

NORTH DAKOTA

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

Legislative Report

The Road to Bill Passage

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. More than 80 bills and resolutions have been sent to a conference committee to work out differences between the chambers. These bills cover a broad range of topics including appropriations and tax relief.

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, generally Aug. 1 or July 1 for appropriations bills or revenue measures. Many bills are passed with an emergency clause on them, meaning they go into effect when the Governor signs them. Governor Burgum has signed more than 300 bills so far this session.

Sorvaag Elected Interim President Pro Tempore

Water leader, Sen. Ron Sorvaag, was elected the Senate's interim President Pro Tempore on April 13 during the Senate floor session. He replaces Sen. Don Schaible. One of Sorvaag's new duties include presiding over the Senate in the absence of Lt. Gov. Tammy Miller.

WOTUS Rule Now Blocked in 26 States

On Wednesday, a U.S. District in North Dakota granted a preliminary injunction to stop the Biden administration's WOTUS rule in 24 states, adding to the injunctions already in place in Texas and Idaho. The preliminary injunction affects Alabama, Alaska, Arkansas, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming. The court's decision comes after President Biden vetoed a bipartisan congressional attempt to overturn the rule on April 6.

Water Funding

SB 2020 DWR/SWC Funding

Support

SB 2020 is the appropriations bill for the Department of Water Resources and State Water Commission. While the bill was passed out of the Division last week, the bill was sent back to the Division for additional amendments detailed below.

Changes to income included:

- +\$38M in unobligated current biennium funding
- +\$24.6M that was double counted in the Senate version
- \$10M based on projections

The bill appropriates funding into the buckets as follows:

Bucket	Amount
Salaries and operations	\$81.7M**
Capital Assets (Resources Trust Fund \$\$)*	\$118M
--NAWS	--\$36M
--SWPP	--\$80M
--Devils Lake Outlet	--\$2M
Flood Control	\$115.7M
--Valley City	--\$13.2M
--Mouse River	--\$76.1M
--Lower Heart	--\$12.3M
--Other Flood Control	--\$6.1M
--Conveyance	--\$8M
Water Supply	\$318.2M
--Red River Valley Water Supply	--\$180M
--Western Area Water Supply	--\$46M
--Bismarck	--\$50M
--Municipal	--\$36M
--Medora	--\$3.2M
--Parks and Recreation Grant	--\$3M
Rural Water	\$50M
General Water	\$12M
Discretionary	\$9M
Red River Joint Board Pilot Project	\$0M
TOTAL	\$719.7M

The bill also includes:

- A line of credit for NAWS and SWPP's water treatment plant project (total of \$100M)
- Legislative intent to provide 75% funding for the Red River Water Supply Project (approx. \$953M)
- Legislative intent for the Mouse River Flood Control Project (approx. \$380.5M)

- Language allowing the State Water Commission to use the remaining funds in the 21-23 discretionary bucket, as well as the 23-25 discretionary bucket, for a wide variety of expenses, including potentially non-project expenses
- Language allowing line transfers between the operating line and the capital assets line up to \$5M
- Funding for staff training and tools for the DWR's appropriations division
- Funding for the DWR's IT unification initiative
- Approval of three additional FTEs for the DWR
- Lower the threshold for requiring economic analysis from \$1M to \$500,000
- Directing up to \$100M in Bank of North Dakota income to the Water Infrastructure Revolving Loan Fund, as needed.
- Intent language in support of the Missouri River Joint Board's Educate Advocate Engage program.
- Directing the DWR to provide a legislative management report regarding the Red River Valley Water Supply intake in Washburn.
- Directing the DWR to utilize the State Investment Board to invest Resources Trust Fund dollars with the idea of getting a higher return on investment.

The bill no longer includes:

- Loan forgiveness for WAWS. Instead that \$30M is directed to the Water Infrastructure Revolving Loan Fund.
- Funding for a basin wide pilot project.

*The bill itself includes \$300.3M in the capitol assets line item. This includes the line of credit and authority to use federal funds for the NAWWS project.

**This is an estimate based on verbal committee discussion. It was testified to that the agency's operating funds were decreased by \$1.6M to go to a 'vacant FTE funding pool' managed by the Office of Management and Budget.

Additional amendments are being considered, likely in concert with the work of the conference committee on SB 2196. Additional work is likely to occur on Monday. Once the bill passes Division, it's likely it will quickly go to the full committee and the floor.

Committee work, House Appropriations Education and Environment Division, April 17

SB 2017 Game and Fish Department

Support

SB 2017 is the appropriations bill for the Game and Fish Department, including funding for aquatic nuisance species prevention. The Senate Appropriations Committee received a report from the Game and Fish Department on the Governor's budget proposal for the department. The Governor's proposed budget recommends funding for the Game and Fish's aquatic nuisance species (ANS) line item totaling almost \$3 million. This includes funding for 1 FTE as well as seasonal workers. The almost \$1.5 million increase from current funding will come from federal funds from the US Army Corps of Engineers and additional funding from the Game and Fish Department. This funding will be for more inspection facilities and activities. The Governor's proposal also includes \$850,000 for an aquatic nuisance species lab and storage facility in Jamestown. The Water Users testified regarding the importance of funding ANS prevention activities. The bill as passed by the Senate includes full funding for the ANS requests. The bill was heard in front of the House Appropriations Government Operations

Division on Wednesday, March 8. The full Appropriations Committee gave the bill a 'do pass as amended' recommendation, keeping all ANS funding intact. The bill passed the House floor as amended.

Conference Committee Appointed (Meyer, Rust, Schaible)

[HB 1286](#) Oil Tax Trigger

Monitor

HB 1286 would remove the trigger which increases the tax rate paid when oil prices get above \$90 per barrel for three consecutive months. The trigger was reached this summer and resulted in greater than expected revenue in the Resources Trust Fund, among other state government funds. This bill was amended to clarify the portion of the tax paid to the Three Affiliated Tribes. The Senate committee passed the bill to the floor with no committee recommendation, an unusual motion. The committee was evenly split on the bill thus the no committee recommendation was the only motion that could get a majority of the committee.

Signed by the Governor, March 29

[HB 1385](#) Tribal Eligibility for SWC Funds

Support

HB 1385 would include tribes in the list of entities eligible for cost share from the State Water Commission. The ND Water Users Association testified in favor of this bill. The Senate passed the bill unanimously. There was a ceremonial signing ceremony on March 30 that the ND Water Users participated in.

Signed by the Governor, March 27

[SB 2196](#) WAWS Oversight and Loans and NAWS Line of Credit

Support

SB 2196 would move oversight of WAWS from the Industrial Commission to the State Water Commission. It also provides for forgiveness of some WAWS loans and stipulates that interest on WAWS loans should be the same as what other North Dakota governmental entities receive. The bill also renews the line of credit available for NAWS. The North Dakota Water Users submitted testimony in favor of SB 2196. The Department of Water Resources asked the bill to be amended to remove the reference to the NAWS line of credit as that is now included in SB 2020. The committee amended the bill to remove the loan forgiveness authorized in the bill and gave the bill a do pass recommendation as amended. The House passed the bill but the Senate refused to concur in the amendments and appointed a conference committee.

Conference Committee, (Bosch, Dockter, J. Olson, Patten, Kannianen, Sorvaag), April 18

Water Resource Districts

[HB 1073](#) Operations Plans for Dams

Monitor

HB 1073 removes an existing requirement that operators of dams submit an operating plan to the Department of Water Resources.

Signed by the Governor, March 15

[HB 1076](#) Permit Thresholds for Dams and Dikes

Support

HB 1076 creates a tiered regulatory framework for dikes based on what the dike is protecting and not a specified volume. It does this by eliminating the requirement for a professional engineer for the construction of agricultural dikes and farmstead ring dikes, increasing the threshold for requiring a construction permit for an agricultural dike from 50 acre-feet volume

protected to 80 acres or more protected area, and requiring construction permits for construction of municipal dikes if they are protecting residences or occupied structures. HB 1076 was heard by the House Energy and Natural Resources Committee and was given a 'do pass' recommendation. The Water Resource Districts Association submitted testimony in favor of the bill.

Signed by the Governor, March 29

HB 1239 Subsurface Drainage Notification

Support

HB 1239 would renew legislation passed during the 2021 session that requires landowners to notify water resource districts when they are conducting a subsurface drain project that is under 80 acres. The notification requirement that was passed in 2021 will sunset if this legislation does not pass. The ND Water Resource Districts Association and several agriculture groups testified in favor of this bill. The committee amended this bill to add an emergency clause and gave the bill a 'do pass' recommendation. The Senate committee heard this bill. There were questions raised about exempting farmyards from the notification requirement. The committee was interested in looking at that issue further. The Senate Ag Committee added an amendment to the bill that exempts projects under 15 acres from notification.

Conference Committee Scheduled (Beltz, Schreiber-Beck, VanWinkle, Weber Myrdal, Lemm), April 18 (tentative)

HB 1391 Assessment Authorities

Support

HB 1391 would require water resource districts publish and distribute meeting minutes within 72 hours after a meeting. It would also alter the trigger for when projects that are cleaning or repairing a drain have to go to a public vote. Currently, these projects only go to a vote when the cost of the project, minus dollars received for sources other than annual levies, exceeds the amount the board receives over six years in annual levies. This proposal would require projects that cost more than that six-year max, regardless of other funds, to go to a vote. The ND Water Resource Districts Association and ND Water Users Association, along with several water managers testified in opposition to this bill. The committee amended this bill to remove the section dealing with assessment votes. It also changed the meeting minutes section to stipulate that the board will publish in a newspaper or put on a website draft meeting minutes 10 days after a meeting. The bill passed as amended unanimously. This bill was heard on the Senate side on March 10. Amendments were made to the bill to clarify that the minutes could be draft or unofficial minutes and that minutes must be posted both on the website and in the newspaper. The bill was given a 'do pass as amended' recommendation.

Conference Committee Appointed (Hagert, Conmy, J. Olson)

HB 1462 Appeals from a Local Governing Body

Oppose

HB 1462 would require a local board to serve a decision of the board on every entity impacted by a decision. Additionally, it would clarify the ability for the court to award attorney's fees if a board loses an appeal at the district court level. The ND Water Resource Districts Association and League of Cities testified in opposition to this bill. The committee adopted an amendment to require only water boards to serve notice via three publications, once per week over three weeks, in the county newspaper where the decision is made and mail a copy of the decision to

any “aggrieved person”. The amendment also removes the attorney’s fees section. The House floor passed the bill as amended, sending it over to the Senate side. The bill received a ‘do not pass’ recommendation from the committee.

Failed, Senate, 46-0, March 30

SB 2036 Drainage Statute Clean Up

Support

SB 2036 is the clean-up bill put together by the interim drainage committee. This bill combines the current two chapters of code that deal with assessment projects into one chapter and makes some updates to the assessment process. The committee made a slight amendment to the bill to update a reference to the Department of Water Resources and fix a drafting error. The Senate passed the bill unanimously. The bill was heard on March 2 with both the DWR and the Water Resource Districts Association offering amendments to the bill. Amendments are still being prepared on the bill. The committee added amendments and gave the bill a ‘do pass recommendation’. The House passed the bill and the Senate concurred in the amendments, sending this bill to the Governor for his signature.

Signed by the Governor, April 12

SB 2326 Economic Analysis Threshold for SWC Cost Share

Support

SB 2326 would clarify that the State Water Commission could only require an economic analysis on flood control and water conveyance projects above \$1 million. This would remove the SWC’s ability to lower that threshold via policy as is current practice. The committee add an amendment to reduce the threshold to \$500,000 and gave the bill a ‘do pass recommendation’.

Conference Committee Appointed (Kessel, Kannianen, Patten)

SB 2372 Watershed Districts

Monitor

SB 2372 would require the Department of Water Resources to establish boundaries for watershed districts and then require counties to appoint managers to the watershed districts. The current drainage chapter of code, 61-16.1, would apply to watershed districts. The ND Water Resource Districts Association provided opposition testimony to SB 2372 and offered to work with interested parties on a possible amendment to encourage watershed-based management within the current water resource district model. The bill was amended to require participation in joint boards. The House committee took testimony on this bill with some opposition testimony. The committee amended the bill to remove an unnecessary section and gave the bill a do pass as amended recommendation and sent it to the full House.

Concurred, Senate, 45-0, April 13

Irrigation

HB 1020 2023-2025 SBARE Funding Priorities

Support

HB 1020 includes appropriations for NDSU Agriculture Research and Extension, including the 2023-2025 priorities for the State Board of Agricultural Research and Education (SBARE) priorities. SBARE priorities include infrastructure for the Nesson Valley Irrigation Research and Demonstration Project. The Irrigation Association submitted testimony in support of HB 1020. The House Appropriation’s Government Operations Division gave this bill a ‘do pass’ recommendation, sending it to the full Appropriations Committee. The bill includes \$1.2 million for Nesson Valley.

Conference Committee, (Monson, Brandenburg, Pyle, Erbele, Wanzek, J. Roers), April 14

[HB 1074](#) Informational Hearings related to Water Permit Applications **Support**

HB 1074 clarifies that informational hearings related to water permit applications are more appropriately referred to as public hearings for the public to provide input to the Department of Water Resources. The Irrigation Association testified in support of this bill.

Signed by the Governor, March 15

[HB 1075](#) Public Hearing on Water Permit Cancellations **Support**

HB 1075 removes the requirement that the Department of Water Resources hold a public hearing on a water permit cancellation. Instead, the bill would institute a public notice and comment period to allow feedback on a cancellation. The DWR believes this change will speed up the cancellation process. The Irrigation Association testified in support of this bill. The bill passed the Senate unanimously.

Signed by the Governor, March 27

[HB 1247](#) Property Tax Exemption for Elevators and Potato Warehouses **Monitor**

HB 1247 would treat property that is zoned commercial property, but is now privately owned and houses a grain elevator or potato warehouse, as agricultural property for tax purposes. The committee could not get information on what impact this would have statewide and so asked for the issue to be studied. The bill was amended to ask for a study.

Signed by the Governor, March 20

[SB 2279](#) Property Tax Exemption for Potato Warehouses **Monitor**

SB 2279 would treat property that is zoned commercial property, but is now privately owned and houses a potato warehouse, as agricultural property for tax purposes. This has been described as a temporary exemption while the legislative management study authorized in HB 1247 is looking into the issue. The expectation is that this issue will be discussed again next session after the study has concluded.

Conference Committee Appointed (Luick, Myrdal, Lemm)

Atmospheric Resources

[HB 1166](#) Weather Modification **Oppose**

HB 1166 would prohibit state cost share for weather modification unless counties adjoining the county conducting the activity agrees. The ND Weather Modification Association testified in opposition. The committee considered significant amendments to this bill. The bill as amended now completely removes the cost share for weather modification activities and restricts where weather modification activities can occur. The amendment also alters the process for reauthorizing weather modification in counties where it occurs. The bill passed the floor, 69-22. The Senate committee heard the bill with several amendments discussed. No action was taken on the bill. The Senate Agriculture committee amended the bill to remove the prohibition of cost share and clarify that reauthorization needs to occur via a public vote every four years. After amending the bill, the committee sent the bill to the floor with no committee recommendation.

Failed, Senate, 14-33, April 3

Other Bills of Interest

HB 1038 Statute Technical Corrections

Monitor

HB 1038 updates one outdated reference to the Office of the State Engineer.

Signed by the Governor, March 23

HB 1072 Technical Corrections

Monitor

HB 1072 updates some references to the State Water Commission in the Atmospheric Resource Board's statutes.

Signed by the Governor, March 15

HB 1077 Water Storage Contracts

Support

HB 1077 adds a requirement that a federal agency completing a water storage contract with an entity within North Dakota must provide the Department of Water Resources a copy of the contract. The ND Water Users Association testified in support of this bill. The bill was amended to require entities to notify the DWR within 60 days of beginning discussions and keep in contact with the DWR throughout the negotiations.

Signed by the Governor, March 15

HB 1098 Floodplain Management Ordinances

Monitor

HB 1098 clarifies when communities that fail to adopt or enforce floodplain management ordinances are prohibited from receiving funds.

Signed by the Governor, March 15

HB 1118 Income Tax Credit

Monitor

HB 1118, as amended by the committee, would provide a \$800 tax credit for single filers and a \$1,600 tax credit for joint filers. It also establishes a flat tax rate of 1.9%.

Do not pass recommendation, Senate Finance and Tax Committee, 6-0, March 21

HB 1158 Income Tax Rate

Monitor

HB 1158 would lower the income tax rate to a flat 1.5%. The Senate Finance and Tax Committee significantly amended the bill to make a more comprehensive tax bill, passed the bill unanimously, and rereferred the bill to the Appropriations Committee. In its current form the bill combines initiatives to provide both income tax and property tax relief. Income tax relief is preferred by the House; property tax relief is preferred by the Senate. The conference committee will meet to work out the differences between chambers.

Conference Committee, (Headland, Hagert, Bosch, Kannianen, Patten, Rummel), April 14

HB 1218 NAWS Authority

Monitor

HB 1218 would make the current Northwest Area Water Supply (NAWS) advisory committee an authority. It would also change the makeup of the Authority. The North Dakota Water Users submitted testimony in favor of HB 1218. The committee lowered the representation from Minot

and gave the bill a do pass recommendation unanimously. The bill passed the House 91-0 on February 14. The Senate committee made a minor amendment and gave it a do pass recommendation. The Senate passed the bill and the House concurred, sending the bill to the Governor.

Concurred, House, 90-0, April 3

HB 1379 Legacy Fund Earnings

Monitor

HB 1379 would change the current 'streams' that Legacy Fund earnings go into. Last session, the legislature established certain priorities that would be funded with Legacy Fund earnings. The latest amendments to the bill which passed in a 46-0 Senate vote on April 12 would streamline the distribution process for \$486.6 million during the 2023-25 biennium with \$102.6 million to the Legacy Sinking and Interest Fund, \$225 million to the General Fund for tax relief and \$100 million to the Legacy Earnings Highway Distribution Fund. Remaining earnings would be split 50/50 between the General Fund and the Strategic Investment and Improvements Fund.

Conference Committee Appointed (Bosch, Lefor, Vigesaa)

SB 2029 Caps for Emergency Commission and Budget Section Approvals

Monitor

SB 2029 changes the caps on approvals from the Emergency Commission and Budget Section. Last session, the legislature placed dollar amount caps on these approvals. This bill seeks to change that to a percent of the budget approved by the legislature. This bill was amended in committee to add an emergency clause. An emergency clause would allow the bill to come into effect sooner. The bill was given a do not pass recommendation from the House committee. The bill was sent back to committee by the House floor. The committee made some further amendments and gave it a 'do pass' recommendation.

Conference Committee, (K. Roers, Estenson, Cleary, Steiner, Rohr, Schauer), TBD

SB 2097 Wild and Scenic River Designations

Support

SB 2097 would require anyone seeking a wild, scenic or recreational river designation notify the department of water resources, the local water resource district and other interested state and local entities prior to seeking the designation. The North Dakota Water Users testified in support of this bill. The Senate committee amended the bill to add some legislators and grazing associations to the organizations that receive notification. The House committee added the Public Service Commission to the list of entities and gave the bill the a do pass recommendation. The House passed the bill and the Senate concurred, sending the bill to the Governor for his signature.

Signed by the Governor, April 11

SB 2113 Flexible Transportation Fund

Monitor

SB 2113 would create a flexible transportation fund to hold federal, state, or private dollars to fund road and bridge construction and maintenance and to match available federal funds. If passed, it is anticipated that some motor vehicle excise tax dollars and general funds could be put in this fund.

Signed by the Governor, April 4

[SB 2192](#) Term Limits

Monitor

SB 2192 would authorize an interim study to look at the impact term limits will have on the legislature and make recommendations to the next legislative assembly.

Signed by the Governor, March 22

[SB 2251](#) Land Access for Eminent Domain Proceedings

Oppose

SB 2251 would require an entity to receive written permission, or a court order, to access a landowner's property to conduct surveys. The House committee gave it a do not pass recommendation. The bill failed on a tie vote on the floor.

Failed, House, 46-46, March 28

[SB 2313](#) Legislative Management Study on Eminent Domain

Monitor

SB 2313 would direct a court to increase the damages award in an eminent domain case by 33% above what was established by the court. The bill was amended to request a study.

Failed, House, 40-51, March 28

[SB 2330](#) Infrastructure Revolving Loan Fund

Monitor

SB 2330 makes changes to the way the Legacy Fund is invested. It changes the amount of investment made in North Dakota. Of interest to the water community, the bill makes changes to how the Infrastructure Revolving Loan Fund and the Water Infrastructure Revolving Loan Fund. In the 2021 session, legislation was passed to allow these loan fund to be backstopped by the Legacy Fund. This would have allowed the Bank of ND to utilize the Legacy Fund should there be more interest in the funds than the funds have available. SB 2330 removes the ability to use the Legacy Fund as a backstop for these funds. There was much testimony regarding the importance of the infrastructure loan funds. The committee amended the bill to provide \$150 million for the infrastructure revolving loan fund. It is intended to find funding for the water infrastructure revolving loan fund and put that in SB 2020.

Passed (with amendment), House, 90-0, April 12

[SB 2364](#) Garrison Diversion Easements

Monitor

SB 2364 would limit the use of easements by the Garrison Diversion Conservancy District (GDCCD) to building, operating, and maintaining water pipelines and would clarify that easements from GDCCD can only be assigned from GDCCD to the state. The ND Water Users testified in favor of this bill. The committee amended the bill to clarify that easements would first pass to a local water authority before going to state. The amended bill was given a 'do pass' recommendation. The House committee heard the bill and additional amendments are in the works. The bill was amended to include non-pipeline components of the project. The committee brought the bill back and made some further amendments. They gave it a do pass as amended recommendation. The bill passed the House, sending it back to the Senate with amendments.

Signed by the Governor, April 12

[SB 2359](#) Tax Levies to Pay for Special Assessments

Monitor

SB 2359 would remove the levy limitation to cover the costs of land acquisitions. It also requests a legislative management study studying the impact of political subdivisions levying special

assessments against other political subdivisions and the overall impact on taxpayers. This bill was amended in committee to remove the levy limitation section but maintain the study. After amending, the committee gave the bill a do pass recommendation.

Signed by the Governor, March 13

Hearing Schedule (April 17-21)

No hearings are scheduled. Conference committees, as well as committee work on SB 2020, will occur throughout the week. Particularly with conference committees, meetings are scheduled quickly and there may not be much notice prior meetings happening. All conference committees, as well as floor sessions and regular committee meetings, can be viewed here:

<https://video.ndlegis.gov/>

How to Submit Testimony This Session

During this Legislative Session, individuals and organizations still can [testify](#) at committee hearings both in person and virtually. This session, however, the permitting of virtual testimony is left to the discretion of each committee chairperson. An instructional video on how to submit written and oral testimony remotely in a committee hearing is available on the Legislative Branch [website](#). To view the video, [click here](#).

How to Contact Your Legislators

During the session, legislators can be reached by email, phone or mail as listed in the legislator's online bio: [Senate](#) or [House](#). Detailed information on legislative activities is available on the [Legislative Assembly website](#).

Legislative Calendar

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

For more details, check out the complete list of [legislative deadlines](#).