from the line of credit for reimbursing rural and municipal water systems affected by local cost-share changes during the 2013-15 biennium. Rural and municipal water systems must be reimbursed up to an amount, which makes the state share 65 percent in lieu of the 75 percent that was approved by the state water commission.

SECTION 17. STATE WATER COMMISSION PROJECT FUNDING DESIGNATIONS. 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, water development trust fund, and the line of credit available from the Bank of North Dakota, $414,000,000 is designated as follows:

1. $113,000,000 for flood control projects;
2. $61,000,000 for general water projects:
   a. $50,000,000 is available for providing grants; and
   b. $11,000,000 from the infrastructure revolving loan fund is available for providing loans;
3. $130,000,000 for rural water projects;
4. $85,000,000 for municipal water projects; and
5. $25,000,000 for providing loans from the infrastructure revolving loan fund for rural and municipal water projects.

SECTION 18. FUNDING DESIGNATIONS - TRANSFERS - BUDGET SECTION APPROVAL. The funding designated for the items in section 17 of this Act, is designated for the specific purposes identified; however, the state water commission may transfer funding among these items, upon notification to the water topics overview committee and subject to budget section approval.

SECTION 19. CONTINGENT ALLOCATION - WATER AND ATMOSPHERIC RESOURCES - CENTRAL DAKOTA WATER SUPPLY STUDY. Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act, $70,000,000, is designated as follows, contingent on the state water commission entering into a written agreement that a fertilizer or chemical processing facility will be constructed in Stutsman County:

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

The state water commission shall conduct a study on the feasibility and desirability of the central Dakota water supply project for the biennium beginning July 1, 2015, and ending June 30, 2017. The study must include a financial analysis as well as a detailed business plan for the project, including projected operational costs and projected water supply needs for the area to be served.

SECTION 20. STUTSMAN COUNTY WATER REUSE FACILITY - EXEMPTION. For purposes of a project for a water reuse facility, the Stutsman rural water district is granted an exemption from the aggregate total outstanding limit of $50,000,000 of revenue bonds under section 61-35-15 and is instead limited to an aggregate total outstanding limit of $100,000,000 of revenue bonds for purposes of section 61-35-15.

SECTION 21. STUTSMAN COUNTY WATER REUSE FACILITY PROJECT - USER BONDING. Any agreement entered into by the state water commission relating to the Stutsman County water reuse facility project must include requirements that the users of the water reuse facility have entered into contracts, which may include use contracts or credit support arrangements, with the Stutsman rural water district pursuant to which the expected revenues from these contracts over the term of the

contracts are sufficient to repay the total balance of the loans or revenue bonds authorized by the sixty-fourth legislative assembly for the Stutsman County water reuse facility.

SECTION 22. LEGISLATIVE MANAGEMENT STUDY - WATER SUPPLY FOR CENTRAL AND EASTERN NORTH DAKOTA. During the 2015-16 interim, the legislative management shall study options available for providing a sustainable water supply to central and eastern North Dakota. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

SECTION 23. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY PROJECT. It is the intent of the sixty-fourth legislative assembly that the state, beginning on July 1, 2017, and extending over the next four bienniums, provide $150,000,000 per biennium of state funds to implement the selected alternative for the Red River valley water supply project.

SECTION 24. WESTERN AREA WATER SUPPLY AUTHORITY MEMBER ENTITIES - DEBT. A western area water supply authority member entity may incur debt as authorized by law, except that an entity may not use any income from industrial water sales relating to oil and gas exploration or production to repay any debt or as collateral to secure debt beginning January 1, 2015. Previous debt accrued by the western area water supply may be serviced by the western area water supply revenues from industrial water sales.

SECTION 25. STATE WATER COMMISSION PRIORITY PROJECTS LIST - REPORTS TO THE WATER TOPICS OVERVIEW COMMITTEE. The state water commission shall report to the legislative management's water topics overview committee every six months during the 2015-16 interim regarding any changes made to the state water commission priority projects list presented to the sixty-fourth legislative assembly for the biennium beginning July 1, 2015, and ending June 30, 2017.

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

SECTION 27. INDEPENDENT WATER PROVIDERS AND WESTERN AREA WATER SUPPLY AUTHORITY - REPORT TO THE WATER TOPICS OVERVIEW COMMITTEE. During the 2015-16 interim, the independent water providers and the western area water supply authority shall report to the legislative management's water topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, engineering contract procedures, and market share. The water topics overview committee shall report to the legislative management with recommendations to ensure western area water supply authority's ability to maintain its payment schedule of the state's loan.

SECTION 28. REPORT TO LEGISLATIVE ASSEMBLY - SOUTHWEST PIPELINE PROJECT. The state water commission and the southwest water authority shall continue the process of reviewing capital repayment and revenues being returned to the resources trust fund; payments necessary to meet obligations of existing bonds and other loans; ownership of land and associated facilities; existing construction documents; liabilities; contracts with cities, bulk users, companies, and other users; and other items; and shall report to the sixty-fifth legislative assembly on the actions necessary for the transfer of ownership and responsibility of the southwest pipeline project from the state water commission to the southwest water authority.

SECTION 29. STATE WATER COMMISSION STUDY OF FARGO DIVERSION PROJECT. The state water commission shall contract with North Dakota state university to expand the scope of the current agricultural impacts study of the F-M area diversion project at a cost that may not exceed

$80,000. The expanded study is contingent upon hydraulic modeling performed by the diversion authority and supplied to the state water commission and North Dakota state university research team. The hydraulic modeling performed by the diversion authority is eligible for cost share by the state water commission. The expanded study must be completed by September 1, 2016, and must focus on:

1. The area determined by hydrology modeling to be affected by project conditions in excess of six inches, and outside the area recognized by the army corps of engineers for which mitigation is required upstream of the proposed dam, which is consistent with current floodplain designation by the federal emergency management agency for the studied flood event.

2. The impacts on agricultural production income due to operation of the diversion project.

SECTION 30. BONDING AUTHORITY - BUDGET SECTION APPROVAL. The state water commission shall request budget section approval prior to issuing any revenue bonds during the biennium beginning July 1, 2015 and ending June 30, 2017.

SECTION 31. AMENDMENT. Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 32. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

Bank of North Dakota - Line of credit.

The Bank of North Dakota shall extend a line of credit not to exceed two hundred million dollars at a rate that may not exceed one and three-quarters percent to the state water commission. The state water commission shall repay the line of credit from funds available in the resources trust fund, water development trust fund, or other funds, as appropriated by the legislative assembly. The state water commission may access the line of credit, as necessary, to provide funding as authorized by the legislative assembly for water supply projects in suspense, water supply projects identified in section 19 of this Act and water supply projects approved before June 30, 2017, and flood control projects that have approval for funding before June 30, 2017.

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

State water commission cost-share policy.

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

1. Must provide a water supply project is eligible for grants up to seventy-five percent of the total eligible project costs.

2. May not determine program eligibility of water supply projects based on a population growth factor. However, a population growth factor may be used in prioritizing projects for that purpose.

3. Must consider all project costs potentially eligible for reimbursement, except the commission may exclude operations expense and regular maintenance. The commission shall require a water project sponsor to maintain a capital improvement fund from the rates charged customers for future extraordinary maintenance projects as condition of funding an extraordinary maintenance project.

4. May not determine program eligibility of water supply projects based on affordability. However, affordability may be used in prioritizing projects for that purpose.

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

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

For projects involving the repair of an existing flood control or recreation structure, the state water commission may not deduct North Dakota outdoor heritage fund moneys provided from the cost of the project before determining the local cost-share. The state water commission shall include those provided moneys as part of the local cost-share, however, the local entity may not receive funding in excess of the total project cost.

SECTION 35. EMERGENCY. Sections 1, 7, 12, and 17 of this Act are declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2020 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 2 Absent 0

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 90 Nays 0 Absent 4

Speaker of the House

Chief Clerk of the House

Received by the Governor at 4:18 P.M. on May 4, 2015.

Approved at 4:37 P.M. on May 12, 2015.

Governor

Filed in this office this 13th day of May, 2015,

at 918 o'clock A M.

Secretary of State