

NORTH DAKOTA

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

Legislative Report

Appropriations Committees Receive Budget Update

Pencil sharpening will need to happen in the second half of the legislative session. At a presentation to the legislature’s appropriation committees on Friday, March 3, Legislative Council provided a budget update, which noted if every remaining bill makes it through the session, the general fund will be overspent by roughly \$1.2 billion and the Strategic Investment and Improvements Fund (SIIF) will be overspent by \$447 million.

The total state budget at crossover was \$20.2 billion. The budget’s starting point was \$14.1 billion with the Governor’s recommended budget at \$18.4 billion. The starting point for appropriations spending was \$4.2 billion and has reached \$6.5 billion at crossover, accounting for the \$1.2 billion shortfall. The House bills general fund spending totaled \$893 million, and the Senate’s spending totaled \$212 million.

Special funds spending totaled \$2.8 billion for the House bills and \$1.7 billion for the Senate, and one-time spending thus far totals \$617.5 million. In the second half of the session, the legislature also has \$14.2 million in remaining COVID-19 relief dollars to be allocated.

The appropriations committees will receive updated revenue forecasts next week, which will help inform their final decisions on bills in the second half of the session.

Water Funding

SB 2020 DWR/SWC Funding

Support

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:

- \$30M 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.

The DWR gave their budget overview to the full House Appropriations Committee on Thursday, March 2. The public hearing for SB 2020 will be Thursday, March 9, starting at 8am. The hearing will continue on Tuesday, March 14.

Hearing scheduled, House Appropriations Education and Environment Division, March 14

[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.

Hearing, House Appropriations Government Operations Division, March 8**[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.

Hearing, Senate Finance and Tax Committee, March 8**[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.

Hearing, Senate Energy and Natural Resources Committee, March 9**[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.

Heard, House Energy and Natural Resources Committee, March 3**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.

Passed, Senate, 47-0, March 6

[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.

Heard, Senate Energy and Natural Resources Committee, March 2

[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.

Hearing scheduled, Senate Agriculture Committee, March 16

[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. An amendment was offered to revert the bill back to its original form with the 72 hour notice requirement. No action was taken on the bill.

Heard, Senate Agriculture Committee, March 10

[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 was heard on March 2 but the committee did not take action on this bill.

Heard, Senate Energy and Natural Resources Committee, March 2

[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.

Heard, House Energy and Natural Resources Committee, March 2

[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. This bill will be heard on March 9 on the House side.

Heard, House Energy and Natural Resources Committee, March 9

[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.

Hearing scheduled House Energy and Natural Resources Committee, March 16

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. The full Senate Appropriations Committee received an overview of this bill. The Government Operations Division heard this bill on March 9. The division will continue to work on the bill in coming weeks.

Heard, Senate Appropriations Government Operations Division, March 9

[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.

Passed, Senate, 47-0, March 6

[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.

Heard, Senate Energy and Natural Resources Committee, March 2

[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.

Passed, Senate, 28-18, March 10

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.

Hearing scheduled, Senate Agriculture Committee, March 16

Other Bills of Interest

[HB 1038](#) Statute Technical Corrections

Monitor

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

Hearing scheduled, Senate Judiciary Committee, March 14

[HB 1072](#) Technical Corrections

Monitor

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

Passed, Senate, 46-0, March 10

[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.

Passed, Senate, 47-0, March 6

[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.

Passed, Senate, 45-0, March 3

[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%.

Hearing scheduled, Senate Finance and Tax Committee, March 13

[HB 1158](#) Income Tax Rate

Monitor

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

Hearing scheduled, Senate Finance and Tax Committee, March 13

[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 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. The Senate committee made a minor amendment and gave it a do pass recommendation.

Passed (with amendment), Senate, 46-1, March 7

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

Referred to Senate Appropriations Committee

[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.

Do not pass recommendation, House Government and Veterans Affairs Committee, 11-1, March 10

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.

Do pass recommendation, House Energy and Natural Resources, 12-0, March 9

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.

Hearing scheduled, House Transportation Committee, March 16

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.

Do pass recommendation, House Political Subdivisions, 12-1, March 9

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 committee made a minor amendment and gave it a do pass recommendation.

Hearing scheduled, House Energy and Natural Resources Committee, March 17

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.

Hearing scheduled, House Energy and Natural Resources Committee, March 17

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. 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.

Hearing scheduled, House Finance and Tax Committee, March 14

[SB 2364](#) Garrison Diversion Easements

Support

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. The House committee heard the bill and additional amendments are in the works.

Heard, House Energy and Natural Resources Committee, March 9

[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.

Passed, House, 92-0, March 7

Hearing Schedule (March 13-17)

<u>Date and Time</u>	<u>Bill Number</u>	<u>Short Title</u>	<u>Committee</u>	<u>Room</u>
03/13/202 3 09:00 AM 	HB 1158	Relating to the imposition of a flat income tax rate of one and one-half percent for individuals, estates, and trusts; and to provide an effective date.	Senate Finance and Taxation	Fort Totten
03/13/202 3 10:15 AM 	HB 1118	Relating to an individual income tax credit; to amend and reenact sections 57-38-30.3 and 57-38-75 of the North Dakota Century Code, relating to the imposition of a flat income tax rate of one and ninety-nine hundredths percent for individuals, estates, and trusts and rounding rules; to repeal section 57-38-01.28 of the North Dakota Century Code, relating to the marriage penalty credit; and to provide an effective date.	Senate Finance and Taxation	Fort Totten
03/14/202 3 09:00 AM 	HB 1038	Relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and to amend and reenact subsection 9 of section 12.1-31-01.2, subsection 8 of section 12.1-31.2-01, subsection 1 of section 15-08-19.2, subsection 5 of section 15-08-19.3, section 15-11-37, paragraph 1 of subdivision a of subsection 2 of section 19-24.1-01,	Senate Judiciary	Peace Garden

		paragraph 1 of subdivision b of subsection 2 of section 19-24.1-01, subsection 8 of section 23-09-01, subsections 24 and 34 of section 26.1-05-19, subsection 7 of section 26.1-17-33.1, subsection 6 of section 32-19-41, sections 37-01-16 and 39-06-32, subsection 4 of section 39-06-33, subdivision i of subsection 2 of section 39-06-49, subsection 5 of section 39-06.1-11, sections 40-34-13 and 40-35-02, subsection 11 of section 43-23-06.1, sections 54-21.3-05, 57-15-06, and 57-15-08, and subsection 6 of section 61-32-03.1 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and to provide a penalty.		
03/14/2023 10:00 AM 	SB 2330	Relating to the legacy and budget stabilization fund advisory board and legacy fund definitions; and to repeal section 6-09-49.1 of the North Dakota Century Code, relating to the legacy infrastructure loan fund.	House Finance and Taxation	327E
03/14/2023 02:15 PM 	SB 2020	Relating to a Bank of North Dakota line of credit and state water commission discretionary funding; to provide legislative intent; to provide an exemption; and to declare an emergency.	House Appropriations - Education and Environment Division	Prairie
03/16/2023 09:00 AM 	SB 2372	Relating to joint water resource boards and the construction of a water project in more than one county; and to amend and reenact sections 61-16.1-12.1 and 61-16.1-15 of the North Dakota Century Code, relating to joint water resource boards.	House Energy and Natural Resources	Coteau AB
03/16/2023 09:00 AM 	HB 1239	Relating to smaller subsurface water management systems; to provide a penalty; and to declare an emergency.	Senate Agriculture and Veterans Affairs	Fort Union
03/16/2023 09:45 AM 	SB 2113	Relating to the creation of a flexible transportation fund.	House Transportation	327E

03/16/202 3 10:15 AM 	HB 1166	Relating to requirements to cease cloud seeding; to amend and reenact subsection 10 of section 61-04.1-03, section 61-04.1-23, subsection 3 of section 61-04.1-24, and sections 61-04.1-26, 61-04.1-27, 61-04.1-30, 61-04.1-38, and 61-04.1-39 of the North Dakota Century Code, relating to state funding requirements for county weather modification operations and a prohibition on the use of state funds for weather modification; and to provide a penalty.	Senate Agriculture and Veterans Affairs	Fort Union
03/17/202 3 09:00 AM 	SB 2313	Relating to eminent domain and the assessment of damages.	House Energy and Natural Resources	Coteau AB
03/17/202 3 09:00 AM 	SB 2251	Relating to the surveying process during eminent domain proceedings; and to declare an emergency.	House Energy and Natural Resources	Coteau AB

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

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