

Legislative Report

Hearing Schedule (February 27 – March 3)

Hearings of bills being tracked by the North Dakota Water Users Association for the next week are included in this report. We are tracking these bills because they have a direct or indirect impact on water issues.

This Week at the Legislature

Legislators finished the first half of the 2017 Legislative Session on Thursday morning, a day before today's Crossover deadline. Crossover marks the point when each chamber must act on the bills that originated in their chamber. They resume work Wednesday, March 1 after a short recess. The final revenue forecast of the session is expected soon, possibly on Thursday, March 9.

Crossover Report

[**HB 1009**](#), the funding bill for the agriculture commissioner, passed on the House floor on February 22 with an 85-6 vote.

[**HB 1017**](#), the funding bill for the Game and Fish Dept., passed on the House floor on February 22 with an 82-9 vote.

[**HB 1020**](#), the funding bill for the SWC, passed on the House floor on February 22 with a 78-13 vote. The bill includes \$299,875,000 from the Resources Trust Fund and Water Development Trust Fund plus a \$75 million line of credit. The committee has allocated the total amount of money into seven purpose funding buckets.

1. \$30,000,000 for rural water supply projects;
 2. \$44,125,000 for municipal water supply projects;
 3. \$58,000,000 for regional water supply projects;
 4. \$1,000,000 for water conveyance projects;
 5. \$150,000,000 for flood control projects;
 6. \$750,000,000 for irrigation projects; and
 7. \$16,000,000 for general water management.
- Requires SWC to use BND line of credit for NAWS before any other funding.
 - Authorizes SWC to obtain a loan from BND not to exceed \$110 million for phases 1-4 of the Minot flood control project and restricts them from receiving any funding for the next 8 years.
 - Directs BND to consolidate WAWS loans and directs the SWC to make the payments if the authority defaults, which is subject to budget section approval.
 - Authorizes a \$50,000 flood hazard risk management study.
 - Reduces the energy conservation grant fund from \$1 million to \$0 and the renewable energy fund will remain at \$3 million.
 - Limits the deposit into the infrastructure revolving loan fund to \$25 million. If the amount exceeds \$25 million it is transferred into the Resources Trust Fund.
 - Authorizes a \$75 million line of credit.

- Directs the Industrial Commission to consider the amount of state secured debt and market rates before setting domestic water rates for WAWS.
- Creates two new sections of code relating to oil and gas industry fresh water royalties.
- Provides a legislative management study on the effects on repayment of state-guaranteed debt by allowing private persons to lease the WAWS authority's industrial infrastructure and privatizing industrial water sales.

HB 1026 passed on the House floor on January 10 with a 91-1 vote. The bill was introduced by legislative management and deals with locating underground facilities before excavation. The bill would revise the One Call law: providing a 48 hour locate period excluding weekends/holidays and revising the One Call Board as a nine member board with various utility and city representation.

HB 1054 unanimously passed on the House floor on January 27. The bill relates to the cancellation of unexpended appropriations and the new language gives clarity to carry over fund authority. Upon request, majority leaders of the senate and house of representatives and the chairmen of the appropriations committees of the senate and house of representatives with the office of the budget and management may continue appropriations or balances in force for not more than two years after the expiration of the biennial period. The office of management and budget must provide the appropriation continuation requests to the legislative council a one weeks prior to the meeting where requests are considered.

HB 1055 passed on the House floor on February 22 with a 73-16 vote. This bill increases the revenue bond authority of water resource districts from \$10 million to \$50 million.

HB 1106 passed on the House floor on January 12 with an 86-5 vote. The bill clarifies the definitions of disasters and emergencies.

HB 1111 passed on the House floor on January 17 with an 83-9 vote. The bill ensures that the NDDOT director has the authority to enter into agreement with the Fargo-Moorhead metropolitan area flood risk management project impacting the state interstate system. The agreement must address the construction and maintenance of the parts of the project which need to be constructed and maintained on the interstate system.

HB 1114 was killed on the House floor on February 1 with a vote of 1-90. The bill would have changed license fees for plumbers and sewer and water installers.

HB 1162 passed on the House floor on January 31 with an 83-8 vote. The bill instructs legislative management to consider studying competition between government and private industry during the 2017-2018 interim.

HB 1165 defines transparency of state grants and passed on the House floor on February 14 with a 79-10 vote.

HB 1168 was defeated on the House floor on February 20 with a vote of 5-86. The bill would have restricted compensation and travel reimbursement for public employees who attend legislative meetings. Exceptions include if a public employee has been requested by a member of the legislative assembly to testify or if the state employee has been requested to attend the meeting by the head of the state agency.

HB 1191 unanimously passed on the House floor on January 23. The bill clarifies who can sign loan agreements on behalf of political subdivisions. The loan agreement must be signed on behalf of the political subdivision by the president, chairman or equivalent officer and also by the political

subdivision's auditor, business manager, secretary or equivalent officer.

[HB 1199](#) passed on the House floor on February 21 with a 90-2 vote. The bill relates to mineral ownership of land inundated by Lake Sakakawea and the definition of sovereign lands.

[HB 1244](#) passed on the House floor on February 22 with an 87-2 vote. The bill would require County Commission approval before a water resource district could exercise quick take authority. The bill was amended to basically eliminate quick take authority for WRDs. At the first committee hearing, Mike Dwyer, representing water resource districts, provided testimony in support and explained that quick take is only for right of way, and that water managers are landowners and farmers, and only use quick take authority as a very last resort.

[HB 1298](#) was defeated on the House floor on February 20 with a vote of 8-83. The bill would have prohibited counties, cities, townships and associations from hiring a contract lobbyist.

[HB 1322](#) passed on the House floor on February 17 with a 54-32 vote. The bill relates to authority and procedure when financing special improvements and township bonding authority.

[HB1326](#) was killed on the House floor on February 15 with a vote of 33-57. This bill would have allowed political subdivisions to opt in or opt out of local property tax incentives.

[HB 1331](#) was killed on the House floor on February 7 with a vote of 10-79. The bill would have required the N.D. Plumbing Board to inspect and certify all private sewage disposal systems in the state. Currently, systems are inspected at a local level.

[HB 1336](#) unanimously passed on the House floor on February 22. The bill defines procedures of environmental or health safety audits.

[HB 1339](#) passed on the House floor on February 20 with a 79-13 vote. The House Government and Veterans Affairs Committee amended the bill, including the elimination of the original language that would have required certified mailings for all assessment and reassessment projects. HB 1339 also sought to eliminate the 25 percent requirement for appeals of assessment projects to the State Engineer. The current law allows 25 percent of the benefitting landowners to file a full appeal with the State Engineer (regarding the project mechanics, location, any and all benefits, etc.); the bill language originally would have allowed any single landowner the right to a full appeal to the State Engineer (in addition to their other appeal rights already available), a process that would have resulted in significant delays and costs to assessment projects, and would have inevitably resulted in frivolous appeals. The Committee agreed with us regarding the appeal language, and compromised by reducing the 25 percent landowner threshold to 15 percent (instead of allowing any single landowner to appeal in this manner).

[HB 1345](#) passed unanimously on the House floor on February 13. The bill amends various sections and subsections of Century Code relating to open record and meeting laws.

[HB 1349](#) was killed on the House floor on January 30 with a vote of 14-80. The bill would have provided incentive for pipeline companies to install leak detection systems on existing pipelines and new pipelines.

[HB 1351](#) passed on the House floor on February 7 with a 51-38 vote. The bill requires state, county, city, township, school, water and park district taxes and special assessments to be levied or voted in specific amounts of money by the majority of the elected members of the related governing body.

[HB 1367](#) passed on the House floor on February 20 with an 82-8 vote. The bill would not require an

observer on a personal watercraft while towing an individual on water skis, a kneeboard or an inflatable craft if the personal watercraft is equipped with a mirror on each side that provides the operator an unobstructed field of vision to the rear. It would allow an individual who is 16 years of age or older to windsurf or board sail without wearing a personal floatation device and prohibits water skiing or surfboarding between one hour after sunset to one hour before sunrise.

[HB 1374](#) passed on the House floor on February 20 with an 82-8 vote. The bill offers various amendments relating to types of financial assistance for water projects and the composition and operation of the State Water Commission.

[HB 1385](#) unanimously passed on the House floor on February 17. The bill defines the process of refunding bonds for municipalities.

[HB 1390](#) was passed on the House floor on February 22 with a 79-11 vote. HB 1390 contains the following provisions:

- A county may not require a resident to provide thirty days' notice before discharging water from a subsurface outlet into a legal drain.
- Requires a water resource board member to attend a water management course before their term and one every three years during the member's term.
- Restricts the board from making rule regarding subsurface water management system permits unless expressly authorized.
- Instructs state engineer to develop an application form for a permit for subsurface water management and allows thirty days for approval or denial from the SWC, otherwise the permit will be deemed approved.
- Restricts WRD ability to deny an application unless based on technical evidence, the application is of statewide significance or the proposed water management system will flood or adversely affect lands of downstream landowners within one mile.
- Instructs applicant to obtain downstream landowner's notarized letters of approval before issuing a permit.
- Instructs legislative management to consider studying and monitoring the nutrient management plan developed by the state department of health.

[HB 1393](#) was defeated on the House floor on February 20 with a vote of 12-79. The bill was introduced to protect landowners, but would have restricted WRD's drainage projects.

[HB 1409](#) passed on the House floor on February 20 with an 89-3 vote. The bill relates to well water testing preceding subsurface mineral production and liability for damages to water supply. The bill also instructs results of all tests to be reported to the State Department of Health which would be entered into a database.

[HB 1416](#) failed on the House floor on February 22 with a vote of 8-82. HB 1416 is a bill that would prohibit any drain maintenance if it changed the design or function of a drain. Numerous water managers and representatives of water boards testified against HB 1416, demonstrating how the bill would stop to maintenance because you could not change culvert sizes, bridge designs, side slopes, and other necessary changes to accommodate changes in hydraulics.

[SB 2047](#) passed on the Senate floor on January 18 with a 38-7 vote. This is the bill that was sent forward by the Water Topics Interim Committee to set forth requirements and procedures for the use of quick take eminent domain by water resource districts. While this bill only applies to water resource districts, any changes would likely be extended to other water political subdivisions and agencies. The water resource districts supported SB 2047 before the Water Topics Interim Committee. Sen. Dwight Cook offered amendments that would require county commission approval

before a water resource district can use quick take authority. The amendment requires the county commission to hold a public meeting and invite the landowner to the public meeting before quick take is approved. Other amendments required that the easement be specifically delineated, and that if the easement is not used it would automatically terminate.

SB 2134 passed unanimously on the Senate floor on February 8 with a 44-0 vote. The bill changes definition of sovereign minerals within Missouri River reservoirs.

SB 2142 passed on the Senate floor on January 20 with a 44-0 vote. The bill requires a construction manager at-risk selected for a public improvement to publically advertise and publically open bids from subcontractors for the work items the construction manager at-risk chooses not to perform. An amendment of “and to evaluate and determine the most responsible bidder” was added to the bill.

SB 2146 unanimously passed on the Senate floor on January 19. The bill increases the public improvement bidding threshold from \$100,000 to \$150,000. The current bid threshold was last increased in 1997. Last session, the engineering/architect threshold was increased from \$100,000 to \$150,000.

SB 2147 passed on the Senate floor on January 19 with a 43-1 vote. The bill eliminates the double bond issue that faces contractors today. The new bill language makes it explicitly clear that the construction manager would carry a bond that is at least equal to the cost of the guaranteed maximum price of the project. The subcontractors would not be required to carry a bond.

SB 2168 passed unanimously on the Senate floor on February 1 with a 46-0 vote. The bill amends sections of Century Code dealing with definitions of public improvements.

SB 2178 unanimously passed on the Senate floor on January 24 with a 45-0 vote. The bill expands the infrastructure revolving loan fund program to include the replacement of existing infrastructure. Currently, Century Code only includes fund programing for new infrastructure.

SB 2227 was defeated on the Senate floor on January 30 with a vote of 21-24. The bill would have entitled a nonresident age 65 or older to purchase up to two nonresident waterfowl hunting licenses per year, with \$100 of the fee for the second license used for Private Land Open to Sportsmen (PLOTS) program. The second license would cost \$150.

SB 2229 was killed on the Senate floor on February 3 with a vote of 14-31. The bill would’ve allowed the majority leader of the Senate to appoint a member of the Senate and the majority leader of the House to appoint of member of the House of Representatives to the Red River Basin Commission. Adding a new section to chapter 54-03 of Century Code would mandate by law that appointees would be compensated for their time.

SB 2236 passed on the Senate floor on February 15 with a 45-1 vote. The bill instructs the agriculture commissioner to establish a program to provide technical assistance and support to surface owners and surface tenants on pipeline restoration and follow up support to surface owners and surface tenants on pipeline reclamation.

SB 2239 passed unanimously on the Senate floor on February 7. The bill creates an exception for watercraft owned and operated by a guide to forgo annual boat inspections by the N.D. Game and Fish Department.

SB 2245 passed on the Senate floor on February 13 with a 43-3 vote. The bill would allow landowners to mitigate activities with wetlands established on state lands.

SB 2259 passed on the Senate floor on January 31 with a 33-13 vote. SB 2259 allows a nonresident to buy a waterfowl license that is valid for three periods of four consecutive days. The fee for this license would be \$200 and \$50 must be used for the Private Land Open to Sportsmen (PLOTS) program.

SB 2262 passed on the Senate floor on January 30 with a 44-1 vote. The bill prevents a city, county or township to enact new or enforce existing fertilizer regulations.

SB 2263 passed on the Senate floor on February 21 with a 42-3 vote. The bill would change the law regarding permitting of tile drainage. Currently, the law provides that projects exceeding 80 acres of land (not a watershed) require a permit from the local water resource district. The water resource district is allowed to impose some conditions and can evaluate impacts downstream of a proposed project not to exceed one mile, projects which drain into assessments drains or ponds through lakes that do not require flowage easements. Water resource districts have been in negotiations with advocates of SB 2263 (Ellingson Companies), along with the State Engineer's Office. The Senate Agriculture Committee proposed amendments that were adopted. The committee acknowledged that the amended bill will need some work on the House side. Amendments are as followed:

- Changes "drainage system" to "water management system" throughout the entire bill.
- Defines a drainage coefficient of three-eighths of an inch.
- Increases the application fee from \$100 to \$500.
- Gives authority to the Water Board to decide if a control structure is needed on the outlet.
- Flowage easement is replaced with a notarized letter of approval.
- Applicant is liable for negative impacts downstream.

SB 2269 passed unanimously on the Senate floor on February 1. The bill offers several minor changes to the powers and authorities of the GDCD and the LAWA. Highlights of the changes are as follows:

- Allowing the GDCD to use the Public Finance Authority as a source of funding.
- Adding central N.D. to the scope of the project and adding two board of director's positions to represent central N.D. (one water district and one city from west of N.D. Highway 1).
- Further defining system eligibility for voting and being elected to the board.
- Adding the ability to use weighted voting based on nomination capacity.
- Shifting the intent of the project from a federal project to a state and local one.

SB 2270 passed unanimously on the Senate floor on February 17. The bill authorizes GDCD and LAWA to work with the N.D. Public Finance Authority to finance various projects. The bill also eliminates public hearings if the board receives written consent from each affected landowner to the levy assessments.

SB 2280 passed on the Senate floor on February 1 with a 41-5 vote. The bill allows cities to levy taxes for emergency purposes, such as snow removal, natural disasters and other emergency conditions, based on the population of the city.

SB 2308 unanimously passed on the Senate floor on February 16. The bill allows an ice fish house and a coyote snare to be identified by a registration number provided by the Game and Fish Department.

SB 2327 passed on the Senate floor on February 16 with a 27-17 vote. The bill transfers the duties and responsibilities of the State Department of Health relating to environmental quality to a newly established Department of Environmental Quality. The transition would take place over the next two years.

[SB 2331](#) was defeated on the Senate floor on February 7 with a vote of 4-40. The bill outlined responsibilities of a mineral developer having to do with groundwater protection.

[SB 2332](#) was defeated on the Senate floor on February 16 with a vote of 13-32. The bill dealt with the valuation of property for just compensation.

[HCR 3019](#) passed on the House floor on February 22. The resolution looks to return the land no longer required for the Pick-Sloan Missouri Basin Project dam at Lake Sakakawea to the original landowners.

[HCR 3020](#) passed on the House floor on February 20. The resolution urges Congress and the President to allow the continuation of the Garrison Diversion project canal system to aid in the delivery of water to the Red River Valley. John Olson testified in support on behalf of GDCD.

[HCR 3021](#) passed on the House floor on February 14. The resolution urges Congress and the President to allow the utilization of Garrison Diversion Unit facilities, including the McClusky Canal and the Snake Creek pumping plant, to assist in supplying water to eastern and central North Dakota. The resolution also asks to not deauthorize or repurpose any part of GDCD.

II. 2017 Legislative Deadlines and Dates

Date	Topic
February 27-28	Recess
March 8	Crossover for resolutions
April 14	Good Friday
May 1	Session is limited to 80 legislative days

III. HEARING SCHEDULE: February 27-March 3, 2017

Date and Time	Bill	Short Title	Committee	Room
03/01/2017 02:30 PM	<u>HB 1026</u>	Relating to survey of areas having underground facilities; to amend and reenact sections 49-23-01, 49-23-03, 49-23-04, 49-23-05, and 49-23-06 of the North Dakota Century Code, relating to location of underground facilities before excavation; and to provide a penalty.	Senate Industry, Business and Labor	Roosevelt Park
03/02/2017 09:00 AM	<u>SB 2262</u>	Relating to fertilizer regulation by cities, counties, or townships.	House Agriculture	Peace Garden
03/02/2017 09:00 AM	<u>SB 2047</u>	Relating to the authority of water resource boards to exercise the power of quick take eminent domain.	House Energy and Natural Resources	Coteau A
03/02/2017 09:30 AM	<u>SB 2239</u>	Relating to annual inspections for watercraft for hire.	House Transportation	Fort Totten
03/02/2017 10:00 AM	<u>SB 2259</u>	Relating to nonresident waterfowl hunting licenses.	House Energy and Natural Resources	Coteau A
03/02/2017 10:30 AM	<u>HB 1191</u>	Relating to loans for political subdivisions.	Senate Political Subdivisions	Red River
03/02/2017	<u>SB 2308</u>	Relating to identification of fishhouses and	House Energy	Coteau A

02:15 PM		coyote snares.	and Natural Resources	
03/03/2017 09:00 AM	SB 2327	Relating to the creation of the department of environmental quality, the transfer of duties and responsibilities of the state department of health relating to environmental quality to the department of environmental quality.	House Energy and Natural Resources	Coteau A
03/03/2017 09:00 AM	HB 1374	Relating to contracts and financial assistance for water projects and duties of the state engineer; relating to definitions of types of financial assistance for water projects and the composition and operation of the state water commission.	Senate Energy and Natural Resources	Fort Lincoln
03/03/2017 09:30 AM	HCR 3020	A concurrent resolution urging Congress and the President of the United States to allow the continuation of the Garrison Diversion project canal system to aid in the delivery of water to the Red River Valley.	Senate Energy and Natural Resources	Fort Lincoln
03/03/2017 10:00 AM	HCR 3021	A concurrent resolution urging Congress and the President of the United States to fulfill the federal government's promises to North Dakota, allow the utilization of the Garrison Diversion Unit facilities, including the McClusky Canal and the Snake Creek pumping plant, as a water supply for eastern and central North Dakota, irrigation, and for all other authorized project purposes, and not deauthorize or repurpose any part of the Garrison Diversion Unit.	Senate Energy and Natural Resources	Fort Lincoln
03/03/2017 10:30 AM	HB 1367	Relating to personal watercraft and towing an individual on water skies or similar devices; and to provide a penalty.	Senate Energy and Natural Resources	Fort Lincoln

IV. Legislative Bills Tracked (To Date)

Bill	Short Title	House	Senate
HB 1009	Agriculture Commissioner Appropriation	PASSED	
HB 1017	Game and Fish Department Appropriation	PASSED	
HB 1020	State Water Commission Appropriation	PASSED	
HB 1026	Underground Facilities Before Excavation	PASSED	
HB 1054	Cancellation of Unexpected Appropriations	PASSED	
HB 1055	Revenue Bond Indebtedness Limit for WRD	PASSED	
HB 1106	Definitions of Disasters and Emergencies	PASSED	
HB 1111	Metro Flood Diversion Authority	PASSED	
HB 1162	Competition between the Government and Private Industry	PASSED	
HB 1165	Transparency of State Grants	PASSED	
HB 1191	Loans for Political Subdivisions	PASSED	
HB 1199	Definition of Sovereign Lands	PASSED	
HB 1244	Authority of County Commissioners to Approve Quick Take Eminent Domain	PASSED	
HB 1322	Township Bonding Authority	PASSED	
HB 1336	Environmental or Health Safety Audits	PASSED	
HB 1339	Notice, Appeals, and Refunds of Special Assessments	PASSED	
HB 1345	Open Record and Meeting Laws	PASSED	

<u>HB 1351</u>	Approval of Special Assessment Projects by Elected Governing Bodies	PASSED	
<u>HB 1367</u>	Personal Watercraft and Towing an Individual on Water Skies or Similar Devices	PASSED	
<u>HB 1374</u>	Contracts and Financial Assistance for Water Projects/Duties of the State Engineer	PASSED	
<u>HB 1385</u>	Municipal Refunding Bonds	PASSED	
<u>HB 1390</u>	Limitation on County Authority and Subsurface Drains	PASSED	
<u>HB 1409</u>	Well Water Testing	PASSED	
<u>SB 2047</u>	Quick Take Eminent Domain		PASSED
<u>SB 2134</u>	Pick-Sloan Missouri Basin Project Dams		PASSED
<u>SB 2142</u>	Construction Manager At-Risk Subcontractor Bids		PASSED
<u>SB 2146</u>	Public Improvement Bid and Bond Thresholds		PASSED
<u>SB 2147</u>	Bond Requirements for Public Improvements		PASSED
<u>SB 2168</u>	Public Improvements		PASSED
<u>SB 2178</u>	Infrastructure Revolving Loan Fund		PASSED
<u>SB 2236</u>	Pipeline Restoration and Reclamation Oversight Program		PASSED
<u>SB 2239</u>	Annual Inspections for Watercraft for Hire		PASSED
<u>SB 2245</u>	Listing Parcels Under Control of Certain State Entities Use as Wetlands Mitigation		PASSED
<u>SB 2259</u>	Nonresident Waterfowl Hunting Licenses		PASSED
<u>SB 2262</u>	Fertilizer Regulation by Cities, Counties, or Townships		PASSED
<u>SB 2263</u>	Subsurface Drainage Permits		PASSED
<u>SB 2269</u>	Powers of LAWA & GDCD		PASSED
<u>SB 2270</u>	Financing Options for the GDCD		PASSED
<u>SB 2280</u>	City Levy Authority		PASSED
<u>SB 2308</u>	Identification of Ice Fish houses and Coyote Snares		PASSED
<u>SB 2327</u>	Creation of the Department of Environmental Quality		PASSED
<u>HCR 3019</u>	Exercise nondiscrimination in public land management and return the land no longer required for the Pick-Sloan Missouri Basin Project dam at Lake Sakakawea to the citizens of the United States.	PASSED	
<u>HCR 3020</u>	Allow the Continuation of the Garrison Diversion project canal system to aid in the delivery of water to the Red River Valley.	PASSED	
<u>HCR 3021</u>	Allow the utilization of the Garrison Diversion Unit facilities, including the McClusky Canal and the Snake Creek pumping plant, as a water supply for eastern and central North Dakota, irrigation, and for all other authorized project purposes, and not deauthorize or repurpose any part of the Garrison Diversion Unit.	PASSED	

V. Legislative Bills Failed (To Date)

<u>HB 1114</u>	License Fees for Plumbers and Sewer and Water Installers
<u>HB 1168</u>	Reimbursement for Public Employees
<u>HB 1298</u>	Prohibiting Counties, Cities and Townships from Contracting with Lobbyists
<u>HB 1326</u>	Approval from Impacted Municipalities for Grant of Local Property Tax Incentives
<u>HB 1331</u>	Inspection of Septic Systems
<u>HB 1349</u>	Deduction for Pipeline Leak Detection Equipment Depreciation Expenses
<u>HB 1393</u>	Assessments by Water Resource Districts
<u>HB 1416</u>	Definition of Cleaning Out and Repairing of Drain
<u>SB 2227</u>	Nonresident Waterfowl Hunting Licenses
<u>SB 2229</u>	Appointments to the Red River Basin Commission
<u>SB 2331</u>	Protection of Groundwater and Other Responsibilities of a Mineral Developer
<u>SB 2332</u>	Valuation of Property for Just Compensation

