

Legislative Report

This week at the Capitol

Legacy Fund Proposals Highlight Session

This session, many bills are aimed at utilizing the state's \$8.1 billion Legacy Fund to support infrastructure improvements and economic development and diversification across North Dakota. Originally approved by voters in 2010, the Legacy Fund was developed to ensure a portion of the state's revenues would be set aside for the long-term financial well-being of the state.

Among the many Legacy Fund proposals before the Legislature are [HB 1037](#), [HB 1380](#), [HB 1425](#), and [HB 1431](#). Each contains a different approach to using the available earnings or principal of the fund. The following is a summary of each of the proposed approaches:

Legacy Fund Earnings ([HB 1037](#))

Defines the earnings of the Legacy Fund by utilizing a Percent of Market Value (POMV) formula that averages annual earnings to minimize swings in distributions. The bill also ensures a portion of the earnings are reinvested in the fund.

North Dakota Investment via State Investment Board ([HB 1425](#))

Invests Legacy Fund principal into North Dakota through lending programs (Bank of North Dakota) and through equity investments in North Dakota companies through approved fund managers.

Legacy Bonding ([HB 1431](#))

Utilizes a portion of the earnings from the Legacy Fund to repay bonds issued to support water and transportation infrastructure, workforce and state priorities through a one-time program.

Legacy Streams ([HB 1380](#))

Defines a framework for the utilization of the Legacy Fund earnings to support initiatives, programs and projects that benefit North Dakota both short and long term.

The primary Legacy Fund bills are inter-dependent on each other. Legacy distribution streams are dependent on the earnings definition; bonding repayment is dependent on Legacy streams to ensure consistent funding for payments; and Legacy investments generate the interest and income to create the earnings. There's more information about these bills and their impact on water projects below as well.

Water Project Funding

[HB 1431](#) Bonding for Water Projects

House Appropriations heard hours of testimony in support of HB 1431 on Monday, Feb. 1st. The North Dakota Water Users, North Dakota Water Coalition, and the North Dakota Water Resources Districts all offered written testimony in support of the bill. Adoption of HB 1431 would free up \$142.1 million of the Resources Trust Fund shortfall for water project cost-share grants, leaving a funding gap of only \$16.1 million in the Resources Trust Fund and projects contemplated in HB 1020. Many water projects could benefit from reduced competition for SWC money if the major flood control projects are funded with

bonding. Thank you to everyone who submitted testimony or contacted legislators in support of this bill. The committee has not yet taken action on HB 1431; we will keep you updated when that is scheduled.

HB 1425 Legacy Fund Loans and Infrastructure Projects

The House Finance and Taxation Committee took testimony on HB 1425 on Tuesday, Feb. 2nd. This bill would provide loans for specific/essential infrastructure projects utilizing 10% of Legacy Fund fixed income investments. An additional 10% would be utilized to make equity investments in the state. Essential infrastructure projects include capital construction for the Red River Valley Water Supply Project, new or replacement of existing water treatment plants, wastewater treatment plants, sewer lines and waterlines, storm water and transportation infrastructure, including curb and gutter construction. The North Dakota Water Users and North Dakota Water Coalition submitted written testimony in favor of HB 1425.

HB 1020 State Water Commission budget bill

HB 1020 is the appropriation bill for State Water Commission (SWC) cost-share grants and department operations. To date the proposed funding levels in HB 1020 are:

- \$100 million for water supply grants,
- \$41.6 million for rural water supply grants,
- \$66.5 million for Fargo flood control,
- \$85.8 million for Mouse River flood control,
- \$49 million for other flood control,
- \$14.2 million for general water management grants, and
- \$1.1 million for a basin wide pilot project.

With capital asset costs of \$175.3 million and operations and salaries of \$64 million, the revenue to cover objectives is short \$157 million, even with a \$75 million line of credit. Should HB 1431 (bonding bill above) pass, additional dollars would be freed up, closing the gap to just over \$16 million.

Rural Water Management

SB 2208 Changes water boards' ability to construct, maintain, and manage water projects and drains

SB 2208 would limit the ability of local water boards to construct, maintain and manage water projects and drains, and it removes a landowner appeal process. On Friday, Feb. 5, the Senate Agriculture Committee rewrote SB 2208 to instead create an interim study committee to address specific topics.

Water groups suggested the following topics for the study committee to review:

- Combining Chapters: Study options to merge assessment authority in NDCC chapters 61-16.1 and 61-21; and
- Appeals Board: Study options for an appeals process to receive, investigate and mediate disputes between a local water board and impacted land owners or infrastructure authorities; and
- Assessment Practices: Study options to improve assessment district authority and processes for water conveyance construction, maintenance, and improvements; and
- Watershed Management: Water management by watershed should be reviewed for its relative advantages and processes, but in the context of comparison, not drafted as an objective to reorganize. If a 2021-2023 study finds local water management could be better accomplished by a watershed reorganization, a subsequent interim could study the mechanics of that objective.

There was discussion about the make-up of the study committee. It seems likely that the committee will include both legislators and non-legislators, including representatives from WRDs and landowners. The Senate Agriculture committee will likely formalize the rewrite of SB 2208 on Thursday, Feb. 11.

HB 1437 Modifies drain tile approval processes

House Bill 1437 is the result of a collaborative effort between county water resource boards, a water attorney, and tile industry representatives who worked to streamline the process to obtain a permit for subsurface water management (tiling). The bill simplifies ownership documentation processes with fewer

documents required; requires tile projects under 80 acres to report, and larger projects to apply for a permit from a local water board; defines conditions that could be attached to a permit; allows for permit fee for actual cost up to \$500; eliminates restriction of the size of the drainage coefficient with surface inlets since the outflow capacity and drainage coefficient are requirements on the application; and tile plans cannot be disclosed by officials without cause. The bill includes an emergency clause which will allow its immediate effective date if the bill receives sufficient legislative support.

The House Agriculture Committee had over a dozen landowners, water managers, agriculture organizations, and tile firms support the bill during its Feb. 4 hearing. Amendments related to defining downstream impacts may be considered later.

Governance Changes

[HB 1063](#) NAWS Advisory Committee Membership

HB 1063 removes the requirements for members of the advisory committee from Williston, Three Affiliated tribes and the counties of Divide, Mountrail, and Williams. There has been talk of amending this bill significantly to change the advisory committee to either an authority or a ‘transition planning committee’ with more oversight over the project. This bill was heard by Energy and Natural Resources Committee on Jan. 14 but no formal action has since been taken.

[HB 1353](#) Reorganizes Office of State Engineer into Department of Water Resources

The bill would reorganize the Office of the State Engineer and the State Water Commission into the Department of Water Resources and set powers and duties of the director of the Department of Water Resources. The 129-page bill would place the engineer and associated regulatory roles into a division within the reorganized department and make the head of the Department a member of the Governor’s cabinet. The cost-share grant role and the selection of the board of the State Water Commission would not change from current practice of being appointed to represent specific watershed areas. HB 1353 was Heard by House Appropriations Committee on Jan. 26 but no action has been taken since.

Other Bills of Interest

[HB 1038](#) Legislative Management Legacy Fund Earnings Committee

HB 1038 creates a legislative management committee to look at how legacy fund earnings should be used.
Passed the House 89-0; Referred to Senate Finance and Taxation Committee Feb. 2

[HB 1043](#) Ethics Commission Bill

HB 1043 makes modifications to the complaint process for the Ethics Commission.
Passed the House Judiciary as amended 13-1; referred back to House Judiciary Jan. 13

[HB 1057](#) Liability of Political Subdivisions

HB 1057 increases the liability cap for the state and political subdivisions starting July 1, 2022 and increasing annually until July 1, 2026.
Passed House 89-3; referred to Senate Political Subdivisions Committee Feb. 3

[HB 1079](#) Uniform Environmental Covenants Act

HB 1079 creates a framework at the state level to register and oversee sites that have use restrictions due to environmental considerations (e.g., if a site had a hazardous waste spill and was remediated, its use in the future might be limited to industrial uses); any land under an “environmental covenant” issued at the state or federal level would be registered with the state’s DEQ.
Passed House 86-7; referred to Senate Judiciary Committee Feb. 2

[HB 1088](#) Commissioner Hosted Meeting Requirements in the SWC Development Plan

HB 1088 removes the ability of projects to use Outdoor Heritage funds as a local match on projects seeking funding from the Water Commission.
Passed House Energy and Natural Resources Committee 12-0 Feb. 4

[HB 1116](#) General Obligation Bonds

HB 1116 allows county capital project levies to be used for roads and bridges and lengthens the term of county bonds from 20 to 30 years.

Passed House 64-26, sent to Senate Jan. 12

[HB 1216](#) Water Resource District Board Member Compensation

HB 1216 Allows water resource board members to receive pay and per diem matching what legislators receive.

Passed House 70-23, sent to Senate Feb. 1

[HB 1324](#) Eminent Domain Penalties

HB 1324 provides penalties for unauthorized or unnecessary takings for airport authorities, municipalities, water resource boards and improvement districts.

Referred to House Political Subdivisions Committee Jan. 12; Hearing scheduled Feb. 12

[HB 1380](#) Legacy Fund Earnings Programs

HB 1380 creates a legacy fund earnings fund and then sets up various program funds, including fund for one-time infrastructure projects, and a distribution formula to fund those programs.

Heard by the House Appropriations Committee Feb. 2

[HB 1419](#) Cities, Counties Levying Infrastructure Fees

HB 1419 gives counties and cities the ability to charge an 'infrastructure fee' instead of a special assessment to pay off infrastructure projects. The imposition of an infrastructure fee much be approved by the voters.

Heard by House Political Subdivisions Committee Jan. 29

[SB 2034](#) Advisory Opinions

SB 2034 allows for requests for advisory opinions from the Ethics Commission, provides a timeframe for issuance the opinion, and provides protections for individuals who utilize such opinions.

Passed the Senate as amended 42-4, sent to House Jan. 29

[SB 2081](#) Floodways and National Flood Insurance Program

SB 2081 provides for uses, within the floodway as delineated by the national flood insurance program, if those uses due not result in an increase in flood levels.

Passed Senate 47-0, sent to House Jan. 8

[SB 2120](#) Water Resource District Board Members

SB 2120 requires an odd number of board members, not to exceed seven, for Water Resource District boards containing one county.

Passed Senate 47-0, sent to House Jan. 18

[SB 2124](#) Declared State of Disaster or Emergency and Virtual Legislative Assembly

SB 2124 adds parameters to a disaster or emergency declared by the governor. It also permits a virtual special session of the legislative assembly during the emergency or disaster.

Passed Senate 40-7 Feb. 4

[SB 2285](#) Abstractor Fees

SB 2285 looks to shift the cost of adding an easement to an abstract to the owner of the easement. There was no testimony in support. Several utility-based associations and the title/abstract industry opposed the bill. This bill will result in thousands of \$15 invoices being sent to unsuspecting entities who are not related to the transaction that caused the abstract to be updated. A significant undue hardship would be put on small abstracting businesses to find, invoice, and collect for a service that was ordered by someone else.

Heard by Senate Political Subdivisions Committee; reported back do not pass (7-0) Feb. 5

[SB 2306](#) **Western Area Water Supply Authority**

SB 2306 adds tribes to the list of entities the western area water supply authority can contract with.

Heard by Energy and Natural Resources Committee Feb. 4

[SB 2324](#) **Installation of Culverts or Bridges**

SB 2324 requires a road authority to install a culvert or bridge to the state engineer's specification if the state engineer makes such a recommendation.

Referred to Political Subdivisions Committee Jan. 25; Hearing on Feb. 12

Hearing Schedule (Feb. 8-12)

<u>Date and Time</u>	<u>Bill Number</u>	<u>Hearing Description</u>	<u>Committee</u>
02/11/2021 08:30 AM	SB 2218	Annually reconvened sessions of the legislative assembly and interim committee meetings	Senate Appropriations
02/11/2021 09:00 AM	HB 1020	Committee Work: Committee Work	House Appropriations - Education and Environment Division
02/12/2021 09:00 AM	SB 2324	relating to installation of culverts.	Senate Political Subdivisions
02/12/2021 10:00 AM	HB 1324	Relating to the exercise of eminent domain; and to provide a penalty.	House Political Subdivisions

Status of Key Bills

A report on the status of all tracked bills is attached.

Bill Testimony Available Online

Submitted bill testimony is available for viewing online through the [North Dakota Legislative Branch](#) website. Specific bills and related testimony can be accessed on the [67th Legislative Assembly](#) page by scrolling down to [House Bills](#) or [Senate Bills](#).

Find the bill you would like to view in the numerical bill listing and click on the linked bill number. Listed above the bolded "Bill Action for (Bill #)" title are additional linked titles that include "Testimony on (Bill #)." Once you are on the selected bill's testimony page, a list of the submitted testimony is available, which includes the committee which heard the bill, the individuals who submitted the testimony, the organizations represented, and positions on the bill. Click on the word "view" at the far right of the list to access the selected testimony. On a hand-held or mobile device, the user may be required to scroll to the far right of the page to access the linked "view" button.

This a great resource to better understand a bill and its impacts. The efforts of the Legislative Council to provide submitted testimony online has helped make the legislative process more accessible this session.

Legislative Leaders

The 67th Legislative Assembly includes 80 Republicans and 14 Democrats in the House of Representatives and 40 Republicans and seven Democrats in the Senate. Thirteen legislators are new this session. House and Senate members have selected the following leaders for the 2021 Legislative Session: [House](#) and [Senate](#).

How to Contact Your Legislators

During the session, legislators can be reached at the Capitol through [Contact My Legislators](#) or by leaving a message at 888-NDLEGIS (635-3447) or 701-328-3373 (local). A legislator can also be

reached by email, phone or mail as listed in the legislator's online bio: [Senate](#) or [House](#). Details information on legislative activities is available on the [Legislative Assembly website](#).

Legislative Calendar

- Feb. 26: Crossover
- March 1-2: Recess
- April 30: Final day of session (limited to 80 days)