

# Legislative Report

## Crossover

With facemasks and virtual testifying, one of the more unusual legislative sessions in recent memory has reached its midpoint and is currently on recess until March 3. The 2021 Legislature has demonstrated key support for historic water infrastructure investments and is actively debating key legislation to modify how water policies are administered.

Key water-related bills that have already passed the House of Representatives include a major bonding bond that includes funding for critical water projects; the budget for State Water Commission (SWC) with substantial funding for cost-share grants; legislation to create a loan fund for major infrastructure projects; and a proposal to reorganize the Office of the State Engineer and SWC into the Department of Water Resources.

The State of North Dakota has made significant investment in water resources across North Dakota and that help continues. Most prominent in the 2021 Legislature for water infrastructure development is House Bill 1431. This bonding bill funds major water projects including \$435.5 million for the Fargo Flood Diversion Project and \$74.5 million to repay Western Area Water Supply loans and support the Mouse River Flood Control project. The bond will be repaid using Legacy Fund earnings and would free up SWC dollars to support other water projects across the state. The House of Representatives passed HB 1431 by a vote of 74-17, and it will now be considered by the Senate.

Legislators met the Feb. 26 Crossover deadline early for the 2021 Legislative Session, with the Senate concluding work on Tuesday, Feb. 23, and the House adjourning for its recess on Wednesday, Feb. 24. The House had 538 bills and resolutions introduced; the Senate had 359. The legislature will resume its work Wednesday, March 3, after a short break.

The North Dakota Water Coalition will meet on March 2 to discuss the status and details of water funding legislation and on March 3, water leaders will meet with Reps. Monson and Schmidt via Zoom about water policy and funding bills. Please let us know if you did not receive invitations to these meetings but would like to participate.

Below is the Legislative Crossover Report, which includes a summary and status of the many bills water is supporting, opposing, or monitoring.

## Water Funding

### [HB 1020](#) State Water Commission budget bill

**Passed 89-5**

The House passed HB 1020, the appropriation bill for SWC cost-share grants and department operations, on Feb. 23. Below is a chart comparing the funding levels as they currently stand in HB 1020 compared with the budget for the current biennium from the 2019 session appropriation:

Line Item	Current Appropriation	HB 1020
<b>Capital Assets</b>	\$106 million	\$163 million
<b>Water Supply Grants</b>	\$128 million	\$96 million
<b>Rural Water Supply Grants</b>	\$37.2 million	\$40.6 million
<b>Fargo Flood Control</b>	\$66.5 million	\$0; caps total state funds at \$850 million (funding in HB 1431)
<b>Mouse River Flood Control</b>	\$82.5 million	\$0; caps total state funds at \$604 million (funding in HB 1431)
<b>Other Flood Control</b>	\$48 million	\$38 million
<b>General Water Management Grants</b>	\$27.1 million	\$14.2 million
<b>Basin Wide Pilot Project</b>	\$1 million (of other flood control line)	\$1.1 million

Funding levels are based on the presumption that HB 1431, the major water project bonding bill, passes. If HB 1431 is not adopted, HB 1020 will have to be largely rewritten to address a \$141 million difference in funding needs compared to anticipated revenue.

The bill caps total state funds for the Fargo Flood Control Project at \$850 including the \$414.5 million the state has already provided and the remaining \$435.5 million from the bond issue. It also caps state funding for Mouse River Flood Control projects to a total of \$604 million, including \$74.5 million provided through bond proceeds.

House Bill 1020 also includes a \$75 million line of credit for the Northwest Area Water Supply and allows the Western Area Water Supply to issue revenue bonds. The bill also directs the Legislative Management to study governance and ownership of the Red River Valley Water Supply Project and the Northwest Area Water Supply project. Spending authority for prior budget carryover projects is not reappropriated, but the bill authorizes the SWC to obtain approval from the Emergency Commission and Budget Section to increase carryover funding.

**House passed 89-5 Feb. 23**

**HB 1431 Bonding for Water Projects**

**Passed 74-17**

The House approved HB 1431, the major water infrastructure and revolving loan bonding authority bill, 74-17 on Feb. 19. Legacy Fund earnings would repay for bonds funding infrastructure projects and programs.

HB 1431 includes:

- \$435.5 million for the Fargo Diversion Project
- \$74.5 million to the Resources Trust Fund for Mouse River Flood Control
- \$50 million to the Infrastructure Revolving Loan Fund
- \$70 million to the Highway Fund
- \$50 million to Ag Products Development Center and Hastings Hall

Adoption of HB 1431 would free up \$142.1 million of the Resources Trust Fund shortfall for water project cost-share grants for projects contemplated in HB 1020. Many water projects could benefit from reduced competition for SWC money if the major water projects are funded with bonding. The North Dakota Water Users, North Dakota Water Coalition, and the North Dakota Water Resource Districts Association all supported the bill.

**Passed House 74-17 Feb. 19**

**[HB 1038](#) Legacy Fund Earnings**

**Passed 89-0**

HB 1038 creates a legislative management committee to look at how legacy fund earnings should be used.

**Senate Finance and Taxation Committee do pass recommendation 7-0 Feb. 16**

**[HB 1088](#) SWC Development Plan**

**Passed 82-12**

HB 1088 removes the ability of projects to use Outdoor Heritage funds as a local match on projects seeking funding from the SWC.

**Passed House 82-12 Feb. 10**

**[HB 1132](#) Infrastructure Bonding Bill**

**Withdrawn**

Proposal for a \$1.1 billion bonding package to fund infrastructure projects across the state using legacy fund dollars to pay for the borrowed money. HB 1132 was withdrawn and replaced with HB 1431.

**Withdrawn Jan. 27**

**[HB 1380](#) Legacy Fund Earnings Programs**

**Passed 71-22**

HB 1380 sets up a disbursement formula earnings from the Legacy Fund. The bill allows appropriation of 6% of the 5-year rolling average of the Legacy Fund earnings. \$100 million of the appropriation goes to pay off the bond payment set up in HB 1431; \$40 million goes to a clean energy fund; and \$40 million goes to a local community revolving loan fund. Earnings above the 6% will be distributed as follows: 40% to the strategic investment and improvements fund; 40% back into the Legacy Fund principal; 20% into an income tax relief fund.

**Passed by House 71-22 Feb. 24**

**[HB 1425](#) Legacy Fund Loans and Infrastructure Projects**

**Passed 85-8**

HB 1425 establishes an infrastructure revolving loan fund for water-related projects and other infrastructure investments. Projects could receive a loan of up to \$40 million. Eligible projects include capital construction for the Red River Valley Water Supply Project, new construction or replacement of existing water treatment plants, wastewater treatment plants, sewer lines and waterlines, storm water and transportation infrastructure, including curb and gutter construction. This bill requires the State Investment Board give preference to qualified investment firms and sets specific targets for investing Legacy Fund assets within the state and within specified asset classes. The North Dakota Water Users and North Dakota Water Coalition submitted testimony in favor of HB 1425.

**Passed House 85-8 Feb. 24**

**Water Resource Districts**

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

**Passed 70-23**

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

**Hearing in Senate Political Subdivisions, March 5**

**[HB 1324](#) Eminent Domain Penalties**

**Failed 17-77**

HB 1324 provides penalties for unauthorized or unnecessary takings for airport authorities, municipalities, water resource boards and improvement districts, or for depositing insufficient compensation in a quick-take procedure.

**Defeated in House 17-77 Feb. 23**

**[HB 1437](#) Modifies drain tile approval processes**

**Passed 94-0**

House Bill 1437 streamlines the permit process for subsurface water management (tiling) by simplifying ownership documentation processes; requires tile projects under 80 acres to report and larger projects to apply for a permit from 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. A recent opinion from the Attorney General had created a question whether drain improvements and extraordinary maintenance were eligible for state cost share. The House added an amendment to clarify the SWC can cost-share drain widening or deepening activities. The bill includes an emergency clause which will allow its immediate effective date if the bill receives sufficient legislative support.

**Passed House 94-0 Feb. 23**

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

**Passed 47-0**

SB 2120 requires an odd number of board members, not to exceed seven, for Water Resource District boards within one county, and more members from the county with the larger aggregate taxable valuation of property in the district.

**Passed Senate 47-0 Jan. 18**

**[SB 2208](#) Interim Water Study**

**Passed 45-2**

Initially SB 2208 would have substantially modified assessment drain processes and maintenance authority, but the Senate Agriculture Committee completely rewrote the bill to instead establish an interim study to examine combining NDCC chapters 61-16.1 and 61-21; make assessment procedures uniform; establish an appeals and mediation process; manage water by watershed; review responsibility of culvert sizing; cost-benefit analyses on projects; and the relationship between the SWC and water resource districts. The study committee will include both legislators and non-legislators. Two members of water resource district boards are currently slated to be voting members on the committee.

**Passed Senate 45-2 Feb. 16**

**Water Projects**

**[HB 1063](#) NAWS Advisory Committee Membership**

**Passed 90-4**

HB 1063 removes the requirements for members of the advisory committee from Williston, Three Affiliated tribes and Divide, Mountrail, and Williams Counties. The House amended HB 1063 to require the SWC consult with and provide staff support to the advisory committee. The amendments also require the advisory committee to prepare reports on the long-term place for operation and management of NAWS for legislative management and interim committees.

**Passed House 90-4 Feb. 23**

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

**Failed 3-44**

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

**Defeated in Senate 44-3 Feb. 10**

**Governance Changes**

**[HB 1353](#) Reorganization of the Office of State Engineer**

**Passed 86-8**

HB 1353 would reorganize the Office of the State Engineer and the SWC 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 SWC would not change from current practice of appointment to represent specific watersheds.

**Passed the House 86-8 Feb. 23**

**State and Local Government**

**[HB 1043](#) Ethics Commission Bill**

**Passed 79-12**

HB 1043 makes modifications to the complaint process for the Ethics Commission.

**Passed the House 79-12 Feb. 23**

**[HB 1057](#) Liability of Political Subdivisions**

**Passed 89-3**

HB 1057 increases the liability cap for the state and political subdivisions starting July 1, 2022 and increasing annually until July 1, 2026.

**Passed the Senate Political Subdivisions Committee 7-0 Feb. 18**

**[HB 1079](#) Uniform Environmental Covenants Act**

**Passed 86-7**

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.

**Amended and passed the Senate Judiciary Committee 5-2, Feb. 16**

**[HB 1116](#) General Obligation Bonds**

**Passed 64-26**

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 Jan. 12**

**[HB 1259](#) Wastewater Surveillance**

**Passed 87-5**

HB 1259 would require a public hearing and vote by a governing entity before a local or state entity can participate in a national or state wastewater surveillance program.

**Passed House 87-5 Feb. 17**

**HB 1419 Cities, Counties Levying Infrastructure Fees**

**Passed 75-19**

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 must be approved by the voters.

**Passed House 75-19 Feb. 24**

**SB 2034 Advisory Opinions**

**Passed 42-4**

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

**Passed Senate 42-4 Jan. 29**

**SB 2079 Operating Plans for Dams**

**Failed 0-47**

This bill removes requirements for dam operators to follow state engineer plans of operations.

**Failed in Senate 0-47 Jan. 21**

**SB 2080 Construction Permit Thresholds for Dikes, Dams, and Other Devices**

**Failed 3-44**

This bill adds requirements for permits to construct low-hazard dam capable of retaining, obstructing, or diverting more than fifty acre-feet of water, medium and high-hazard dams capable of retaining, obstructing, or diverting more than twenty-five acre-feet of water, and low-risk dike capable of protecting more than eighty acres of land area; and moderate-risk or high-risk dike.

**Failed in Senate 3-44 Jan. 21**

**SB 2081 Floodways and National Flood Insurance Program**

**Passed 47-0**

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

**Passed Senate 47-0 Jan. 8**

**SB 2124 Virtual Legislative Assembly**

**Passed 40-7**

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 2129 Liability of State and Political Subdivisions**

**Withdrawn**

This bill changes the total liability of political subdivision from \$250,000 to \$500,000 per person and from \$1,000,000 to \$2,000,000 for any number of claims from a single occurrence.

**Withdrawn Jan. 12**

**SB 2285 Abstractor Fees**

**Failed 2-45**

SB 2285 requires that an abstractor fee on a subsurface entry on an easement must be paid by holder of the easement.

**Defeated in Senate 45-2 Feb. 8**

### **SB 2324 Installation of Culverts or Bridges**

**Passed 25-22**

SB 2324 requires a road authority to install a culvert or bridge to the state engineer's specification within one year if the state engineer makes such a recommendation. Court costs and attorney fees could be awarded to the plaintiff if the road authority does not install the recommended culvert or bridge within one year.

**Passed the Senate 25-22 Feb. 22**





### **SB 2337 Engineering Requirements**

**Failed 5-41**

SB 2337 requires that projects over \$250,000 must have a professional engineer involved. The threshold in current law is \$200,000.

**Defeated in Senate 5-41 Feb. 22**

### **Hearing Schedule (March 1-5)**

<b><u>Date and Time</u></b>	<b><u>Bill Number</u></b>	<b><u>Hearing Description</u></b>	<b><u>Committee</u></b>
03/04/2021 09:00 AM 	<u>HB 1088</u>	Relating to the state water commission's comprehensive water development plan; and to repeal section of the North Dakota Century Code, relating to North Dakota outdoor heritage fund grants and their effect on state water commission cost-share amounts.	Senate Energy and Natural Resources
03/05/2021 08:30 AM 	<u>HB 1216</u>	Relating to compensation and reimbursement of water resource district board members.	Senate Political Subdivisions
03/05/2021 09:00 AM 	<u>SB 2081</u>	relating to permissible uses in the floodway and flood fringe under the national flood insurance program.	House Energy and Natural Resources
03/05/2021 09:30 AM 	<u>SB 2120</u>	Relating to the number of board members for water resource districts encompassing one county.	House Political Subdivisions

### **Status of Key Bills**

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

### **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)