

NORTH DAKOTA

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

Legislative Report

Governor Delivers State of the State Address

Governor Burgum delivered the [State of the State address](#) to a joint session of the 68th Legislative Assembly, which convened on Jan. 3. Burgum called on lawmakers to utilize the state's strong financial position to make significant infrastructure investment and diversify and grow the state's agriculture, energy and other sectors. He emphasized the need to address the state's workforce challenges and provide tax relief to North Dakotans, proposing a plan to eliminate state income tax for lower-earning North Dakotans and create a flat tax of 1.5% for higher earners. Burgum said the state's combined reserves are at the highest in state history with general fund revenue running 23% (\$700 million) ahead of forecasts.

In the agriculture industry, Burgum highlighted \$1 billion in private sector investments in soybean processing plants and expanding the Agricultural Product Utilization Commission grant to \$5.1 million, nearly tripling the program. He noted the state's energy industry has fully-funded the \$8 billion Legacy Fund and most of the \$5.7 billion common schools trust fund. He also proposed investing \$500 million for the Clean Sustainable Energy loan fund and \$50 million in grants through the fund.

To address workforce needs, Burgum touted the Energize Our Communities plan to attract new residents and retain youth and workforce, including \$40 million to support more affordable available housing and infill developments. He urged lawmakers to refresh the Renaissance Zone Program as a means to continue to reduce state property tax through the use of existing infrastructure, and to honor funding commitments for career academies, childcare affordability, industry automation, and workforce development and recruitment programs.

In a boost to tourism and commerce, Burgum announced Continental Resources Board Chairman Harold Hamm completed a \$50 million gift to the Theodore Roosevelt Presidential Library Foundation, leveraging a \$50 million endowment approved by the 2019 Legislature and bringing more than \$100 million in private investment for the Theodore Roosevelt Presidential Library in Medora. Burgum highlighted the request for more than \$51 million to improve and expand state parks and recreation sites and the proposed \$50 million Destination Development Fund to build or expand attraction.

He noted the state has invested \$318 million this biennium to rebuild aging roads and bridges as part of the NDDOT's 10-year infrastructure plan, and the governor proposed another \$2.4 billion investment in infrastructure projects across the state in the upcoming biennium. Burgum also encouraged the legislature to advance the \$10 million Innovation Workforce Grant to respond to falling higher education enrollments and rising workforce needs and noted the state's research universities are teaming up with 11 universities in five states on the Regional Technology Innovation Alliance to ensure receipt of large research technology grants.

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](#).

Federal Update

Below is an update from NWRA on the WOTUS rule:

On Friday, December 30, the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) [announced](#) a new [514-page final rule](#) defining “waters of the United States” under the Clean Water Act. The new definition provides similar protections to those that were in place before 2015, while also clarifying certain qualifications for protected waters. The rule takes effect 60 days after it is formally published in the Federal Register. The following are a few highlights from the new rule:

- Like the 2015 rules, navigable waters, oceans, and interstate waterways are protected by default. Tributaries that flow into and affect larger bodies of water, as well as wetlands near protected waters and some additional lakes and ponds can also be protected.
- To qualify under the rule, smaller waterways, such as ephemeral streams, must meet a set of standards that focuses on their permanence and their interconnectedness with other bodies of water. The Trump administration's 2020 rule categorically excluded ephemeral streams from regulation.
- Wetlands would be considered adjacent if they are connected via “relatively permanent” flows but also those that have a “significant nexus” to navigable waters or protected tributaries.
- The new rule also establishes some exclusions: wetlands that were converted to cropland before 1985, waste treatment centers, ditches, areas with human-made irrigation, artificial lakes and ponds, and artificial pools.
- The new rule adopts USDA’s prior converted cropland policy, used to implement the 1985 Swampbuster program enacted in the 1985 farm bill. Under the new rule, “the exclusion would cease upon a change of use, which means that the area is no longer available for the production of agricultural commodities.”

The new rule concludes the EPA and Corps Phase I rulemaking process to replace the 2020 Navigable Waters Protection Rule. The EPA and Corps have indicated they will supplement the Phase I rule with a Phase II rulemaking process to build on the Phase I foundational rule. Both phases of the rulemaking process will be subject to congressional oversight and judicial review. The standard to determine jurisdictional waters under the CWA is currently under review by the Supreme Court in *Sackett v. Environmental Protection Agency* and the Court is expected to issue a decision soon. NWRA filed an amicus brief in the Sackett case in 2022 to advocate for NWRA member interests on the jurisdictional question.

Water Funding

SB 2020 DWR/SWC Funding

SB 2020 is the appropriations bill for the Department of Water Resources and State Water Commission. Like other appropriations bills that have not had a hearing yet, this bill is currently a placeholder and does not have updated language in it. Language will be updated when the

committee begins its work on the bill. The Senate Appropriations Committee will begin its work on SB 2020 on January 11 with a presentation by Director Travnicek and the Department of Water Resources. It is anticipated that the E&E Division will begin holding hearings on SB 2020 after January 17. **We are hearing the first hearing on SB 2020 might take place on January 18.**

Committee Work by Senate Appropriations scheduled January 11

SB 2017 Game and Fish Department

SB 2017 is the appropriations bill for the Game and Fish Department, including funding for aquatic nuisance species prevention.

Referred to the Senate Appropriations Committee

Water Resource Districts

HB 1073 Operations Plans for Dams

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

Referred to the House Energy and Natural Resources Committee

HB 1076 Permit Thresholds for Dams and Dikes

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.

Referred to the House Energy and Natural Resources Committee

SB 2036 Drainage Statute Clean Up

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.

Referred to the Senate Agriculture Committee

SB 2037 Economic Analysis for Drainage Projects

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.

Referred to the Senate Agriculture Committee

Irrigation

HB 1020 2023-2025 SBARE Funding Priorities

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.

**Hearing Scheduled by House Appropriations-Government Operations Division
January 16**

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

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.

Referred to the House Energy and Natural Resources Committee

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

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.

Referred to the House Energy and Natural Resources Committee

Other Bills of Interest

[HB 1038](#) Statute Technical Corrections

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

Heard by the House Judiciary Committee, January 4

[HB 1072](#) Technical Corrections

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

Referred to the House Energy and Natural Resources Committee

[HB 1077](#) Water Storage Contracts

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.

Referred to the House Energy and Natural Resources Committee

[HB 1088](#) State Investment Board Membership

HB 1088 removes the insurance commissioner and representative from the public employees retirement system board from the state investment board and replaces them with the director of the office of management and budget and two individuals experienced in institutional investments.

Hearing Scheduled House Government and Veterans Affairs Committee, January 12

[HB 1098](#) Floodplain Management Ordinances

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

Amended, Do Pass Recommendation 14-0 by the House Political Subdivisions Committee, January 5

[HB 1118](#) Income Tax Credit

HB 1118 would provide a \$750 tax credit for single filers and a \$1,500 tax credit for joint filers.

Hearing Scheduled in House Finance and Taxation Committee, January 11

[HB 1158](#) Income Tax Rate

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

Hearing Scheduled in House Finance and Taxation Committee, January 11

[HB 1166](#) Weather Modification

HB 1166 would prohibit state cost share for weather modification unless counties adjoining the county conducting the activity agrees.

Hearing Scheduled in House Agriculture Committee, January 13

[SB 2029](#) Caps for Emergency Commission and Budget Section Approvals

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.

Amended, Do Pass Recommendation 6-0, by the Senate State and Local Government Committee, January 5

[SB 2097](#) Wild and Scenic River Designations

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 at the hearing on January 5.

Heard by the Senate Energy and Natural Resources Committee, January 5

[SB 2113](#) Flexible Transportation Fund

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.

Amended, Do Pass Recommendation 6-0 by the Senate Transportation Committee, January 5

Hearing Schedule (January 9-13)

<u>Date and Time</u>	<u>Bill Number</u>	Short Title	<u>Committee</u>	Room
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01/11/2023 09:00 AM	<u>HB 1158</u>	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.	House Finance and Taxation	327E
01/11/2023 10:00 AM	<u>HB 1118</u>	Relating to an individual income tax credit; to provide an effective date; and to provide an expiration date.	House Finance and Taxation	327E
01/12/2023 10:15 AM	<u>HB 1088</u>	Relating to membership of the state investment board.	House Government and Veterans Affairs	Pioneer
01/13/2023 10:30 AM	<u>HB 1166</u>	Relating to state funding requirements for county weather modification operations.	House Agriculture	327C

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

- Jan. 18: Deadline for representatives to introduce bills
- Jan. 23: Deadline for senators to introduce bills
- Feb. 24: Crossover
- 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](#).