

Legislative Report

Hearing Schedule (February 27 – March 1).

All of bills being tracked by the North Dakota Water Users Association are included in this report. These bills are tracked these because they have a direct or indirect impact on water management.

I. Legislative Crossover

Legislators finished the first half of the 2019 Legislative Session on Wednesday, two days before Friday’s Crossover deadline. Crossover marks the point when each chamber must act on the bills that originated in their chamber. Legislators resume work Wednesday, February 27 after a short recess. Significant work will need to be done after Crossover to balance the [budget](#). Much will depend on the final revenue forecast of the session expected next month.

II. Status Report

Funding:

[SB 2020](#) **Passed** on the Senate floor with a vote of 44-1 on Friday, February 15. This is the appropriations bill for the State Water Commission. The Senate Appropriations Committee adopted amendments to authorize line-item funding in four “bucket” categories. The allocations of the \$350M of anticipated revenue for new grants were distributed as follows:

- | | |
|-------------------------------------|-----------------------------------|
| • Water Supply – grants | \$115 million |
| • Rural Water – grants | \$30 million |
| • Flood control – grants | \$145 million |
| • General water management – grants | \$35.255 million |
| • Increase to Capital Assets | \$23.1 million |
| • Project Carryover | \$33.5 million |
| • One-time line of credit funding | \$75 million for capital projects |

The bill reduces the SWC authorized FTEs by three net positions, from 93 to 90.

SB 2020 authorizes the appropriation of additional revenues above forecast in the Resources Trust Fund, the Water Development Trust Fund or federal funds, subject to Budget Section

approval with the following conditions:

1. Approval of additional appropriation will not affect the 2021 Legislature's ability to address water needs
2. Proposed use of additional income complies with legislative intent
3. The use of additional income will not result in future funding commitments

The bill includes a statement of legislative intent to extend the State commitment to the Fargo Flood Control Project:

- To continue to provide a portion of the non-federal project costs not to exceed \$703 million, which includes the \$120 million originally designated for Fargo interior flood control.
- Extend the biennial commitment of \$66.5 million two additional biennia to \$332.5 million over five biennia.

SB 2020 includes legislative intent that the SWC approve a grant of \$50 million for the RRV Water Supply Project from the Water Supply budget line-item; and after the 2019-21 biennium, the SWC provide grants to accomplish 80% state cost-share for the project.

- Lists requirements that the Garrison Diversion Conservancy District must certify compliance items with the SWC and the Budget Section in order to commence construction of the RRVWS Project

[HB 1431](#) Passed on the House floor with a vote of 83-9 on Tuesday, February 19. This bill removes Mandan from SW Water Authority's mill levy.

[SB 2213](#) Passed on the Senate floor with a vote of 40-6 on Monday, February 11. This bill extends the sunset clause for the SWWA mill levy until 2030.

[SB 2293](#) Passed on the Senate floor with a vote of 45-2 on Monday, February 18. This bill creates funding to support aquatic nuisance species programs and enforcement. The bill establishes a \$3 surcharge on in-state fishing licenses (excluding senior citizen and disabled licenses) and \$6 surcharge on out-of-state fishing and waterfowl licenses.

Finance:

[HB 1066](#) Passed the House with a vote of 80-12 on Wednesday, February 20. This bill is widely known as the "Prairie Dog Bill," revises the formula for the distribution of the gross production tax on oil and gas in a way that will fund Hub Cities and other oil-impacted communities in the 2019-2021 biennium at approximately the same rate as the current biennium. It would also establish "buckets" for non-oil producing cities, counties and townships to support infrastructure needs. The floor debate on this bill lasted for almost an hour and, while it was agreed by many that the bill was not perfect, passed because it was seen a good way to improve the state's aging infrastructure.

[HB 1449](#) **Failed** on the House floor with a vote of 12-76 on Friday, February 8. This bill would have raised the oil extraction tax rate to 6.5%. Competition from other states with lower tax rates for oil extraction was the main concern.

[SB 2275](#) **Passed** on the Senate floor with a vote of 45-0 on Friday, February 15. This bill creates an infrastructure revolving loan fund at the Bank of North Dakota with the lending terms supported with earnings from the Legacy Fund.

- SB 2275 proposes to allocate no more than \$55,000,000 of Legacy Fund earnings as a repayment source for appropriations bonds to provide funding for the Legislature's Infrastructure Revolving Loan Fund. The concept is to "disconnect" repayment of the bonds from use of the bond proceeds.
- The estimated bond proceeds to be used in the IRLF are approximately \$450,000,000.
- SB 2275 will enable loans for flood control, water supply and water management projects with a loan term up to 40-years, as opposed to 30-years for other projects. The committee agreed to the longer term because of the scale of water projects.
- SB 2275 consolidates the State Water Commission Revolving Loan Fund for water project loans into the IRLF. These loans are provided by the SWC in coordination with grants for projects approved by the SWC.

[SCR 4005](#) **Failed** on the Senate floor with a vote of 11-34 on Thursday, January 31. This bill would have created a North Dakota infrastructure fund to be known as the North Dakota First fund to be administered by the North Dakota infrastructure board. The fund would have served as a grant and low-interest revolving loan fund from the principal and earnings of the legacy fund and would provide a procedure for political subdivisions to access grants and low-interest loans for permanent infrastructure projects. One of the main reasons the bill failed was because it was a large fund and the type of fund it was and the way it was to be administered would put it at risk.

Property Use/Protections:

[HB 1184](#) **Failed** on the House floor with a vote of 26-64 on Wednesday, February 20. The amended bill would have placed additional restrictions on the use of quick take by all political subdivisions, like what was imposed on water resource districts in 2017. The bill implemented treble damages and a possible two-year moratorium on quick-take authority if WRDs fail to comply with statutory time-lines.

[HB 1207](#) **Passed** on the House floor with a vote of 80-13 on Tuesday, February 19. This bill awards reasonable costs awarded to defendants that prevail in eminent domain cases.

[HB 1362](#) **Passed** on the House floor with a vote of 83-8 on Wednesday, February 20. This bill allows a utility to cross over or under the railroad right of way for the placement of facilities.

[HB 1440](#) **Failed** on the House floor with a vote of 13-80 on Tuesday, January 29. This bill would have removed the water quality test requirement from protections for groundwater against mineral developers and required developers to collect soil samples and inventory water wells. The process was deemed duplicative and an unnecessary burden.

[SB 2238](#) **Failed** on the Senate floor with a vote of 12-35 on Monday, February 18. This bill would have required county commissions to approve eminent domain proceedings over 320 acres. This bill was deemed to be an additional step in an already arduous process.

[SB 2259](#) **Failed** on the Senate floor with a vote of 20-25 on Wednesday, January 30. This bill would have set out guidelines for evaluating property when being taken for eminent domain. This bill would have placed a burden political subdivisions and the NDDOT.

Water Resource Districts:

[HB 1173](#) **Passed** on the House floor with a vote of 90-1 on Thursday, January 17. This bill reduces the cost of appeals to local government.

[HB 1243](#) **Failed** on the House floor with a vote of 12-80 on Wednesday, January 30. This bill would have required all easements to be recorded. The timelines that would have been imposed and when exactly the easements are created were the main concerns with the bill.

[HB 1299](#) **Failed** on the House floor with a vote of 18-75 on Tuesday, January 29. This bill would have made an easement, servitude, or nonappurtenant restriction obtained for the purpose of building a pipeline considered abandoned if the pipeline is not built within twenty years of the date the restriction was obtained. Restricting a landowners' right to negotiate a contract beyond a 20 year period for a pipeline easement was the main concern with this bill.

[HB 1302](#) **Passed** on the House floor with a vote of 86-4 on Friday, February 15. This bill allows the person whose land was taken for eminent domain by the state or a political subdivision to have the opportunity to purchase the land back if it is no longer needed.

[HB 1314](#) **Failed** on the House floor with a vote of 12-80 on Wednesday, January 30. This bill would have adjusted the compensation of WRD board members to be consistent with the state legislature and state officers. The main concern was tying a local governing body's pay to that of a legislator.

[HB 1514](#) **Failed** on the House floor with a vote of 28-62 on Wednesday, February 20. This bill would have repealed section 61-32-03.1, which requires permits for subsurface water management systems. The primary reason this bill failed was because the legislators felt that the changes made in the 2017 session should remain and the ideas were good, but it was not the time for the legislation.

[SB 2139](#) **Passed** on the Senate floor with a vote of 41-5 on Friday, February 1. This bill reinstates the ability of the State Water Commission to cost-share snagging and clearing operations in natural waterways. Representative Schmidt and Senator Schaible provided an amendment which requires all water boards to develop a plan for water conveyance projects with other water boards in a common basin. This amendment was not adopted, but may be studied under SCR 4009.

[SB 2166](#) **Failed** on the Senate floor with a vote of 2-44 on Tuesday, February 5. This bill would have raised the total liability of political subdivisions from \$250K to \$1M per person and from \$1M to \$4M for any number of claims arising from any single occurrence regardless of the number of political subdivisions, or employees of such political subdivisions, which are involved in that occurrence. This would have doubled some current limits and current rates are evaluated regularly, which is a major reason why it did not pass.

[SB 2174](#) **Failed** on the Senate floor with a vote of 4-40 on Monday, February 4. This bill would have required elections for WRD board members and set term limits. The bill was defeated because WRD boards are held accountable to County Commissions and the positions may be politicized.

[SB 2220](#) **Failed** on the Senate floor with a vote of 14-32 on Thursday, February 7. This bill would have allowed WRD to charge actual costs associated with permits and allowed a WRD board to review completed applications up to 45 days after receipt. The primary reason this bill was defeated was because it was felt that the 2017 changes should remain as they are.

[SCR 4009](#) **Passed** on the Senate floor on Friday, February 8. This bill would authorize a legislative interim study of the feasibility and desirability of the water resource boards in each drainage basin forming a joint water resource board to plan and construct water conveyance projects based on basin-wide needs.

Agriculture/Irrigation:

[HB 1020](#) **Passed** on the House floor with a vote of 79-14 on Wednesday, February 20. This bill provides funding for the 2019-2021 SBARE priorities. House action resulted in a 3% base level decrease from the 2017-19 biennium. Extension was increased by 4.6% of the 2017-19 funding level. The House included funding for salary increases (2% and 2%) and fully funded health insurance. Funding for SBARE priorities include one-time funding of \$1.4 million from the strategic investment and improvements fund for extraordinary repairs and \$750,000 for the Williston seed cleaning plant, including \$250,000 from the general fund and \$500,000 from other funds.

[HB 1085](#) **Passed** on the House floor with a vote of 87-2 on Thursday, January 10. This bill would amend the drought disaster livestock water assistance program to remove the \$3,500 funding limit and raises the limit to \$4,500 to address increased costs.

[HB 1087](#) Passed on the House floor with a vote of 87-3 on Tuesday, January 22. This bill excludes agricultural dikes two feet in height or less from requiring a PE to submit plans and specs be reviewed by the State Engineer.

[SB 2090](#) Passed on the Senate floor with a vote of 42-2 on Monday, February 4. This bill exempts reuse of fossil byproduct water from requiring a water permit, clarifies that a legal interest in the point of diversion or place of use for irrigation water is required, and puts into statute the long-standing practice of having a 30-day comment period on water permit applications. It also increases the costs. All new water permit applications increased from \$200 to \$500, industrial permits are now \$1,000, and amendments are raised to \$100. The \$250 under 2,500 population break will also go away.

[SB 2295](#) Passed on the Senate floor with a vote of 46-0 on Friday, February 8. This bill limits the creation of irrigation districts, adds permit requirements for drainage projects and ensures drainage benefits provided by an irrigation district do not impact the authority of a water resource board.

[SB 2315](#) Passed on the Senate floor with a vote of 28-18 on Wednesday, February 20. This bill reverses the presumption that all land is considered open and requires people to seek permission to access private property, except for hunting, where designations of open or closed will be indicated on an electric database. This bill also authorizes the development of a publicly available, electronic, hunter access database, wherein land will be designed as green (hunters welcome without asking); yellow (hunting may be allowed with permission); and red (no hunting available). Contact information will be provided for parcels indicated as yellow. If the landowner does not provide information for the database, the land will be designated as green. This bill also allows traditional signs to be used if landowners prefer them. Signs take precedence over the database. Lastly, this bill establishes an advisory group, including landowners and sportsmen, to oversee the development of the database so it meets stakeholder needs.

[SB 2360](#) Passed on the Senate floor with a vote of 34-11 on Monday, February 18. This bill changes the definition of farm income from net to gross income for purposes of qualification for the farm home property tax exemption. The bill adopts the IRS definition of a farmer, which is two-thirds or more of annual gross income from farming activities during any of the two preceding calendar years. It also removes the present \$40,000 cap for allowable off-farm income.

Ethics:

[HB 1521](#) Passed on the House floor with a vote of 81-9 on Wednesday, February 20. This bill lays out campaign contribution disclosure requirements and the complaint procedure for campaign contribution violations by lobbyists.

[SB 2148](#) Passed on the Senate floor with a vote of 46-0 on Tuesday, February 19. This bill establishes an ethics commission and outlines the complaint process for violations.

Watercourses:

[HB 1086](#) Failed on the House floor with a vote of 0-91 on Thursday, January 31. This bill related to the waters of the state. WOTUS negatively impacted the bill and its intent was unclear, causing concern.

[HB 1192](#) Passed on the House floor with a vote of 80-13 on Tuesday, February 19. This bill adds a definition of ordinary high water mark to N.D.C.C. ch. 61-33.1 and adds a section requiring the State Engineer to maintain ordinary high water mark delineation guidelines as provided.

[HB 1428](#) Failed on the House floor with a vote of 38-54 on Wednesday, February 6. This bill would have formed a Missouri River council to conduct acquisitions and manage the Missouri River shoreline. The proposed council was too viewed as too similar to the already established Missouri River Advisory Council and was deemed duplicative and potentially confusing.

[SB 2342](#) Passed on the Senate floor with a vote of 37-9 on Friday, February 8. This bill sets noise restrictions on the operation of airboat watercraft without mufflers.

[SB 2358](#) Passed on the Senate floor with a vote of 44-1 on Friday, February 15. This bill would study adding a creek, river, or stream appearing in a plat book to the definition of a watercourse.

Infrastructure/Construction/Contracts:

[HB 1136](#) Passed on the House floor with a vote of 91-0 on Friday, January 25. This bill allows a governing body to award a contract for each portion of the public improvement project that received bids and readvertise for bids on the portion of the project that did not receive bids if a bid for general, electrical, or mechanical portions of a public improvement project are not received.

[HB 1356](#) Passed on the House floor with a vote of 54-37 on Wednesday, February 20. This bill requires that the state and its political subdivisions may not engage in the construction of public works involving the practice of professional engineering when the contemplated expenditure for the project exceeds the sum of two hundred fifty thousand dollars, unless the engineering drawings and specifications and estimates have been prepared by, and the

construction administration and construction observation services are executed under the supervision of, a registered professional engineer.

[SB 2044](#) Passed on the Senate floor with a vote of 42-3 on Friday, February 15. This bill provides penalties for tampering with critical infrastructure and defines a critical infrastructure facility.

[SB 2091](#) Passed on the Senate floor with a vote of 46-1 on Monday, January 14. This bill allows permissible structures within a flood fringe to be constructed on piers or columns, or other methods allowed by FEMA.

[HB 1320](#) Passed on the House floor with a vote of 73-19 on Wednesday, February 13. This bill removes voter approval requirements for some RRVWS projects and allows contract terms to exceed forty years.

III. 2019 Legislative Deadlines and Dates

February 25-26 Recess
 March 6 Crossover for resolutions
 April 23 Session is limited to 80 legislative days

IV. HEARING SCHEDULE: February 27 - March 1, 2019

Date and Time	Bill Number	Short Title	Committee	Room
02/27/2019 10:00 AM	HB 1173	Relating to costs of appeals of local government decisions.	Senate Judiciary	Fort Lincoln
02/28/2019 9:15 AM	SB 2090	Relating to permits for the appropriation of water, to appeals of permit application rejections, change in point of diversion or use, surplus water delivery, and a prescriptive water right.	House Energy and Natural Resources	Coteau A
02/28/2019 9:30 AM	SB 2091	Relating to floodplain management community standards for permissible uses within the flood fringe.	House Energy and Natural Resources	Coteau A

03/01/2019 9:30 AM	SB 2139	Relating to cost-sharing and duties of the state water commission.	House Energy and Natural Resources	Coteau A
03/01/2019 10:00 AM	HB 1320	A bill relating to Red River valley water supply project contract terms and elimination of voter approval requirements.	Senate Energy and Natural Resources	Fort Lincoln

V. Legislative Bills Tracked (To Date)

Note that all failed bills will be removed from the tracking list after this report.

Bill	Short Title	House	Senate
HB 1066	"Prairie Dog Bill"	PASSED	
HB 1085	Drought Disaster Livestock Water Assistance Program	PASSED	
HB 1086	Waters of the State	FAILED	
HB 1087	Permit to Construct or Modify a Dam, Dike, or Other Device	PASSED	
HB 1136	Bid Requirements for Public Improvements	PASSED	
HB 1173	Appeals to Local Government Cost	PASSED	
HB 1184	Eliminating Quick Take Eminent Domain	FAILED	
HB 1192	Ordinary High Water Marks	PASSED	
HB 1207	Reasonable Costs Awarded to Eminent Domain Defendant	PASSED	
HB 1243	Recording of Easements	FAILED	
HB 1299	Duration of Pipeline Easements	FAILED	
HB 1302	Sale of Property Acquired by Eminent Domain	PASSED	
HB 1314	Compensation and Reimbursement of WRD Board Members	FAILED	
HB 1320	RRVWSP Contract Terms and Elimination of Voter Approval Requirements	PASSED	
HB 1356	Bids, Plans and Specifications for Public Improvements and Bond Thresholds	PASSED	
HB 1362	Railroad Right of Way Utility Applications	PASSED	
HB 1428	Acquisition and Management of the Missouri River Shoreline	FAILED	
HB 1431	Removal of Mandan from SW Water Authority's Mill Levy	PASSED	

HB 1440	Protection of Groundwater	FAILED	
HB 1449	Oil Extraction Tax Rate	FAILED	
HB 1514	Eliminates Tile Permitting Process	FAILED	
HB 1521	Reporting Campaign Contributions	PASSED	
SB 2020	Appropriation for Defraying the Expenses of the State Water Commission		PASSED
SB 2044	Damaging Critical Infrastructure Penalty		PASSED
SB 2090	Permits for the Appropriation of Water		PASSED
SB 2091	Floodplain Management Community Standards		PASSED
SB 2139	Snagging and Clearing		PASSED
SB 2148	Measure 1 Lobbyist Bill		PASSED
SB 2166	Increased Liability Limits for Political Subdivisions		FAILED
SB 2174	WRD Board Member Elections, Appointments and Terms		FAILED
SB 2213	SW Water Authority Permanent Mill Levy		PASSED
SB 2220	WRD Tile Permits		FAILED
SB 2238	Eminent Domain Power of County Commissioners		FAILED
SB 2259	Valuation of Property		FAILED
SB 2275	Essential Infrastructure Revolving Loan Fund		PASSED
SB 2293	Aquatic Nuisance Species Program Fund		PASSED
SB 2295	Limiting Creation of Irrigation Districts		PASSED
SB 2342	Noise Restrictions on Watercraft		PASSED
SB 2358	Definition of a Watercourse		PASSED
SCR 4005	Low-Interest Revolving Loan Fund		FAILED
SCR 4009	Joint Water Resource Board Study		PASSED