

**HOUSE BILL NO. 1153**

Introduced by

Appropriations Committee

(At the request of the State Water Commission)

1 A BILL for an Act to amend and reenact section 11 of chapter 535 of the 1999 Session Laws,  
2 as amended by section 1 of chapter 559 of the 2001 Session Laws, as amended by section 1 of  
3 chapter 549 of the 2003 Session Laws, relating to the issuance of bonds for construction of an  
4 outlet from Devils Lake; to amend and reenact sections 61-02.1-01 and 61-02.1-02.1 and  
5 subsection 3 of section 61-02.1-04 of the North Dakota Century Code, relating to the water  
6 commission's authority to issue bonds for projects; to repeal section 61-02.1-02 of the North  
7 Dakota Century Code, relating to bond issuance amount limits; and to declare an emergency.

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

9 **SECTION 1. AMENDMENT.** Section 11 of chapter 535 of the 1999 Session Laws, as  
10 amended by section 1 of chapter 559 of the 2001 Session Laws, as amended by section 1 of  
11 chapter 549 of the 2003 Session Laws is amended and reenacted as follows:

12 **Section 11. EXPIRATION DATE.** ~~Except for the issuance of bonds for construction of~~  
13 ~~an outlet from Devils Lake, the~~ The authority of the commission to issue bonds as provided in  
14 chapter 61-02.1 is effective through June 30, ~~2004~~ 2007, and after that date is ineffective. ~~The~~  
15 ~~authority of the commission to issue bonds as provided in chapter 61-02.1 for construction of an~~  
16 ~~outlet from Devils Lake is effective through June 30, 2005, and after that date is ineffective.~~  
17 However, the commission may continue to exercise all other powers granted to it under this Act  
18 and to comply with any covenants entered into pursuant to this Act.

19 **SECTION 2. AMENDMENT.** Section 61-02.1-01 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **61-02.1-01. Legislative findings and intent - Authority to issue bonds.**

22 1. The legislative assembly finds that some cities suffered serious economic and  
23 social injuries due to the major flood disaster in 1997 and other recent floods and  
24 are at significant risk for future flooding; and that construction of flood control or

1 reduction projects is necessary for the protection of health, property, and  
2 enterprises and for the promotion of prosperity and the general welfare of the  
3 people of the state and that construction of any such projects involves and requires  
4 the exercise of the sovereign powers of the state and concerns a public purpose.  
5 Therefore, it is declared necessary and in the public interest that the state by and  
6 through the state water commission assist in financing the costs of constructing  
7 flood control or reduction projects through the issuance of bonds.

8 2. The legislative assembly finds that continued construction of the southwest pipeline  
9 project is necessary for the protection of health, property, and enterprises and for  
10 the promotion of prosperity and the general welfare of the people of the state and  
11 that continued construction of the southwest pipeline project involves and requires  
12 the exercise of the sovereign powers of the state and concerns a public purpose.  
13 The legislative assembly also finds that current funding for the southwest pipeline  
14 project has become uncertain, and therefore, it is declared necessary and in the  
15 public interest that the state by and through the state water commission assist in  
16 financing the costs of continued construction of the southwest pipeline project  
17 through the issuance of bonds.

18 3. The legislative assembly finds that the Devils Lake basin is suffering and facing a  
19 worsening flood disaster; and that construction of an outlet from Devils Lake is  
20 necessary for the protection of health, property, and enterprises and for the  
21 promotion of prosperity and the general welfare of the people of the state; and that  
22 construction of the outlet involves and requires the exercise of the sovereign  
23 powers of the state and concerns a public purpose. Therefore, it is declared  
24 necessary and in the public interest that an outlet from Devils Lake be constructed  
25 with financing from the state water commission to provide flood relief to the Devils  
26 Lake basin.

27 4. ~~The legislative assembly finds that there is a critical need to develop a~~  
28 ~~comprehensive statewide water development program to serve the long term water~~  
29 ~~resource needs of the state and its people and to protect the state's current usage~~  
30 ~~of, and the state's claim to, its proper share of Missouri River water.~~

- 1           5- In furtherance of the public purpose set forth in subsection 1, the state water  
2           commission may issue bonds under chapter 61-02 and the proceeds are  
3           appropriated for flood control projects authorized and funded in part by the federal  
4           government and designed to provide permanent flood control or reduction to cities  
5           that suffered severe damages as a result of the 1997 flood or other recent floods  
6           and to repay the line of credit extended to the state water commission under  
7           S.L. 1999, ch. 535, § 4. The commission may issue bonds for a flood control or  
8           reduction project only:
- 9           a.    When:
- 10               (1)   A flood control or reduction project involves a city that suffered  
11               catastrophic flood damage requiring evacuation of the major share of its  
12               populace;
- 13               (2)   A flood control or reduction project includes interstate features and  
14               requires acquisition of private property to build permanent flood  
15               protection systems to comply with federal flood protection standards;
- 16               (3)   The governing body of a city provides a written certification to the state  
17               water commission that the city has committed itself to contribute  
18               one-half or more of the North Dakota project sponsor's share of the  
19               nonfederal share of the cost to construct the project;
- 20               (4)   The United States army corps of engineers issues its approval of the  
21               flood control or reduction project;
- 22               (5)   A project cooperation agreement, which contains provisions acceptable  
23               to the state engineer and is approved by the governor, is entered by the  
24               state of Minnesota or one of its political subdivisions in which the flood  
25               control or reduction project is to be constructed;
- 26               (6)   A project cooperation agreement, which contains provisions acceptable  
27               to the state engineer and is approved by the governor, is entered by the  
28               state or one of its political subdivisions in which the flood control or  
29               reduction project is to be constructed;

- 1                   (7) The governing body of the city has approved a financing plan for all  
2                   amounts of the nonfederal share of a flood control or reduction project  
3                   in excess of the amounts to be paid by the state; and  
4                   (8) ~~That no order for injunctive relief has been issued by a court of~~  
5                   ~~competent jurisdiction enjoining construction of the flood control or~~  
6                   ~~reduction project; and~~  
7                   (9) That the flood control or reduction project is designed to be  
8                   cost-effective and that any impact on residential neighborhoods is  
9                   minimized in an amount reasonably practicable as determined by the  
10                  state engineer and approved by the governor;  
11                  b. When a flood control or reduction project in a city with a population as of the  
12                  1990 federal decennial census of at least eight thousand and not more than  
13                  ten thousand has received significant federal funding through federal grants  
14                  and funds from the United States army corps of engineers and the federal  
15                  emergency management agency; or  
16                  c. When a flood control or reduction project in a city with a population as of the  
17                  1990 federal decennial census of at least four thousand five hundred and not  
18                  more than six thousand has at least seventy percent of the land within the  
19                  boundaries of the city located within the one hundred year floodplain as  
20                  designated on a flood insurance rate map and the United States army corps  
21                  of engineers issues its approval of the flood control or reduction project.
- 22        6- 5. In furtherance of the public purpose set forth in subsection 2, the state water  
23        commission may issue bonds under chapter 61-02 and the proceeds are  
24        appropriated for construction of the southwest pipeline project and to repay the line  
25        of credit extended to the state water commission under S.L. 1999, ch. 535, § 4.  
26        The commission may only issue bonds under this chapter for continued  
27        construction of the southwest pipeline project when it is determined that the  
28        Perkins County water system will not make payment to the state water commission  
29        in the amount of four million five hundred thousand dollars or on January 1, 2000,  
30        whichever occurs earlier. If the Perkins County water system makes payment to  
31        the state water commission after January 1, 2000, the payment must be used to

1 pay principal and interest on bonds issued for continued construction of the  
2 southwest pipeline project as provided in subsection 2 of section 61-02.1-04. If the  
3 Perkins County water system does not make payment to the state water  
4 commission, no benefits may accrue to the Perkins County water system.

5 ~~7.~~ 6. In furtherance of the public ~~purposes~~ purpose set forth in ~~subsections~~ subsection 3  
6 ~~and 4~~, the state water commission may issue bonds under chapter 61-02 to  
7 finance the cost of ~~one or more of the projects identified in this~~ the Devils Lake  
8 outlet identified in subsection, ~~provided that:~~ 3.

9 a. ~~(1)~~ ~~The state water commission may only issue bonds for construction of~~  
10 ~~an outlet from Devils Lake when either the state water commission or~~  
11 ~~the United States authorizes construction of an outlet and either the~~  
12 ~~state water commission or a federal agency has developed a plan~~  
13 ~~addressing damage to basic infrastructure such as roads, culverts, and~~  
14 ~~bridges; riverbank erosion; downstream flooding; and increased water~~  
15 ~~treatment costs caused by or resulting from construction of the outlet;~~

16 ~~(2)~~ ~~The outlet from Devils Lake to west Stump Lake must comply with any~~  
17 ~~environmental impact statement or National Environmental Policy Act~~  
18 ~~provisions required under federal law; and~~

19 ~~(3)~~ ~~Bonds may not be issued if an order for injunctive relief has been~~  
20 ~~issued by a court of competent jurisdiction enjoining construction of an~~  
21 ~~outlet from Devils Lake to the Sheyenne River or to west Stump Lake.~~

22 b. ~~The state water commission may only issue bonds to finance the nonfederal~~  
23 ~~cost share of the Garrison diversion unit when the Congress of the United~~  
24 ~~States enacts legislation for the completion of the Garrison diversion unit,~~  
25 ~~which may include the delivery of water to the northwest area water supply~~  
26 ~~project; southwest pipeline project; Turtle Lake irrigation district;~~  
27 ~~Nesson Valley irrigation district; Elk Charbon irrigation district; the Williston~~  
28 ~~irrigation project; the Oakes irrigation project; other irrigation, municipal, rural,~~  
29 ~~and industrial water supply projects; augmented streamflow and ground water~~  
30 ~~recharge projects; development of a Red River valley water supply; and~~  
31 ~~delivery of Missouri River water to the Sheyenne River.~~

1       ~~8.~~ 7. This chapter does not affect the state water commission's authority to otherwise  
2                   issue bonds pursuant to chapter 61-02 or section 61-24.3-01.

3       ~~9.~~ 8. Notwithstanding this section, the state water commission may not issue bonds  
4                   authorized under subsection ~~5~~ 4 for a project unless federal funds have been  
5                   appropriated for that project.

6       ~~10.~~ ~~Notwithstanding this section, if bonds are issued under this chapter, any bonds~~  
7                   ~~subsequently issued after the first issuance must meet the same conditions as the~~  
8                   ~~bonds initially issued.~~

9       ~~11.~~ ~~Notwithstanding this section, except for a project listed in subdivision a of~~  
10                   ~~subsection 7 the state water commission may not issue bonds under this chapter~~  
11                   ~~unless the local project sponsor has agreed to repay the local project sponsor's~~  
12                   ~~share of any bonds issued for the entire nonfederal share of the cost of a project.~~

13               **SECTION 3. AMENDMENT.** Section 61-02.1-02.1 of the North Dakota Century Code  
14 is amended and reenacted as follows:

15               **61-02.1-02.1. Funding - Statewide water development projects - Bond issuance**  
16 **amount.**

17               1. The priorities for the statewide water development program ~~for the 2001-03~~  
18 ~~biennium~~ include municipal, rural, and industrial projects; irrigation projects;  
19 general water management projects, including rural flood control, snagging and  
20 clearing, channel improvement, recreation, and planning studies; flood control  
21 projects; and weather modification projects, which are authorized and declared to  
22 be in the public interest. The state water commission may provide the funds  
23 necessary to construct these projects from money appropriated to the state water  
24 commission from the resources trust fund, the water development trust fund, or by  
25 issuing bonds in an amount not to exceed ~~twenty~~ sixty million dollars plus the costs  
26 of issuance of the bonds, capitalized interest, and reasonably required reserves.  
27 The proceeds of any bonds issued under the authority provided in this section are  
28 appropriated to the state water commission for the purposes set forth in this  
29 section.

30               2. If the state water commission determines it is appropriate to do so, it may, in lieu of  
31 issuing or in combination with the issuance of bonds pursuant to ~~sections~~ this

1            section or section 61-02.1-01 ~~and 61-02.1-02~~, for all or part of the state's cost  
2            share for the projects set forth in those provisions, use funds appropriated to it from  
3            the resources trust fund or the water development trust fund.

4            **SECTION 4. AMENDMENT.** Subsection 3 of section 61-02.1-04 of the North Dakota  
5 Century Code is amended and reenacted as follows:

6            3. Principal and interest on bonds issued under subsection ~~7~~ 6 of section 61-02.1-01  
7            are payable from transfers to be made and appropriated by the legislative  
8            assembly from the water development trust fund as provided in section 61-02.1-05,  
9            then from transfers to be made and appropriated by the legislative assembly from  
10           revenues in the resources trust fund other than revenues from state taxes, then  
11           from appropriations of other available revenues in the then current biennium, and  
12           then from any other revenues the state water commission makes available during  
13           the then current biennium for that purpose, including any federal moneys received  
14           by the state for the construction of an outlet to Devils Lake to pay bonds issued for  
15           that project, or financing a statewide water development program to pay bonds  
16           issued for that project. If sufficient funds from these sources are not available, then  
17           from transfers to be made and appropriated by the legislative assembly from the  
18           first available current biennial earnings of the Bank of North Dakota not to exceed  
19           six million five hundred thousand dollars per biennium prorated with any other  
20           bonds payable from transfers to be made and appropriated by the legislative  
21           assembly from the available current biennial earnings of the Bank of North Dakota,  
22           to be credited by the trustee to the fund established for paying principal and  
23           interest on the bonds under a trust indenture.

24           **SECTION 5. REPEAL.** Section 61-02.1-02 of the North Dakota Century Code is  
25 repealed.

26           **SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.