

NORTH DAKOTA

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

Legislative Report

Crossover Deadline Met Early

Legislators met the Feb. 24 Crossover deadline early for the 2023 Legislative Session, with the Senate concluding work on Tuesday, Feb. 21, and the House adjourning on Wednesday, Feb. 22. The legislature will resume work Wednesday, March 1, after a recess. Note that on Wednesday and Thursday of next week, committees will meet in the morning and afternoon. The respective floors will meet for the first time after crossover on Friday, March 3.

Below is the Legislative Crossover Report, which includes a summary and status of the bills the water community is supporting, opposing or monitoring.

Water Funding

SB 2020 DWR/SWC Funding

PASSED

SB 2020 is the appropriations bill for the Department of Water Resources and State Water Commission. The bill appropriates funding into the buckets as follows:

Bucket	Amount
Salaries and operations	\$83.3M
Capital Assets (Resources Trust Fund \$\$)*	\$118M
--NAWS	--\$36M
--SWPP	--\$80M
--Devils Lake Outlet	--\$2M
Flood Control	\$114.6M
--Valley City	--\$13.2M
--Mouse River	--\$76.1M
--Lower Heart	--\$12.3M
--Other Flood Control	--\$5M
--Conveyance	--\$8M
Water Supply	\$283M
--Red River Valley Water Supply	--\$175M

--Western Area Water Supply	--\$40M
--Bismarck	--\$30M
--Municipal	--\$38M
Rural Water	\$40M
General Water	\$12M
Discretionary	\$1M
Red River Joint Board Pilot Project	\$1M
TOTAL	\$652.9M

The bill also includes:

- \$30 M from the water stabilization fund for WAWS debt service (per SB 2196)
- 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

*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 NAWS project.

This bill was approved by the full Senate by a vote of 46-1. It is anticipated that the DWR will give their budget overview to the full House Appropriations Committee on Thursday, March 2.

Passed, Senate, 46-1, February 21

SB 2017 Game and Fish Department

PASSED

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.

Passed, Senate, 45-2, February 20

[HB 1286](#) Oil Tax Trigger

PASSED

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.

Passed, House, 72-21, February 16

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

PASSED

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.

Passed, House, 93-0, February 22

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

PASSED

SB 2196 would move oversight of WAWS from the Industrial Commission to the State Water Commission. It also provides for forgiveness of interest for 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.

Passed, Senate, 47-0, January 23

Water Resource Districts

[HB 1073](#) Operations Plans for Dams

PASSED

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

Hearing scheduled, Senate Energy and Natural Resources Committee, March 2

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

PASSED

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.

Hearing scheduled, Senate Energy and Natural Resources Committee, March 2

[HB 1239](#) Subsurface Drainage Notification

PASSED

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.

Passed, House, 92-0, February 20

HB 1391 Assessment Authorities

PASSED

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.

Referred to Senate Agriculture Committee

HB 1462 Appeals from a Local Governing Body

PASSED

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.

Hearing scheduled, Senate Energy and Natural Resources Committee, March 2

SB 2036 Drainage Statute Clean Up

PASSED

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.

Referred to House Energy and Natural Resources Committee

SB 2037 Economic Analysis for Drainage Projects

FAILED

SB 2037 is the proposed economic analysis bill from the interim drainage committee. This bill would require water resource districts to conduct an in-depth economic analysis on every parcel

proposed to be part of an assessment district. There was much opponent testimony presented during the hearing on February 2, including from the ND Water Users Association and the ND Water Resource Districts Association. The bill was amended to add an additional public hearing in the assessment process; gives the water board additional flexibility on the type of cost benefit analysis used; adds a list of benefits the water board can consider; and adds a sunset clause, ending the new requirement after four years unless otherwise acted on by the legislature. This bill still requires a parcel-by-parcel analysis. The committee adopted the amendment and gave the bill a 'do pass' recommendation.

Failed, Senate, 5-42, February 21

SB 2326 Economic Analysis Threshold for SWC Cost Share

PASSED

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 ND Water Resource Districts Association and ND Water Users Association, along with several water managers testified in support of this bill. The committee gave this bill a 'do pass' recommendation.

Passed, Senate, 47-0, February 17

SB 2372 Watershed Districts

PASSED

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 bill was given a 'do pass' recommendation.

Passed, Senate, 47-0, February 20

Irrigation

HB 1020 2023-2025 SBARE Funding Priorities

PASSED

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. The full Appropriations Committee gave this bill a 'do pass' recommendation.

Passed, House, 87-7, February 21

HB 1074 Informational Hearings related to Water Permit Applications

PASSED

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.

Hearing scheduled, Senate Energy and Natural Resources Committee, March 2

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

PASSED

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.

Hearing scheduled, Senate Energy and Natural Resources Committee, March 2

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

PASSED

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 and passed out of committee. The amended version of the bill passed the House 81-10 on January 25.

Hearing scheduled, Senate Finance and Taxation Committee, March 1

Atmospheric Resources

[HB 1166](#) Weather Modification

PASSED

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.

Referred to Senate Agriculture Committee

Other Bills of Interest

[HB 1038](#) Statute Technical Corrections

PASSED

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

Referred to the Senate Judiciary Committee

[HB 1072](#) Technical Corrections

PASSED

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

Referred to Senate Agriculture

[HB 1077](#) Water Storage Contracts

PASSED

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 Committee amended the bill to require entities to notify the DWR within 60 days of beginning discussions and keep in contact with the DWR throughout the negotiations.

Hearing scheduled, Senate Energy and Natural Resources Committee, March 2

[HB 1098](#) Floodplain Management Ordinances

PASSED

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

Hearing scheduled, Senate State and Local Government Committee, March 2

[HB 1118](#) Income Tax Credit

PASSED

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%.

Passed, House, 87-7, February 21

[HB 1158](#) Income Tax Rate

PASSED

HB 1158 would lower the income tax rate to a flat 1.5%.

Passed, House, 79-14, February 21

[HB 1217](#) Northern Red River Flooding

FAILED

HB 1217 would appropriate more than \$37 million to the Department of Transportation to begin working on a comprehensive transportation plan to address flooding in the northern part of the Red River valley. The committee gave this bill a do not pass recommendation 21-0. Appropriators will work to include some funding for this in the Department of Transportation's budget instead of having a standalone bill.

Failed, House, 0-90, February 10

[HB 1218](#) NAWS Authority

PASSED

HB 1218 would make the current Northwest Area Water Supply (NAWS) advisory committee an authority. It would also change the makeup of the Authority and stipulate that authority members are appointed by the state water commission. 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.

Hearing scheduled, Senate Energy and Natural Resources Committee, March 2

[HB 1379](#) Legacy Fund Earnings

PASSED

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. This would make a few changes to that, expanding priorities to include value-added agriculture, county and township bridges, and workforce development.

Passed, House, 77-16, February 22

[HB 1384](#) Assessment Damages in Eminent Domain

FAILED

HB 1384 would direct a court to increase the damages award in an eminent domain case by 33% above what was established by the court.

Failed, House, 26-68, February 21

SB 2029 Caps for Emergency Commission and Budget Section Approvals PASSED

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.

Passed, Senate, 45-1, January 12

SB 2097 Wild and Scenic River Designations PASSED

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 committee amended the bill to add some legislators and grazing associations to the organizations that receive notification.

Passed, Senate 45-2, January 11

SB 2113 Flexible Transportation Fund PASSED

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.

Passed, Senate 46-0, January 12

SB 2192 Term Limits PASSED

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.

Passed, Senate, 47-0, January 19

SB 2251 Land Access for Eminent Domain Proceedings PASSED

SB 2251 would require an entity to receive written permission, or a court order, to access a landowner's property to conduct surveys. The committee made a minor amendment and gave it a do pass recommendation.

Passed, Senate, 46-1, February 16

SB 2313 Assessment Damages in Eminent Domain PASSED

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.

Passed, Senate, 47-0, February 16

SB 2330 Infrastructure Revolving Loan Fund PASSED

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. During testimony the bill sponsor indicated that there was a plan to find an alternative funding source to fund these programs. There seems to be agreement from Senate appropriators to find \$100 million in general funds for the infrastructure revolving loan fund.

Passed, Senate, 43-3, February 15

SB 2333 Annual Sessions

FAILED

SB 2333 would allow for the legislature to meet annually. The Senate State and Local Government Committee gave the bill a 'do pass' recommendation. The bill was then referred to the Senate Appropriations Committee as the bill has a fiscal impact. The bill was given a 'do pass' recommendation by the Senate Appropriations Committee. The bill failed on the Senate floor.

Failed, Senate, 21-26, February 17

SB 2364 Garrison Diversion Easements

PASSED

SB 2364 would limit the use of easements by the Garrison Diversion Conservancy District (GDCD) to building, operating, and maintaining water pipelines and would clarify that easements from GDCD can only be assigned from GDCD 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.

Passed, Senate, 47-0, February 16


SB 2359 Tax Levies to Pay for Special Assessments










PASSED

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.

Passed, Senate, 43-4, January 30

Hearing Schedule (February 27- March 3)

<u>Date and Time</u>	<u>Bill Number</u>	<u>Short Title</u>	<u>Committee</u>	<u>Room</u>
03/01/2023 10:30 AM 	<u>HB 1247</u>	Relating to a commercial property tax exemption for grain elevator and potato warehouse property used for personal use; and to provide an effective date.	Senate Finance and Taxation	Fort Totten

03/02/202 3 09:00 AM 	HB 1077	Relating to water storage contracts.	Senate Energy and Natural Resources	Peace Garden
03/02/202 3 09:15 AM 	HB 1218	Relating to the creation of the northwest area water supply authority; and to provide for application.	Senate Energy and Natural Resources	Peace Garden
03/02/202 3 09:45 AM 	HB 1073	Relating to the department of water resources authority to require operating plans for dams.	Senate Energy and Natural Resources	Peace Garden
03/02/202 3 10:00 AM 	HB 1074	Relating to informational hearings for water permit applications.	Senate Energy and Natural Resources	Peace Garden
03/02/202 3 10:00 AM 	HB 1098	Relating to the enforcement and penalties of communities that fail to adopt or enforce floodplain management ordinances as required under the national flood insurance program.	Senate State and Local Government	216
03/02/202 3 10:15 AM 	HB 1075	Relating to comments on the cancellation of water rights; and to amend and reenact sections 61-04-24 and 61-04-25 of the North Dakota Century Code, relating to the notice and hearing process for the cancellation of water rights.	Senate Energy and Natural Resources	Peace Garden
03/02/202 3 10:30 AM 	HB 1076	Relating to the department of water resources authority regarding water permit thresholds for dikes, dams, and other devices; and to provide a penalty.	Senate Energy and Natural Resources	Peace Garden
03/02/202 3 10:45 AM 	HB 1462	Relating to the procedural requirements governing appeals from a water resource board.	Senate Energy and Natural Resources	Peace Garden
03/02/202 3 03:00 PM 	HB 1020	A BILL for an Act to 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	Senate Appropriations	Roughrider

		report; to provide for a transfer; to provide an exemption; and to declare an emergency.		
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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

- February 27-28: Recess
- April 28: Final day of session (limited to 80 legislative days)

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