

NORTH DAKOTA

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

Legislative Report

Final Budget Numbers Set for 2021-2023 Biennium

On Monday, the House and Senate Appropriation Committees adopted the final revenue forecast for the 2021-2023 biennium. The final budget numbers set the general fund tax collections at \$4.04 billion. This is \$95 million more than the Legislature's first budget forecasted in January. Forecasts on oil production and price were also set which has led to an anticipated increase in Resources Trust Fund (RTF) dollars, which supports water projects, both in the current biennium and in the next. It is anticipated that there will be an additional \$19 million in the current biennium and more than \$74 million in the next biennium.

Lawmakers based these numbers on two revenue forecasts presented last week, and essentially split the difference between estimates done by OMB budget analysts and Moody's Analytics, and IHS Markit, the economic forecast firm hired by the Legislature.

The final revenue forecast will serve as a guideline for all spending bills during the remainder of the session and appropriations bills will now begin to head to the House and Senate floor for consideration. Bill differences will be worked out in conference committees of three members from each chamber.

Last week, an agreement was also reached on state employee salaries, with a plan to provide a one percent, or \$100 minimum per month, increase to all state employees in the first year of the biennium, and a two percent merit-based increase in the biennium's second year. This will also help to get state agency budget bills moving to the floor of their respective chambers in the coming weeks.

Water Funding

HB 1020 State Water Commission budget bill

The Senate Appropriations committee held an all-day hearing on HB 1020 on Monday, March 22. The committee heard updates from the State Water Commission (SWC), the various water and flood control projects, rural water, municipalities, irrigation, and water resource districts. The committee appointed a subcommittee, chaired by Sen. Ron Sorvaag, to work further on HB 1020. The subcommittees work will include allocating the additional RTF dollars now anticipated given the updated revenue projections. The Water Coalition will be advocating to the committee that additional revenue be appropriated in a way that would allow the State Water Commission to allocate it with priority to entities that voluntarily turned back or gave up dollars last year during the drop in oil tax. It is anticipated that the subcommittee will work on HB 1020 next week.

Funding levels continue to be 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. 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 (NAWS) 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 NAWS 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.

Funding levels are generally set right now as laid out below:

Line Item	Subcategory	Current Appropriation	HB 1020
Operating		\$43.8 million	\$43.4 million
	Line of credit		\$4.4 million
Capital Assets		\$106 million	\$163 million
	Line of credit (biota treatment plant)		\$70.6 million
	NAWS		\$26.5 million (federal authority)
	NAWS		\$33.6 million
	Southwest		\$32.5 million
Water Supply Grants		\$128 million	\$96 million
	Municipalities		\$36 million
	RRVWS		\$30 million
	WAWs		\$30 million
Rural Water Supply Grants		\$37.2 million	\$40.6 million
	Project funding		\$39 million
	All Seasons		\$1.6 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

Hearing Senate Appropriations Committee March 22

[HB 1431 Bonding for Water Projects](#)

The Senate Finance and Taxation Committee adopted amendments to and then passed HB 1431 this week. HB 1431 is the major water infrastructure bonding authority bill and also includes a revolving loan fund. Legacy Fund earnings, found in 1380, would repay the bonds. The amendments adopted by the committee expanded the bonding portion of the bill from

\$680 million in bonds to \$1.11 billion in bonds. Perhaps of greatest interest is \$30 million in bonding authority for township highway maintenance.

Adoption of HB 1431 would free up \$142.1 million of the RTF 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 included an infrastructure loan fund that political subdivisions would have access to. The bill was amended to combine three infrastructure loan programs found in various state agencies into one program housed in the Bank of North Dakota. This program would make available 30-year loans with a maximum of 2% interest on infrastructure projects, including water projects. The North Dakota Water Coalition advocated for changes to the terms of the loan and the committee's amendments adopted those advocated changes.

Do pass as amended Senate Finance and Taxation Committee 7-0 March 24; hearing Senate Appropriations March 31

[HB 1380](#) Legacy Fund Earnings Programs

HB 1380, referred to as the Legacy Fund 'streams' bill, was amended by the Senate Finance and Taxation Committee this week; one of the 'streams' is to fund repayment of the infrastructure bonds authorized in HB 1431. Additional streams for use of legacy fund earnings were added. The committee is also proposing appropriating 8%, rather than 6%, of the 5-year rolling average of legacy fund earnings. HB 1380 continues to include the payment for the bonds authorized in HB 1431. Proposed amendments do not change the provision related to the bond payment.

Do pass as amended Senate Finance and Taxation Committee 7-0 March 24; hearing Senate Appropriations March 31

[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 Godfreed, Bank of North Dakota, and infrastructure investment supporters, including the North Dakota Water Coalition and the Water Users testified in support.

Heard 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. North Dakota Water Users testified in support of this resolution.

Passed Senate March 26

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, was amended by the Senate Agriculture committee 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. The Senate passed the bill as amended unanimously. Because of the amendments, the bill will be returned to the House for further consideration. It’s anticipated that the House will ask for a conference committee to work out the differences between the House and Senate versions.

Passed as amended Senate 46-0 March 23

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 of the State Engineer. The House passed SB 2208 as amended sending it back to the Senate to either concur in the amendments made by the House or appoint a conference committee to work out the differences.

Passed as amended House 88-4 March 18

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 made to remove the court cost and attorney fee penalties added on the Senate side. A subcommittee of representatives met several times to discuss this bill. On March 25, the full committee met to consider several amendments, none of which passed. The committee then gave the bill a do not pass as amended recommendation.

Do not pass as amended House Political Subdivisions Committee 12-1 March 25

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. The Senate Energy and Natural Resources Committee put this amendment on the bill and gave the bill a do pass as amended.

Do pass as amended Senate Energy and Natural Resources Committee 6-0 March 25

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 House Appropriations Committee met this week to continue work on SB 2020.

Hearing House Appropriations March 23

SB 2041 Taxation of Grain or Potato Warehouses

SB 2041 would have clarified 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. The committee adopted a hoghouse amendment to the bill that updates a definition in the state tax code regarding gross farm income to match changes at the federal level and authorizes a legislative management study of the warehouse issue.

Do pass as amended House Finance and Taxation Committee 13-0 March 24

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 amended this bill to change the proposed process for dealing with anonymous complaints. The committee recommended a do pass as amended. The Senate concurred in the committee's recommendation on March 24.

Do pass as amended Senate 47-0 March 24

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.

Passed Senate 47-0 March 22

[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.

Signed by the Governor March 17

[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.

Failed Senate 12-35 March 22

[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.

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 the opinion, and provides protections for individuals who utilize such opinions.

Do pass House Government and Veterans Affairs Committee 14-0 March 25

[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.

Signed by the Governor March 22

[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 Human Services Committee March 22

Hearing Schedule (March 29-April 2)

<u>Date and Time</u>	<u>Bill Number</u>	<u>Hearing Description</u>	<u>Committee</u>
03/30/2021 08:30 AM	<u>SB 2020</u>	Committee Work: provide an appropriation for defraying the expenses of the North Dakota state university extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm; to provide for a report; and to provide an exemption.	House Appropriations - Education and Environment Division
03/30/2021 04:00 PM	<u>HB 1020</u>	Committee Work: Sub-Committee - Water Commission budget	Senate Appropriations
03/31/2021 08:30 AM	<u>SB 2020</u>	Committee Work: provide an appropriation for defraying the expenses of the North Dakota state university extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm; to provide for a report; and to provide an exemption.	House Appropriations - Education and Environment Division
03/31/2021 02:30 PM	<u>HB 1431</u>	Community water development fund and an infrastructure revolving loan fund within the resources trust fund	Senate Appropriations
03/31/2021 02:45 PM	<u>SB 2020</u>	Committee Work: provide an appropriation for defraying the expenses of the North Dakota state university extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm; to provide for a report; and to provide an exemption.	House Appropriations - Education and Environment Division
03/31/2021 03:30 PM	<u>HB 1380</u>	Legacy sinking and interest fund, a legacy earnings fund, and an income tax relief fund	Senate Appropriations
04/01/2021 08:30 AM	<u>SB 2020</u>	Committee Work: provide an appropriation for defraying the expenses of the North Dakota state university extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm; to provide for a report; and to provide an exemption.	House Appropriations - Education and Environment Division
04/01/2021 02:45 PM	<u>SB 2020</u>	Committee Work: provide an appropriation for defraying the expenses of the North Dakota state university extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm; to provide for a report; and to provide an exemption.	House Appropriations - Education and Environment Division
04/02/2021 08:30 AM	<u>SB 2020</u>	Committee Work: provide an appropriation for defraying the expenses of the North Dakota state university extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm; to provide for a report; and to provide an exemption.	House Appropriations - Education and Environment Division

Status of Key Bills

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

How to Contact Your Legislators

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Legislative Calendar

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