

NORTH DAKOTA WATER COALITION

Legislative Report

Incredible Session for Water

As the 2021 Legislative Session closes, it's a good time to reflect on the many successes water had this year. It really was a banner year for water funding, with almost \$1 billion in investment of state resources this session. While there was often disagreement among legislators about appropriation of dollars, there was near universal consensus on the importance of water funding. This is due in large part to the advocacy of groups like the Water Coalition and strong legislative champions. Please take some time to thank your legislators for their tireless work as policy makers advancing water priorities.

While the legislative session concluded late last week, our work continues in the interim. The State Water Commission will continue to meet to approve project funding and we'll be watching closely the reorganization of the Office of the State Engineer into the newly created Department of Water Resources.

Water Funding

HB 1020 State Water Commission budget bill

Signed

HB 1020 is the funding bill for the State Water Commission. Updated revenue forecasts indicated an additional \$74 million in the 2021-2023 biennium above what was forecasted at the beginning of the session. Final funding is as follows:

Line Item	Final version of HB 1020
Capital Assets	\$173 M
Water Supply	\$125 M
Rural Water Supply	\$59.6 M
Flood Control	\$48 M
Discretionary	\$6 M
Line of Credit	\$50 M

The discretionary bucket is a new concept and will be available to the State Water Commission (SWC) to use for any project. The North Dakota Water Coalition proposed the concept of providing the SWC with flexibility to ensure those projects that voluntarily turned back or deobligated funds in the current biennium could be prioritized with the additional forecast revenue available.

The bill carries an emergency clause which means it became effective as soon as the Governor signed it and the bill was filed.

Signed by the Governor April 27

HB 1431 Bonding for Water Projects

Signed

HB 1431, the major water infrastructure bonding authority bill was signed by the Governor. The final version of the bill included:

- \$435.5 million to complete the Fargo Diversion Project
- \$74.5 million for the Mouse River Flood Control Project
- \$50 million to an infrastructure revolving loan fund
- \$70 million to the state highway fund
- \$50 million to NDSU for an agriculture products development center

Passage of HB 1431 frees up \$142 million of the Resources Trust Fund for water project cost-share grants contemplated in HB 1020 and \$66.5 million in future budgets that had been slated for the Fargo Diversion Project. Many water projects should benefit from reduced competition for SWC money if the major water projects are funded with bonding. The North Dakota Water Coalition voiced strong support for the bonding bill.

The final version of HB 1431 also includes an infrastructure loan program. The interest rate was set at a flat 2%, as advocated by the Water Coalition, in SB 2014, the Industrial Commission's budget.

Signed by the Governor April 21

HB 1380 Legacy Fund Earnings Programs

Passed

HB 1380 provides for legacy fund earnings to be designated for various streams. The final version included \$150 million to pay for the bonds authorized in HB 1431 and \$60 million for the highway tax distribution fund. Of the funds remaining, it is suggested to future legislative assemblies that up to \$50 million go to tax relief, up to \$30 million for coal carbon capture, and up to \$30 million for research workforce initiatives. The bill creates a new interim legacy fund earnings committee. It is expected the Governor will sign this bill, but has not done so yet.

Passed Senate 46-1 April 29

HB 1088 SWC Development Plan

Signed

HB 1088 gives the SWC the ability to require funds other than the Outdoor Heritage Fund dollars to be used by projects as a local match. The SWC retains the ability to consider these dollars as local match if it wishes.

Signed by the Governor March 17

HB 1132 Infrastructure Bonding Bill

Withdrawn

Proposal for a \$1.1 billion bonding package to fund infrastructure projects across the state using legacy fund dollars to pay for the borrowed money. HB 1132 was withdrawn and replaced with HB 1431.

Withdrawn Jan. 27

HB 1425 Legacy Fund Loans and Infrastructure Projects

Signed

HB 1425 supports an in-state Legacy Fund investment plan and gives direction to the State Investment Board to invest up to 20% of the Legacy Fund in North Dakota in fixed income investments (Bank of North Dakota CDs and infrastructure loans) and equity/venture capital. Insurance Commissioner Godfread, the Bank of North Dakota, and infrastructure investment supporters, including the North Dakota Water Coalition, support this important piece of legislation.

Signed by the Governor April 8

Water Management

SB 2208 Interim Water Study

Signed

SB 2208 establishes an interim study to examine many important water management policy issues including: combining NDCC chapters 61-16.1 and 61-21; making assessment procedures uniform; establishing an appeals and mediation process; managing water by watershed; reviewing responsibility of culvert sizing; cost-benefit analyses on projects; water permits and irrigation permit process; and the relationship between the SWC and water resource districts. The study committee will include both legislators and non-legislators.

Signed by the Governor April 22

Water Projects

HB 1063 NAWS Advisory Committee Membership

Signed

HB 1063 removes the requirements for members of the advisory committee from Williston, Three Affiliated tribes and Divide, Mountrail, and Williams Counties. The House amended HB 1063 to require the SWC consult with and provide staff support to the NAWS advisory committee. The amendments also require the advisory committee to prepare reports on the long-term plan for operation and management of NAWS for legislative management and interim committees.

Signed by the Governor March 29

SB 2306 Western Area Water Supply Authority

Failed

SB 2306 would have added tribes to the list of entities the western area water supply authority can contract with.

Defeated Senate 44-3 Feb. 10

HCR 3034 Federal Funding of NAWS Biota Treatment Plant

Passed

HCR 3034 calls on Congress and the President to fully fund the biota water treatment plant for NAWS.

Passed Senate March 26

State and Local Government

HB 1353 Reorganization of the Office of State Engineer

Signed

HB 1353 reorganizes the Office of the State Engineer and the SWC into the Department of Water Resources and sets powers and duties of the director of the Department of Water Resources. The 129-page bill places the state engineer and associated regulatory roles into a division within the reorganized; the head of the Department will be selected by the Governor and will be a member of the Governor's cabinet. The bill was amended to clarify the role of the state engineer in making regulatory decisions. The cost-share grant role and the selection of the board of the SWC would not change from current practice of appointment to represent specific watersheds.

Signed by the Governor April 20

HB 1043 Ethics Commission Bill

Signed

HB 1043 makes modifications to the complaint process for the Ethics Commission. The Senate Judiciary Committee amended this bill to change the proposed process for dealing with anonymous complaints.

Signed by the Governor April 16

[HB 1057](#) Liability of Political Subdivisions

Signed

HB 1057 increases the liability cap for the state and political subdivisions starting July 1, 2022 and increasing annually until July 1, 2026.

Signed the Governor March 10

[HB 1079](#) Uniform Environmental Covenants Act

Signed

HB 1079 creates a framework at the state level to register and oversee sites that have use restrictions due to environmental considerations (e.g., if a site had a hazardous waste spill and was remediated, its use in the future might be limited to industrial uses); any land under an “environmental covenant” issued at the state or federal level would be registered with the state.

Signed by the Governor April 8

[HB 1116](#) General Obligation Bonds

Signed

HB 1116 allows county capital project levies to be used for roads and bridges and lengthens the term of county bonds from 20 to 30 years.

Signed by the Governor April 22

[HB 1259](#) Wastewater Surveillance

Failed

HB 1259 would require a public hearing and vote by a governing entity before a local or state entity can participate in a national or state wastewater surveillance program.

Defeated Senate 12-35 March 22

[HB 1419](#) Cities, Counties Levying Infrastructure Fees

Signed

HB 1419 gives counties and cities the ability to charge an ‘infrastructure fee’ instead of a special assessment to pay off infrastructure projects. The imposition of an infrastructure fee must be approved by the voters.

Signed by the Governor April 19

[SB 2034](#) Advisory Opinions

Signed

SB 2034 allows for requests for advisory opinions from the Ethics Commission, provides a timeframe for issuance the opinion, and provides protections for individuals who utilize such opinions.

Signed by the Governor April 12

[SB 2079](#) Operating Plans for Dams

Failed

This bill would have removed requirements for dam operators to follow state engineer plans of operations.

Defeated Senate 0-47 Jan. 21

[SB 2080](#) Construction Permit Thresholds for Dikes, Dams, and Other Devices

Failed

This bill would have added requirements for permits to construct low-hazard dam capable of retaining, obstructing, or diverting more than fifty acre-feet of water, medium and high-hazard dams capable of retaining, obstructing, or diverting more than twenty-five acre-feet of water, and low-risk dike capable of protecting more than eighty acres of land area; and moderate-risk or high-risk dike.

Defeated Senate 3-44 Jan. 21

SB 2081 Floodways and National Flood Insurance Program

Signed

SB 2081 provides for uses, within the floodway as delineated by the national flood insurance program if those uses do not result in an increase in flood levels.

Signed by the Governor March 22

SB 2124 Virtual Legislative Assembly

Failed

SB 2124 would have added parameters to a disaster or emergency declared by the governor. It would have also permitted a virtual special session of the legislative assembly during the emergency or disaster. This bill was hoghoused to add provisions related to vaccine requirements and the housing of migrants in the state. The Senate defeated the bill 10-36.

Defeated Senate 10-36 April 21

SB 2129 Liability of State and Political Subdivisions

Withdrawn

This bill would have changed the total liability of political subdivision from \$250,000 to \$500,000 per person and from \$1,000,000 to \$2,000,000 for any number of claims from a single occurrence.

Withdrawn Jan. 12

SB 2285 Abstractor Fees

Failed

SB 2285 would have required that an abstractor fee on a subsurface entry on an easement be paid by holder of the easement.

Defeated Senate 45-2 Feb. 8

SB 2324 Installation of Culverts or Bridges

Failed

SB 2324 would have required a road authority to install a culvert or bridge to the state engineer's specification within one year if the state engineer makes such a recommendation. Court costs and attorney fees could have been awarded to the plaintiff if the road authority did not install the recommended culvert or bridge within one year.

Defeated 21-72 March 31

SB 2337 Engineering Requirements

Failed

SB 2337 would have required that projects over \$250,000 must have a professional engineer involved. The threshold in current law is \$200,000.

Defeated Senate 5-41 Feb. 22

HCR 3042 Removing Revenue Generation Authority

Failed

HCR 3042 would have put a constitutional amendment on the ballot to require any revenue generation for a political subdivision done through levying assessments or collection of taxes or fees to be done by an elected board. This would have removed the authority of water resource district boards to make assessments.

Defeated House 31-59 March 9

Status of Key Bills

A detailed report on the status of all tracked bills is attached.