



# NEBRASKA ASSOCIATION OF RESOURCES DISTRICTS

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**TO: NARD Board, NRD Managers and Conservation Partners**  
**FROM: Dean E. Edson, NARD Executive Director**  
**RE: February 13 NARD Update**

**2009 NRD Technician Certification Training and Water Programs Conference.** The 2009 Natural Resources Ground Water Technician Certification Training and Water Programs Conference are scheduled for March 2<sup>nd</sup> and 3<sup>rd</sup> at the Kearney Holiday Inn. The training class is free to all NRD employees but the charge for certification is \$53, payable to the NE Dept. of Health and Human Services by **February 25th**. The cost for the Water Programs conference is \$65 payable to the NARD. Both the technician training and conference are valid for CEU credits. Online registration is available at [www.nrdnet.org](http://www.nrdnet.org).

## Nebraska Unicameral Action

### Hearings this week

**LB 263 -- Provide that state law preempts local law for the Nebraska Seed Law and the Nebraska Commercial Fertilizer and Soil Conditioner Act. Senator Rogert.** The bill proposes that the Nebraska Seed Law and the Nebraska Fertilizer and Soil Conditioners act and any rules and regulations adopted under the act shall supersede and preempt any ordinance, rule, regulation, or resolution enacted by any political subdivision of the state regarding the regulation of seeds. NARD is working with Senator Rogert, the sponsor of the bill, and Senator Carlson, Chair of the Ag Committee, to clarify that NRDs can still regulate fertilizers under the Nebraska Groundwater Management and Protection Act. No action has been taken by the Ag Committee.

**LB 581 -- Change disposition of funds from Pesticide Act fees and weed book sales. Senator Carlson.** The bill makes changes to the distribution of pesticide fees to increase funding to the noxious weed program. No action has been taken by the Ag Committee.

### Committee Action

**LB 56-- Change the Livestock Waste Management Act, Fischer.** The Natural Resources Committee advanced LB 56 **with AM 310** this week. The original bill proposes several changes to the permit system including: 1) Changes the standard for small operations to be subject to the inspection, construction and operating permit system. Small operations (less than 300 head cattle, 750 hogs, etc) are exempt from permits but can be subject to the permit if there has been a discharge to water of the state. The proposal would have it apply only if an intentional or willful intent to discharge occurred. 2) Defines discharge violations to be those discovered after investigation to be caused intentionally or by willful negligence. 3) Establishes that if a permit-holder loses his/her permit for violations on one operation, the revocation does not include any other person who is a relative, partner, member, shareholder, resident, parent company, subsidiary, or other affiliate of the permit holder. 4) Currently, a permit can be revoked for three non-permitted discharges from a facility, whereas the bill proposes to make it three discharge violations. The bill proposes to count those violations on a per facility basis, rather than the current per operator basis. In other words, the bill proposes that a large operator with several facilities could have many violations and still not come under the three strikes provision as long as no one of those facilities had three violations.

The committee amendment (AM 310) eliminates that the producer's discharge must be "willfully" committed before a discharge violation can be charged, leaving only that the discharge must be intentionally or negligently committed before a discharge violation, or "strike", can be assessed. The committee amendment also increases the number of discharges, or strikes, from three to five that a producer must commit before being determined unsuited to hold a permit.

**LB 438 – Prohibits in-stream appropriations in fully or over-appropriated areas. Senator Fischer.** The bill prohibits the Director of the Department of Natural Resources from approving an in-stream flow appropriation in a river basin, sub-basin, or reach that has been determined or designated by the department to be fully-appropriated or over-appropriated. Current law already prohibits new appropriations of water in such areas. NARD testified in support on behalf of the association and also submitted a letter on behalf of the Middle Niobrara NRD. The Committee is working on a clarifying amendment to allow for a transfer from an existing appropriation to an instream flow appropriation in fully or over-appropriated areas. No final committee action has been taken.

**LB 54 – Integrated Water Management Procedures. Senator Fischer.** The bill creates a process for the NRDs and DNR to use in fully and over-appropriated basins for procedures to track depletions and gains to stream flows from new, retired or other changes to uses within the river basin. Just prior to the hearing, surface water irrigators requested three changes to the bill. First, they are requesting a “zero tolerance” standard to be applied for offset water. The language would state that offset water not be allowed if there is any adverse affect on existing water users, no matter how minuscule the affect. The second request is to force collaboration, in addition to consultation, between the NRDs and all surface water users on developing rules on offset water. The third request is to force all Integrated Management Plans to be updated every two years. The third request has been dropped, but parties are meeting to discuss other options for the other two. No final committee action has been taken.

### Floor Action

Senators advanced **LB 184** and **LB 379** this week to Select File. **LB 184** authorizes the Department of Natural Resources to consider and administer any riparian water right that has been validated and recognized in a court order from a court of lawful jurisdiction in the state. **LB 379** extends the grant program for scrap tires from June 30, 2009 to June 30, 2014.

### Hearings next week

**Tuesday, February 17, 2009 -- Agriculture Committee, Room 1524, 1:30 PM.**

**LB 98 – Extend the termination date for the Riparian Vegetation Management Task Force, Carlson.** Extends the termination date for the Riparian Vegetation Management Task Force from 2009 to 2011. The bill also outlines legislative intent to appropriate \$2 million annually for the next two fiscal years. Finally, the bill makes fully appropriated river basins subject to compacts and decrees the priority for programs rather than just the initial priority when the programs started in 2007.

**Thursday, February 19, 2009 - Government Committee, Room 1507, 1:30 PM.**

**LB 361 -- Change roll call provisions under the Open Meetings Act, Avery.** Current law requires that the vote on any question or motion moved and seconded to be on a roll call vote in an open session. There is a provision to allow a municipality to satisfy this requirement by voice vote if an electronic voting device is used and can be viewed by the public. The bill proposes to add a joint entity created pursuant to the

Interlocal Cooperation Act, a joint public agency created pursuant to the Joint Public Agency Act, or an agency formed under the Municipal Cooperative Financing Act to the list that can utilize an electronic voting device.

**LB 639 -- Change provisions relating to telephone conferencing for public meetings, Karpisek.**

Makes a change to allow advisory committees of a risk management pool organized under the Intergovernmental Risk Management Act to hold more than half of their meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing.

**LB 678 -- Change provisions relating to minutes of public meetings, Haar.** The bill allows minutes of meetings subject to the Open Meetings Act to be written or in an electronic recording, including audio or video recording of the meeting.

**Thursday, February 19, 2009 - Revenue Committee, Room 1524, 1:30 PM.**

**LB 480 -- Change budget limit and tax levy limitation provisions, Dierks.** The bill changes the definition of capital improvements by specifying that such improvements must have a useful life of five years or more. The bill also states that property tax levies for capital improvements as so defined are not included in property tax levy limits.

**Friday, February 20, 2009 – Natural Resources Committee, Room 1524, 1:30 PM.**

**LB 535 -- Change membership of the Nebraska Natural Resources Commission and provisions relating to natural resources districts, Stuthman.** The bill increases from 3 to 15 members appointed by the Governor to the Natural Resources Commission. The additional 12 appointments would be representatives of the business community.

The bill also requires that all programs and projects of natural resources districts shall first be shown to be wanted by a majority of the residents of the watershed. If the residents approve, then surveys may be used for general programs or projects to determine potential utilization of the program or project. Any surveys used shall be consistent with state and federal agency statistics and shall not include the same population areas to justify more than one of the same kind of project in a 50-year period of time. All projects shall be bid in total, not by part, and all expenses shall be included when determining a rate of return for a project.

Finally, the bill prohibits the NRD use of eminent domain powers until all other requirements for a dam or any other improvement project have been complied with.

**LB 643 -- Change and provide notice requirements of road construction near electric lines, Schilz.** The bill requires natural resources districts to provide 180-day notice to owners of power lines before the district begins altering a road structure or grading or moving earth for a flood control, recreation, or other project if the performance of any work is within ten feet of any electric transmission or electric distribution line, poles, or anchors.

If the line, poles, or anchors to be moved are within an area that will require Federal Aviation Administration approval, notice shall be given at least one year prior to the start of any work.

**The Legislature will not be in session on Monday, February 16<sup>th</sup>.**