

NORTH DAKOTA

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

# Legislative Report

## **Committees Hard at Work to Meet Crossover Deadline**

“Committee work” was the phrase of the week. A few policy committees held hearings this week, but most of the attention was on the appropriations committees, which were focused on completing agency budgets and bills with a fiscal impact so the House and Senate can vote on all bills before Crossover. Next week, floor sessions will be longer, potentially running most of the day, as the House and Senate strive to complete their work before the Feb. 24 Crossover deadline.

The Legislature will be in recess February 27 and 28 for a short break before the second half of the session resumes on March 1. Watch for the Legislative Crossover report next week, which will include a summary and status of the bills the water community is supporting, opposing or monitoring.

## **State Water Commission Meeting**

The State Water commission met on Monday, February 13. They approved \$47.7 million in cost share requests including significant investments in the Western Area Water Supply project and the Northwest Area Water Supply project. The Commission also had extensive discussion on two snagging and clearing projects that were pulled off the consent calendar and ultimately passed. Of note, current projections are to have just shy of \$152 million in the water stabilization fund after the last deposit. Initial conversations with appropriators indicate that it is likely the stabilization fund will be appropriated for projects in the coming biennium.

## **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 Senate Appropriations Education and Environment Division worked on this bill this week and act on this bill on Monday morning. The bill appropriates funding into the buckets as follows:

<b>Bucket</b>	<b>Amount</b>
Salaries and operations	\$83.3M
Capital Assets	\$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
<b>TOTAL</b>	<b>\$652.9M</b>

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. \$939.1M)
- 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

### **Committee work, Senate Appropriations' E&E Division, February 20**

#### **SB 2017 Game and Fish Department**

**Monitor**

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 Education and Environment Division heard testimony on SB 2017 on January 25. The Water Users testified regarding the importance of funding ANS prevention activities. The division and full committee gave the bill a 'do pass' recommendation with all of the requested funding and FTE for ANS included on February 16.

**Do pass recommendation, Senate Appropriations Committee, 16-0, February 16**

**[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. After amendment, the bill was given a 'do pass' recommendation.

**Passed, House, 72-21, February 16**

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

**Support**

HB 1385 would include tribes in the list of entities eligible for cost share from the State Water Commission. The ND Water Users Association testified in favor of this bill. The committee gave this bill a 'do pass' recommendation.

**Do pass recommendation, House Energy and Natural Resources, 12-0, February 16**

**[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 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. This bill was heard by the Senate Energy and Natural Resources Committee on January 20. 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**

**Monitor**

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

**Referred to the Senate Energy and Natural Resources Committee**

**[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.

### **Referred to the Senate Energy and Natural Resources Committee**

#### **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.

### **Do pass recommendation, House Agriculture Committee, 12-0, February 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.

### **Referred to Senate Agriculture Committee**

#### **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.

### **Referred to Senate Energy and Natural Resources Committee**

#### **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.

### **Referred to House Energy and Natural Resources Committee**

#### **SB 2037 Economic Analysis for Drainage Projects**

**Oppose**

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.

**Do pass as amended recommendation, Senate Agriculture Committee, 3-2, February 17**

#### **SB 2326 Economic Analysis Threshold for SWC Cost Share**

**Support**

SB 2326 would clarify that the State Water Commission could only require an economic analysis on flood control and water conveyance projects above \$1 million. This would remove the SWC's ability to lower that threshold via policy as is current practice. The 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**

**Monitor**

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

**Do pass as amended, Senate Agriculture Committee, 5-0, February 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 Appropriations Committee gave this bill a 'do pass' recommendation.

**Do pass recommendation, House Appropriations' Committee, 21-2, February 16**

**[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.

**Referred to the Senate Energy and Natural Resources Committee**

**[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.

**Referred to the Senate Energy and Natural Resources Committee**

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

**Referred to Senate Finance and Taxation Committee**

**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.

**Referred to Senate Agriculture Committee**

**Other Bills of Interest**

**[HB 1038](#) Statute Technical Corrections Monitor**

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

**Referred to the Senate Judiciary Committee**

**[HB 1072](#) Technical Corrections Monitor**

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**

**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 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.

**Referred to the Senate Energy and Natural Resources Committee**

**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.

**Referred to Senate State and Local Government Committee**

**HB 1118 Income Tax Credit**

**Monitor**

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

**Do pass as amended, House Finance and Taxation Committee, 12-2, February 15**

**HB 1158 Income Tax Rate**

**Monitor**

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

**Do pass, House Finance and Taxation Committee, 13-1, February 15**

**HB 1217 Northern Red River Flooding**

**Monitor**

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**

**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.

**Passed, House, 91-0, February 14**

**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.

**Hearing, House Appropriations Committee, February 8**

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

**Do not pass recommendation, House Energy and Natural Resources Committee, 12-1, February 16**

**[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.

**Passed, Senate, 45-1, January 12**

**[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 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 **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.

**Passed, Senate 46-0, January 12**

**[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.

**Passed, Senate, 47-0, January 19**

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

**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.

**Passed, Senate Energy and Natural Resources Committee, 47-0, February 16**

**[SB 2330](#) Infrastructure Revolving Loan Fund**

**Oppose**

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**

**Monitor**

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**

**Support**

SB 2364 would limit the use of easements by the Garrison Diversion Conservancy District (GDCCD) to building, operating, and maintaining water pipelines and would clarify that easements from GDCCD can only be assigned from GDCCD to the state. The ND Water Users testified in favor of this bill. The committee amended the bill to clarify that easements would first pass to a local water authority before going to state. The amended bill was given a 'do pass' recommendation.

**Passed, Senate, 47-0, February 16**

**[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, Senate, 43-4, January 30**

**Hearing Schedule (February 20-24)**

There are no hearings next week due to Crossover. The Appropriations Committees will finish their work and the week will be dominated by long floor sessions as the House and Senate consider all remaining bills introduced by their respective members.

### **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**

- 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](#).