

NORTH DAKOTA

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

# Legislative Report

## The Road to Bill Passage (or Veto)

This week, conference committees became a more frequent occurrence as differences between House and Senate versions of bills were discussed or new amendments were considered to help find common ground.

Once bills come out of conference committee, they must be voted on and passed by both houses in the same form before going to the Governor for a signature. The Governor's signature on a bill means it becomes law on the effective date set in the bill. The Governor can also veto a bill, despite it being passed by both chambers, by vetoing an entire policy or appropriations bill or a line item in an appropriations bill.

So far, only one bill adopted by the 2021 Legislative Session has been vetoed. On April 13, Governor Burgum vetoed House Bill 1381, which would allow the legislature to introduce and vote on bills and resolutions in December preceding legislative sessions. This bill or other vetoed bills can still become law by a 2/3 affirmative vote in both houses to override the governor's opposition.

There is growing optimism that the legislature might complete its business in the next week since many of the large issues, like flood project bonding, already dealt with. For those of us in the water world, the policy discussions will not end when the session is over. The interim is slated to be quite busy with the creation of a committee to study of rural water management statutes and processes authorized in SB 2208 and the continued role of the separate Water Topics Overview Committee. Please continue to privately (and publicly if you can) thank legislators for their significant support of water infrastructure and policy during the 2021 Legislative Session.

## Water Funding

### HB 1020 State Water Commission budget bill

The Senate Appropriations Committee gave HB 1020 a do pass recommendation with a few amendments. The funding levels changes slightly to reflect the anticipated additional \$74 million in Resources Trust Fund (RTF) dollars. The additional dollars are allocated as follows:

| Line Item          | HB 1020 House Version | HB 1020 Senate version | Additional RTF Dollars Proposed |
|--------------------|-----------------------|------------------------|---------------------------------|
| Capital Assets     | \$163 M               | \$173 M                | \$10 M                          |
| Water Supply       | \$96 M                | \$125 M                | \$29 M                          |
| Rural Water Supply | \$40.6 M              | \$59.6 M               | \$19 M                          |
| Flood Control      | \$38 M                | \$48 M                 | \$10 M                          |
| Discretionary      | \$0                   | \$6 M                  | \$6 M                           |
| Line of Credit     | \$75 M                | \$50 M                 | n/a                             |

The discretionary bucket is a new proposal and would be available to the State Water Commission (SWC) to use for any project. The North Dakota Water Coalition proposed this concept of providing the SWC this type of flexibility to ensure those projects that voluntarily turned back or deobligated funds in the current biennium could be prioritized now that there is additional funding available.

The following additional amendments received a favorable recommendation from the committee:

- Clarifying that the line of credit was for the NAWS project;
- Exempting the pilot project from the State Water Commission's (SWC) cost-share policy; and
- Clarifying that the report from the SWC to the legislature on carryover begins four years after a cost-share agreement is in place.

The Senate so amended the bill and passed it unanimously. A conference committee, made up of three members from each chamber will meet next week to finalize the bill.

### **Amended and passed Senate 47-0 April 14 Conference Committee scheduled April 20**

#### **HB 1431 Bonding for Water Projects**

HB 1431, the major water infrastructure bonding authority bill and includes a revolving loan fund, was passed by the Senate unanimously on April 8 sending the bill to the Governor. Legacy Fund earnings, found in HB 1380, would repay the bonds. The Senate removed amendments it had previously put on the bill, returning HB 1431 to the version that passed the House. There was growing concern that the \$1.1 billion price tag on the bill, after the Senate added a number of projects, could fail to garner enough support to pass the notably more conservative House. With the potential of the House defeating the bond bill entirely due to higher revenue forecasts, water groups advocated returning the bill to its original form to protect the significant water investment included in HB 1431. HB 1431 as passed by the Senate authorizes \$680 million in bonds.

Governor Burgum is expected to sign the measure which will provide:

- \$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

Passage of HB 1431 frees up \$142 million of the RTF for water project cost-share grants for water project cost share contemplated in HB 1020. Many water projects should 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.

The final version of HB 1431 includes an infrastructure loan program with a stepped-up interest rate. This was briefly changed to a 2% flat interest rate cap but that was changed to the less desirable escalating interest rate when the bill reverted to the House version. The North Dakota Water Coalition is advocating for a flat interest rate to be added to another piece of legislation that will pass before the end of session.

HB 1431 will be delivered to Governor Burgum, who as announced his intention to sign the measure. This bond bill is an incredible accomplishment for water.

### **Passed Senate 46-0 April 8**

### **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. Slight amendments were offered to the bill by the Senate Appropriations Committee. HB 1380 received a do pass as amended recommendation from the Senate Appropriations Committee and was amended and passed unanimously in the Senate. It will now go back to the House for either a conference committee or concurrence.

**Passed Senate 47-0 April 13**

### **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 for drains, 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. The conference committee continued to work this week with several amendments to exempt drain projects that are not on agricultural land or are all contained on one owner's property from the notification requirement.

**Conference Committee Meeting April 20**

#### **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 will be voting members on the committee. The conference committee met and agreed to recommend an amendment to SB 2208 to expand the study to include water permits and irrigation. The bill passed both houses of the legislature unanimously this week, sending the bill to the Governor's desk.

**Passed House 94-0 April 15**

### **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 the

House concurred in the Senate amendments. The bill will now go to the Governor for his signature.

**House concurred 89-5 April 13**

### **Irrigation**

#### **SB 2020 2021-23 NDSU Research and Extension with SBARE Priorities**

This bill includes appropriations for NDSU Agriculture Research and Extension as well as the 2021-2023 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 FTE for the Big Data Initiative for the ND Ag Experiment Station.

The House Capital improvement projects are also included in the bill including the Carrington REC for a feedlot research facility and pen renovation, Langdon Research Center greenhouse and \$500,000 in one-time funds for deferred maintenance.

The bill will now be worked on by a conference committee.

**Do pass as amended House 81-13 April 13**

#### **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 conference committee met this week and recommended the Senate agree to the House version of the bill (the hoghoused version).

**Passed Senate 44-3 April 15**

### **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.

**House concurred in Senate amendments 70-23 April 1**

#### **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.

**Signed by the Governor April 8**

### **[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. The Senate Finance and Tax Committee made some amendments to the bill and the bill passed the full Senate as amended.

**House concurred in Senate amendments and passed 84-9 April 15**

### **[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. The Senate Political Subdivisions Committee made some amendments to the bill and the bill passed the full Senate as amended.

**House concurred 68-21 April 14**

### **[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.

**Signed by the Governor April 12**

### **[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 19-23)**

Please note that conference committees regularly meet with very little prior notice. There will likely be more conference committee meetings next week than are indicated below.

| <b><u>Date and Time</u></b> | <b><u>Bill Number</u></b> | <b><u>Committee</u></b>   | <b><u>Representatives</u></b>   | <b><u>Senators</u></b>   |
|-----------------------------|---------------------------|---|---|--|
| 04/19/2021<br>10:30 AM      | <a href="#">SB 2020</a>   | Senate<br>Appropriations  | Monson, David (R),<br>Schmidt, Jim (R), Boe,<br>Tracy (D)                           | Erbele, Robert (R) (Chair),<br>Wanzek, Terry M. (R),<br>Heckaman, Joan (D) |
| 04/20/2021<br>09:30 AM      | <a href="#">HB 1437</a>   | House<br>Agriculture  | Schreiber-Beck, Cynthia (R)<br>(Chair), Thomas, Paul J.<br>(R), Johnson, Dennis (R) | Luick, Larry (R), Myrdal, Janne<br>(R), Hogan, Kathy (D)                   |
| 4/20/2021<br>10:30 AM       | <a href="#">HB 1020</a>   | House<br>Appropriations -<br>Education and<br>Environment<br>Division | Schmidt, Jim (R) (Chair),<br>Monson, David (R), Boe,<br>Tracy (D)                   | Sorvaag, Ronald (R), Hogue,<br>David (R), Heckaman, Joan<br>(D)            |

### **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)