

Legislative Report

Bill Action Deadlines Approach

This week marked the deadline for all bills that must be re-referred to Appropriations Committees to be out of the policy committee where they were initially referred. Bills heard in a policy committee with a marked fiscal impact on an agency, appropriation or revenue stream must be re-referred to the respective Appropriations Committee for consideration of the fiscal impact. The deadline for re-referral of bills was then extended in both chambers this week. Several bills related to water funding, investment, loans and projects are still under consideration in House Appropriations.

If a bill with a financial impact receives a Do Not Pass recommendation in a policy committee, it is not re-referred to the Appropriations Committee unless it passes on the floor of its respective chamber. This deadline is in place so the Appropriations Committees can act on all bills to bring to a floor vote before the approaching Crossover deadline of Feb. 26.

Crossover is the deadline for all bills to be acted on in their house of origin. While some bills are passed by their house of origin and moved to the other legislative chamber for action prior to Crossover, all bills must be acted on by this date.

A unique aspect of the North Dakota Legislature is that all bills introduced and not withdrawn prior to their committee hearings must go to the floor for a vote. While a bill may receive a Do Not Pass recommendation from a committee, it cannot be killed or withheld from the floor by a committee and must pass or fail in a floor vote. Bills which are defeated on the floor do not resurrect in the other side of the legislature.

Water Commission Meeting

The State Water Commission met on Feb. 11 to discuss funding for several projects. There was lengthy discussion about a recent Attorney General's opinion which would seem to preclude the Water Commission from cost-sharing any legal drain projects that include extraordinary maintenance which has traditionally been funded as an improvement and not annual maintenance. Those projects that staff recommended not be funded, due to this AG's opinion, were tabled. In the meantime, staff was directed to work to develop possible statutory language clarifying improvements vs. maintenance, that could be considered during the current legislative session.

The Water Commission also allocated \$200,000 to the Bank of North Dakota for the Ag PACE program, which can be used for irrigation projects.

Water Project Funding

HB 1431 Bonding for Water Projects

The House Appropriations Committee acted on House Bill 1431, the major water infrastructure and revolving loan bonding authority bill.

As introduced the bill proposed \$798.5 million bond fund to provide funding for infrastructure projects- most prominently the Fargo Flood Diversion and Mouse River Flood Control.

Legacy Fund earnings would repay for bonds funding infrastructure projects and programs. The Appropriations Committee reduced the bill funding from \$798.5 million to \$680 million, but no reductions impacted water projects. The North Dakota Water Users, North Dakota Water Coalition, and the North Dakota Water Resource Districts Association all offered written testimony in support of the bill.

The committee retained the funding in HB 1431 of:

- \$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

The committee eliminated \$92.5 million to the Department of Career and Technical Education slated for the Bismarck State College polytechnic program and several career and technical vocational education centers across the state.

The following appropriations were also removed, but may be considered in Senate Bill 2003

- \$10 million for tier II University System extraordinary repairs,
- \$9 million in tier III University System Capital Building Fund for repairs
- \$3 million to Dickinson State University, for Pulver Hall
- \$4 million to the University of North Dakota for a space command initiative

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 flood control projects are funded with bonding. The Committee adopted a Do Pass vote on Feb. 12.

HB 1425 Legacy Fund Loans and Infrastructure Projects

The House Finance and Taxation Committee amended HB 1425 this week to provide additional direction regarding the infrastructure revolving loan fund. Under the amended bill, the State Water Commission will review and approve eligible water-related projects. The amendment also clarified the funds would be available for new builds or replacement of existing infrastructure, not for maintenance and repair projects. Projects can receive a loan of up to \$40 million. Eligible 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 testimony in favor of HB 1425.

HB 1425 was referred to House Appropriations which continues its work on the bill.

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 funding 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. The House Committee on Appropriation's Education and Energy Division worked on HB 1020 on Feb. 11 but no action was taken.

Water Resource Districts

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

SB 2208 was completely rewritten to establish an interim study to examine combining NDCC chapters 61-16.1 and 61-21; making assessment procedures uniform; establishment of an appeals and mediation process; managing water by watershed; reviewing responsibility of culvert sizing; cost-benefit analyses on projects before the State Water Commission; and reviewing the relationship between the State Water Commission and water resource districts. The draft also includes the makeup of the committee which would include both legislators and non-legislators. Two members of water resource district boards are currently slated to be voting members on the committee. Senate Agriculture gave the revised bill a due pass recommendation 5-1 on February 12.

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. 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 are currently being draft and will likely be considered next week.

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. The bill was heard by the Senate Political Subdivisions Committee Feb. 12, wherein landowners offered support and examples of road crossings that hold water on one side of a road, and which should be upsized. Counties and townships opposed the bill as an unfunded mandate. Senator Wanzek offered amendments to provide a road authority with one-year after the State Engineer's determination to install a bridge or culvert of sufficient capacity or to provide good cause for not installing a replacement crossing.

HB 1324 Eminent Domain Penalties

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. The bill was heard by the House Political Subdivisions Committee Feb. 12. The bill sponsor explained the introduction of the bill related to a constituent issue in which an acquired property was undervalued as determined by a court. Opposing testimony was presented by airports, cities, and counties which questioned the bill's limitations, the determination of "reasonable value" and the punitive approach if value was found to be too low. The committee did not act on the bill.

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 Divide, Mountrail, and Williams Counties. Rumors circulate about significant amendments to change the advisory committee to either an authority or a 'transition planning

committee' with more oversight over the project, but no formal action has since the Jan. 14 hearing have occurred.

[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. The bill sponsor has indicated this bill will be amended to retain some State Engineer autonomy, but amendments have not been published.

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.
Referred to Senate Finance and Taxation Committee; hearing scheduled Feb. 16

[HB 1043](#) Ethics Commission Bill

HB 1043 makes modifications to the complaint process for the Ethics Commission.
House Judiciary amended do pass 13-1 Jan. 12; rereferred to House Judiciary Committee 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.
Referred to Senate Political Subdivisions Committee; hearing scheduled Feb. 18

[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.
Referred to Senate Judiciary Committee; hearing scheduled Feb. 16

[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 82-12 Feb. 10

[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

[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 Feb. 1

[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.
House Human Services do pass 11-3 Feb. 10

[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.

Referred to House Appropriations Committee Jan. 18; heard by 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.

Referred to House Political Subdivisions Committee Jan. 18; heard by 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 Senate as amended 42-4 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 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 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 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 2306](#) Western Area Water Supply Authority

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

Defeated in Senate 44-3 Feb. 10

Hearing Schedule (Feb. 15-19)

<u>Date and Time</u>	<u>Bill Number</u>	<u>Hearing Description</u>	<u>Committee</u>
02/15/2021 03:45 PM	HB 1020	Committee Work: Committee Work	House Appropriations - Education and Environment Division
02/16/2021 09:30 AM	HB 1079	Relating to the Uniform Environmental Covenants Act.	Senate Judiciary
02/16/2021 10:00 AM	HB 1038	A public hearing on a bill relating to a legislative management legacy fund earnings committee.	Senate Finance and Taxation
02/18/2021 09:00 AM	HB 1437	Committee Work: Subsurface water management	House Agriculture

02/18/2021 09:30 AM	<u>HB 1057</u>	Relating to the statutory caps for liability of political subdivisions and the state; to provide an effective date; and to provide an expiration date.	Senate Political Subdivisions
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Status of Key Bills

A 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)