

NORTH DAKOTA

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

Legislative Report

Conference Committees Start Work on Appropriations and Budget Bills

With the final revenue forecast of the session set last week, agency budgets and spending bills are quickly moving through appropriations committees and to their respective chambers for consideration. When passed, a bill goes to the second house for its consideration. If passed by the second house in the same form, the bill is enrolled, signed by presiding officers, and sent to the Governor. If the second house amends and then passes the bill, it is sent back to the first house for concurrence. If the first house does not concur, the presiding officers of both houses appoint a conference committee.

As the session draws closer to adjournment, a bill's path to final adoption can get more complicated. Many of the major budget bills are the last bills finalized during the session, as common ground on funding or policy differences is sought between the chambers in conference committees. A conference committee consists of six members, typically two majority members and one minority member chosen from each of the committees that heard the bill in the House and Senate. The conference committee makes recommendations on a uniform version of a bill to both houses, which must both approve the bill in the same form in order for it to be adopted and become law.

Some of our key water bills will likely be among the last to be decided this session simply due to the scale of the funding found within them. House Bill 1020, the budget bill for the State Water Commission, HB 1431, the major bonding bill that includes the major flood control projects, and HB 1380, the authorization to use legacy fund earnings to pay for the bonds in HB 1431, are all integrally tied together. Failure of HB 1431 would require a complete rewrite of HB 1020. All told the legislature has under consideration somewhere in the ballpark of \$800 million in investment in water in North Dakota. This is an incredible show of state support for these important projects. Please take some time to thank your legislators for this support.

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. A subcommittee, chaired by Sen. Ron Sorvaag, will work further on HB 1020. The subcommittees work will include allocating the additional Resources Trust Fund (RTF) dollars now anticipated given the updated state revenue projections. The Water Coalition has advocated that additional revenue be appropriated in a way that would allow the SWC to allocate funds with priority to entities that voluntarily turned back or gave up dollars last year during the drop in oil tax collections. The subcommittee met once this week, mostly to gather more information on the Northwest Area Water Supply (NAWS) project. They will meet several times in the next few weeks to continue work on the water funding bill.

At the subcommittee meeting, Interim State Engineer John Paczkowski provided the following summary on projects that voluntarily delayed funding last year and where those projects are at related to approvals in the 2019-21 biennium and project requests.

Project	19-21 Request or legislative intent (in millions)	Voluntary Reduction (in millions)	19-21 Approval(s) (as of March 2021) (in millions)	19-21 Unfunded (in millions)	Notes
Bismarck Flood Protection	\$3	\$1	\$0	\$3	Projects delayed during the 19-21 biennium could be restored as part of the agency's 21-23 appropriation, though available funding remains to be determined.
FM-Area Diversion	\$66.5	\$22.5	\$44	\$22.5	The \$22.5M reduction is restored as part of the \$435.5M in HB 1431.
Mandan Heart River Flood Control	\$13	\$11	\$1.2	\$9.3	A request for \$9.3M was deferred in February 2021 until the project addresses federal CLOMR requirements.
Mouse River Flood Protection	\$82.5	\$33	\$49.5	\$33	The \$33M reduction could still be requested during the 19-21 biennium. Deferred projects that made up the \$33M are scheduled to be addressed as part of the \$74.5M included in HB 1431. If the \$33M in deferred funding is provided in 19-21, the sponsor will address additional projects with the \$74.5M.
Red River Valley Water Supply	\$43	\$20	\$19.1	\$23.9	The \$23.9M reduction could still be requested during the 19-21 biennium.
Northwest Area Water Supply	\$107.5	\$16	\$68	\$39.5	Reductions to be restored using \$75M line of credit, Resources Trust Fund, and federal MR&I program funding made available during the 21-23 biennium currently included in HB 1020.
Southwest Pipeline Project	\$25.5	\$12	\$2.3	\$23.2	Projects delayed during the 19-21 biennium could be restored as part of the agency's 21-23 appropriation, though available funding remains to be determined.
Western Area Water Supply	\$40	\$9.6	\$21.5	\$18.5	Projects delayed during the 19-21 biennium could be restored as part of the agency's 21-23 appropriation, though available funding remains to be determined.

Rural Water	\$37.2	\$7.4	\$36.2	\$1	Not all funding has been requested for this purpose to date. Remaining requests expected before the end of 19-21 biennium.
Municipal Water	\$45	\$5.5	\$61.4		Municipal projects have been approved for \$16.4M more than originally planned.
Total	\$463.2	\$138.0	\$303.2		An "Unfunded" total is not provided to avoid confusion. Some deferred amounts are currently accounted for in 2021 legislation, and some could still be requested during the 19-21 biennium.

Senate Appropriations Committee March 22

[HB 1431](#) Bonding for Water Projects

This week the Senate Appropriations Committee heard testimony on HB 1431. HB 1431 is the major water infrastructure bonding authority bill and includes a revolving loan fund. Legacy Fund earnings, found in HB 1380, would repay the bonds. The Senate had adopted amendments adopted expanding the bonding portion of the bill from \$680 million to \$1.1 billion in bonding authority was including:

- \$435.5 million for the Fargo Diversion Project
- \$74.5 million for the Mouse River Flood Control Project
- \$50 million to an infrastructure revolving loan fund
- \$70 million to the state highway fund
- \$50 million to NDSU for an agriculture products development center
- \$250 million to the clean sustainable energy fund (coal power plant CO2 capture)
- \$30 million the township highway aid fund
- \$60 million to career and technical education
- \$71 million state facility maintenance and ADA upgrades
- \$10 million to the state park fund for deferred maintenance and improvements
- \$4 million to Dickinson State University for a Pulver Hall
- \$4 million to UND for a space command initiative
- \$1 million to the art initiatives

Adoption of HB 1431 will free up \$142 million of the RTF 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 bonding bill.

It is anticipated that the Senate Appropriations Committee will take a hard look at the various bonding projects currently included in HB 1431 and may move some spending to other spending bills. Water related bonding authority should remain in HB 1431. These moves would likely make the bill look similar to how it passed the House, with funding for Mouse River and Fargo flood control investments.

In addition to bonding authority, HB 1431 includes an infrastructure loan fund for political subdivisions. 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.

Heard Senate Appropriations March 31

[HB 1380](#) Legacy Fund Earnings Programs

HB 1380, referred to as the Legacy Fund 'streams' bill, was head by the Senate Appropriations Committee; one of the 'streams' is to fund repayment of the infrastructure bonds authorized in HB 1431.

Heard 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. The bill passed the Senate without amendment so will go to the Governor for his signature.

Passed the Senate 47-0 March 29

[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. The House appointed 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. The House floor took the committee's recommendation and the bill failed 21-72.

Failed 21-72 House March 31

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. The bill passed the Senate as amended and goes back to the House for either concurrence or conference committee consideration.

Passed Senate 36-11 March 29

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 “hog house” 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. The bill passed the House as amended and will go back to the Senate to either concur in the House changes or ask for a conference committee.

Passed House 94-0 March 29

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.

Signed by the Governor March 29

[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.

House concurred 83-9 March 30

[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 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.

Passed House 94-0 March 29

[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 (April 5-9)

<u>Date and Time</u>	<u>Bill Number</u>	Short Title	<u>Committee</u>	Description
04/05/2021 11:00 AM 	<u>HB 1116</u>	Relating to the issuance and maximum term of general obligation bonds and the authorized uses of the county capital projects levy; and to provide an effective date.	Senate Finance and Taxation	Allows county capital project levies to be used for roads and bridges and lengthens the term of county bonds from 20 to 30 years.
04/05/2021 03:00 PM 	<u>HB 1116</u>		Senate Finance and Taxation	

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 5: Final day of session (limited to 80 legislative days)

