

NORTH DAKOTA

WATER USERS ASSOCIATION | WATER COALITION | WATER RESOURCE DISTRICTS ASSOCIATION | IRRIGATION ASSOCIATION

Legislative Report

For Your Calendar

HB 1020, the State Water Commission's budget, will be heard in Senate Appropriations on Monday, March 22 from 9:00 a.m. to Noon and continuing after the floor session at 2:30 p.m.

Legislators Receive Final State Revenue Forecasts

On Tuesday, legislators received updated revenue forecasts from two economic analytics firms, which will set the pace for finalizing budgets tied to many bills during the remainder of the session.

The morning's report from the Office of Management and Budget (OMB) and Moody's Analytics forecasts the state's treasury will collect about \$1 billion more in oil taxes over the next biennium than what lawmakers expected in January. This is a nearly 30% increase in oil prices over what was used to initially prepare a state budget at the start of the session. This could provide up to \$100 million more than was previously estimated into the Resources Trust Fund, which supports water funding.

IHS Markit also predicted slightly higher oil prices and production in the coming biennium in its report to lawmakers on Tuesday afternoon. The Legislature hired this firm in 2017 to provide a second opinion on state revenue forecast. Both forecasts will be considered to adopt final numbers for the state's 2021-2023 spending plan, and lawmakers have usually split the difference between the two reports in creating their final budget outlook.

Legislators are continuing to take final action on several bills. This is particularly true with policy bills, as the Appropriations Committees were largely holding on bills until the final revenue forecasts and projections. The new revenue forecasts will allow budgets to begin to be finalized and will drive funding and bonding decisions in the closing weeks of the session. Legislative leadership is still aiming to save at least eight days for redistricting in the fall, which could put the final day of session around April 16.

Water Funding

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 future state funding for Mouse River Flood Control projects at \$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.

HB 1020 will be heard in **Senate Appropriations Committee March 22**

HB 1380 Legacy Fund Earnings Programs

HB 1380, referred to as the Legacy Fund 'streams' bill, was heard in the Senate Finance and Taxation Committee this week. Several amendments were offered to the bill to add additional streams for use of legacy fund earnings. The current version of HB 1380 includes the payment for the bonds authorized in HB 1431. Proposed amendments do not change the provision related to the bond payment. Of note, though, the proposed amendments would allow for the appropriation of 8%, rather than the current 6%, per biennium of the 5-year rolling average of the legacy fund earnings. The committee will discuss amendments further next week.

Hearing Senate Finance and Taxation Committee March 17

HB 1431 Bonding for Water Projects

The Senate Finance and Taxation Committee heard testimony on HB 1431 this week. HB 1431 is the major water infrastructure and revolving loan bonding authority bill. Legacy Fund earnings would repay for bonds funding infrastructure projects and programs. Several amendments to HB 1431 were offered during testimony, although not acted upon. In the current version of HB 1431, \$510 million in bond authority is authorized for major flood control projects. Amendments offered did not change that but expanded the bond authority for several other projects, including \$30 million for local roads.

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 advocated for these changes and it seems possible that the escalating loan provisions will be removed from the bill going forward.

Hearing Senate Finance and Taxation Committee March 17

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

HB 1425 would support an in-state Legacy Fund investment plan and give direction to the State Investment Board to invest up to 20 percent of the Legacy Fund in North Dakota in fixed investments (BND CDs and infrastructure loans) and equity/venture capital. Insurance Commissioner Godread, Bank of North Dakota, and infrastructure investment supporters including the North Dakota Water Coalition and the Water Users testified in support.

Senate Finance and Taxation Committee do pass 7-0; hearing in Senate Appropriations March 24

[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.

Hearing Senate Energy and Natural Resources Committee March 25

Water Resource Districts

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

House Bill 1437, the subsurface water management (tiling) bill, which also includes a fix to allow for State Water Commission to cost share widening or deepening activities, received a do pass recommendation from the Senate Agriculture Committee on March 12. On March 15, the committee asked for it to be sent back to the committee for further consideration. Additional testimony was gathered on the time frame water resource districts have to ask for additional information from applicants as well as the reporting requirement for drain activities on less than 80 acres. The Water Resource District Association testified in support of HB 1437 and offered additional information. On March 19, the committee voted to amend the bill to remove the notification requirement on projects less than 80 acres unless the project drains into an assessment drain or a "tributary" of an assessment drain. After amended the bill, the committee gave the bill a do pass recommendation.

Amended and passed Senate Agriculture Committee 6-0 March 19

[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. The Water Resource District Association testified in support of SB 2208. The House Agriculture Committee amended SB 2208 to expand both the scope of the study, to include looking at state cost-sharing additional assessed drains state-wide, and the study committee to include a road authority engineer, an additional legislator, and more representation from the Office of the State Engineer. The House passed SB 2208 as amended sending it back to the Senate to either concur in the amendments made on the House side or appoint a conference committee to work out the differences between the House and Senate versions. The Senate is expected to concur in the House amendments.

Passed as amended House 88-4 March 18

[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.

Signed by the Governor March 16

[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. The House Political Subdivisions Committee amended this bill to clarify board make up of joint boards as well.

Failed 6-88 March 17

[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. The House Political Subdivisions Committee held a three-hour hearing on this bill on March 11 and indicated adjustments should be made to the bill. An amendment was offered, though not voted on, to remove the court cost and attorney fee penalties added on the Senate side. A subcommittee of representatives met several times this week to discuss this bill, but no action has been taken.

Hearing House Political Subdivisions Committee March 11

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. After meeting with the bill sponsor of HB 1353, the North Dakota Water Users negotiated an amendment to HB 1353 to clarify the role and responsibility of the state engineer under this new department. This amendment was offered in committee, but not voted on.

Hearing Senate Energy and Natural Resources Committee March 18

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. The North Dakota Irrigation Association testified in support of SB 2020. The Education and Energy Subcommittee of the House Appropriations Committee met this week to continue work on SB 2020.

Hearing House Appropriations March 12

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. The Irrigation Association supported the bill with the House Finance and Tax Committee. Further discussions with legislators on this issue have revealed that there is not an easy solution to this issue. Legislators are inclined to study this issue during the interim before passing something that could have unintended consequences.

Hearing House Finance and Taxation Committee March 3

Other Bills of Interest

HB 1043 Ethics Commission Bill

HB 1043 makes modifications to the complaint process for the Ethics Commission. The Senate Judiciary Committee heard this bill, and several amendments were discussed, though not voted on, on March 10.

Hearing Senate Judiciary Committee March 10

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.

Passed as amended Senate 40-7 March 10, returned to the House for concurrence

[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.

Sent to the Governor March 12

[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.

Hearing Senate Finance and Tax March 22

[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.

Senate Political Subdivisions Committee do not pass 6-1 March 19

[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 must be approved by the voters.

Hearing Senate Political Subdivisions March 26

[SB 2034](#) Advisory Opinions

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.

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 do not result in an increase in flood levels.

Sent to the Governor March 17

[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.

Hearing House Judiciary Committee March 22

Hearing Schedule (March 22-26)

| <u>Date and Time</u> | <u>Bill Number</u> | <u>Hearing Description</u> | <u>Committee</u> |
|-----------------------------|---------------------------|---|---|
| 03/22/2021 09:00 AM | <u>HB 1020</u> | Expenses of State Water Commission | Senate Appropriations |
| 03/22/2021 09:30 AM | <u>HB 1116</u> | A public hearing on a bill relating to the issuance and maximum term of general obligation bonds and the authorized uses of the county capital projects levy. | Senate Finance and Taxation |
| 03/22/2021 02:30 PM | <u>HB 1020</u> | Expenses of State Water Commission - continued | Senate Appropriations |
| 03/22/2021 02:45 PM | <u>SB 2124</u> | Relating to permitting a virtual session of the legislative assembly during an emergency or disaster; relating to the state health officer's and governor's authority during a declared disaster or emergency; and to provide a penalty | House Human Services |
| 03/23/2021 08:30 AM | <u>SB 2020</u> | Committee work plus zoom: NDSU Extension budget | House Appropriations - Education and Environment Division |
| 03/23/2021 02:45 PM | <u>SB 2020</u> | Committee Work: Committee work: NDSU Research budget | House Appropriations - Education and Environment Division |
| 03/24/2021 08:30 AM | <u>HB 1425</u> | Legacy infrastructure loan fund, state investment board, Legacy and budget stabilization fund advisory board | Senate Appropriations |
| 03/25/2021 08:30 AM | <u>SB 2020</u> | Committee Work: Extension budget | House Appropriations - Education and Environment Division |
| 03/25/2021 09:00 AM | <u>HCR 3034</u> | A concurrent resolution urging Congress and the President of the United States to fully fund the biota water treatment plant for the northwest area water supply. | Senate Energy and Natural Resources |
| 03/26/2021 09:30 AM | <u>HB 1419</u> | Relating to the authority of cities and counties to levy an infrastructure fee in lieu of special assessments and special assessment fund balances. | Senate 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

- May 4: Final day of session (limited to 80 legislative days)