

Legislative Report

Capitol Update

Legislators returned to the Capitol on Wednesday following the Crossover recess. The House adjourned last week on legislative day 35. Legislative leaders want to save approximately 10 days of the constitutionally allowed 80 legislative days for a fall redistricting session. Saving five days in the first half of the session puts them on pace to do so. Also impacting the pace of the remaining session will be the revised state revenue forecast, which is planned to be reviewed on March 16.

This week, legislators returned to 591 bills to address, much fewer than the 847 bills pending action as the session got underway. In the first half of the session, 503 House bills were introduced, 339 passed, 146 failed, and 18 were withdrawn. In the other chamber, a total of 344 Senate bills were introduced, 252 passed, 84 failed, and eight were withdrawn.

As we noted last week, several key water-related bills that have already passed the House of Representatives including 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; and several proposals for infrastructure loan programs. These bills will now be considered by the Senate. It is anticipated that the funding bills will not be up for a hearing until after the Legislature receives updated revenue projections on March 16. Overall, water priorities have fared very well this session thanks to strong advocacy by our members and legislators ably championing our cause. Thank you!

Convention Videos Now Available!

Videos of the presentations made at our conference this winter are now available on the [conference website](#). They can also be found on our [YouTube channel](#).

Water Funding

HB 1380 Legacy Fund Earnings Programs

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 1431 Bonding for Water Projects

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.

In addition to bonding authority, HB 1431 includes an infrastructure loan fund that political subdivisions would have access to. These 30-year loans would be subject to stepped-up interest rates, capping out at 5%. This program would be more accessible to water-related projects if the terms were changed to 40-year loans with a low, flat, interest rate. The North Dakota Water Coalition will be advocating for these changes.

Passed House 74-17 Feb. 19; referred to Senate Finance and Taxation Committee

HB 1020 State Water Commission budget bill

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
Capital Assets	\$106 million	\$163 million
Water Supply Grants	\$128 million	\$96 million
Rural Water Supply Grants	\$37.2 million	\$40.6 million
Fargo Flood Control	\$66.5 million	\$0; caps total state funds at \$850 million (funding in HB 1431)
Mouse River Flood Control	\$82.5 million	\$0; caps total state funds at \$604 million (funding in HB 1431)
Other Flood Control	\$48 million	\$38 million
General Water Management Grants	\$27.1 million	\$14.2 million
Basin Wide Pilot Project	\$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 million 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; referred to Senate Appropriations Committee

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

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; hearing Senate Finance and Taxation Committee March 10

[HCR 3034](#) Federal Funding of NAWS Biota Treatment Plant

HCR 3034 calls on Congress and the President to fully fund the biota water treatment plant for NAWS.

Referred to Senate Energy and Natural Resources Committee Feb. 19

Water Resource Districts

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

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; hearing Senate Agriculture Committee March 11

[SB 2208](#) Interim Water Study

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; Hearing House Agriculture March 11

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. The Water Resource District Association testified in support of this bill.

Senate Political Subdivisions recommended do pass 6-0 March 5

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 within one county, and more members from the county with the larger aggregate taxable valuation of property in the district.

Hearing House Political Subdivisions Commission March 5

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 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

Governance Changes

HB 1353 Reorganization of the Office of State Engineer

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; referred to Senate Energy and Natural Resources Committee

Irrigation

SB 2020 2021-2023 SBARE Funding Priorities

This bill includes appropriations for NDSU Agriculture Research and Extension including the 2021-2023 priorities SBARE priorities. The Senate restored the Governor's recommended cuts to budgets for the Research Extension Center (REC) network, ND Ag Experiment Station, NDSU Extension and Northern Crops Institute. It also added \$500,000 plus two FTEs for Livestock Initiative for NDSU Extension, \$280,000 plus one FTE for the Big Data Initiative for NDSU Extension, and \$800,000 plus three FTEs for the Big Data Initiative for the ND Ag Experiment Station.

Four capital improvement projects are also included in the bill. These are \$500,000 in general funds and \$275,000 in special fund authorization for the Carrington REC for a feedlot research facility and pen renovation, \$200,000 in general funds for the Central Grasslands REC for pasture based working facilities, \$225,000 in general funds and \$100,000 in special funds for the Central Grasslands REC for a director residence and \$300,000 in general funds for Hettinger

Research Extension Center for a machine shed. It also includes \$500,000 in one-time funds for deferred maintenance.

Passed Senate 47-0 Feb. 18

[SB 2041](#) Taxation of Grain or Potato Warehouses

SB 2041 would clarify that facilities for holding potatoes or grain that is situated on commercial property should be eligible for a tax exemption if the commodities being stored is owned by the owner of the facility or their family.

Passed Senate 46-0; Hearing House Finance and Taxation Committee March 3

Other Bills of Interest

[HB 1038](#) Legacy Fund Earnings

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

Passed Senate 46-0 March 3; sent back to House for concurrence in amendments

[HB 1043](#) Ethics Commission Bill

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

Hearing Senate Judiciary Committee March 10

[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 Senate 46-1 March 4

[HB 1063](#) NAWS Advisory Committee Membership

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.

Hearing Senate Energy and Natural Resources Committee March 12

[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.

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

[HB 1088](#) 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 SWC.

Hearing Senate Energy and Natural Resource Committee March 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 Jan. 12; referred to Senate Finance and Taxation Committee

[HB 1259](#) Wastewater Surveillance

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; referred to Senate Political Subdivisions Committee

[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.

Passed House 75-19 Feb. 24; referred to Senate Political Subdivisions

[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 Senate 42-4 Jan. 29; hearing House Government and Veterans Affairs Committee March 12

[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.

Hearing House Energy and Natural Resources Committee March 5

[SB 2124](#) 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; referred to House Judiciary Committee

Hearing Schedule (March 8-12)

<u>Date and Time</u>	<u>Bill Number</u>	<u>Hearing Description</u>	<u>Committee</u>
03/10/2021 10:00 AM	HB 1425	A public hearing on a bill relating to the state investment board and the legacy and budget stabilization fund advisory board.	Senate Finance and Taxation
03/10/2021 03:00 PM	HB 1043	relating to ethics commission complaint procedures.	Senate Judiciary
03/11/2021 09:00 AM	SB 2208	Study of drainage and other water-related issues.	House Agriculture
03/11/2021 10:00 AM	HB 1437	Relating to small subsurface water management systems; relating to large subsurface water management system permits & the state water commission cost-share policy, to provide a penalty; & to declare an emergency.	Senate Agriculture

03/12/2021 08:30 AM	<u>SB 2034</u>	Relating to written advisory opinions regarding ethics.	House Government and Veterans Affairs
03/12/2021 09:00 AM	<u>HB 1063</u>	relating to the northwest area water supply advisory committee and the areas to be served by the northwest area water supply project; to provide for legislative management reports; and to declare an emergency.	Senate Energy and Natural Resources

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

- April 30: Final day of session (limited to 80 days)