



# 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: January 16 NARD Update

**Governor's State of the State Address** -- Gov. Dave Heineman delivered his State of the State address to the Nebraska Legislature on Wednesday focusing on four priorities: No tax increases, providing additional funding for K-12 and higher education, preserving services for vulnerable Nebraskans, and maintaining a strong cash reserve fund.

One of the changes in the budget for agencies is to allow some programs to keep the unexpended balances they have at the end of the fiscal year. The previous practice had been to capture and redirect the saved funds and reduce the appropriation by similar amount in the next fiscal year. The approach attempts to encourage agencies to "save it and keep it" rather than the past practice of "spend it or lose it."

**Hearings Next Week -- The following are bills of interest up for hearings next week.**

### Wednesday, Jan 21, Natural Resources

**LB 42 – Improvements to Rural Water Systems, Flood.** Clarifies that plans for any proposed improvements to rural water systems need to comply with the Nebraska Safe Drinking Water Act and rules/regulations adopted and promulgated by the Department of Health and Human Services under the act.

**LB 43 -- Eliminate the Department of Natural Resources Interstate Water Rights Cash Fund, Flood.** Repeals a fund that was used exclusively for the payment of expenses directly related to interstate water rights litigation. Language in that section of statute specifically called for the fund to terminate on June 30, 2003.

**LB 179 -- Change project limit adjustments under the Nebraska Resources Development Fund, Natural Resources Committee.** Current law established a cap of \$10 million for any individual project from the NRDF. The law also requires the fund to be adjusted each year by an amount equal to the average percentage change in a readily available construction cost index for the prior three years. The proposed change would update the adjustments for each year starting July 1, 1993.

**LB 180 -- Change provisions relating to the Waste Reduction and Recycling Incentive Fund, Natural Resources Committee.** The proposal would allow grants from the Waste Reduction and Recycling Incentive Fund to be used for reimbursement of costs to cities of the second class, villages, and counties of five thousand or fewer population for the deconstruction of abandoned buildings. Eligible deconstruction costs will be related to the recovery and processing of recyclable or reusable material from the abandoned buildings.

### Friday, Jan 23, Natural Resources

**LB 134 – Limit NRD Eminent Domain, Pankonin.** Prohibits the NRD's use of eminent domain for development or management of recreational trails unless they are associated with a flood control structure.

**LB 160 – Bond Authority for PMRNRD, Gay.** Authorizes the PMRNRD to issue bonds to pay costs of design, rights-of-way acquisition, and construction of multipurpose projects and practices for storm water management within the natural resources district issuing such bonds, including flood control and water quality.

### New bills introduced this week

**LB 162 -- Change provisions relating to contractor registration and income tax withholding, Carlson.** The bill specifically eliminates the exemption for contractors involved in the construction of water wells or installation of septic

systems and makes them subject to the Contractor Registration Act. The bill also expands the definition of contractor to include:

An individual, firm, partnership, limited liability company, corporation, or other association of persons engaged in the business of the construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement within the definition of real property and personal property, including such construction, repairing, or alteration of such property to be held either for sale or rental.

Withholding requirements would apply to work done over \$600.

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**LB 184 -- Authorize Department of Natural Resources to administer riparian water rights, Louden.** 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. The court must find that the tract of land in question borders a natural stream, came into private ownership prior to April 4, 1895, and was not separated from the land contiguous to the stream at any time.

The bill also authorizes the department to close surface water appropriations for a riparian right only when the riparian right is used for watering livestock in the streambed. Surface water appropriations for livestock watering shall not be closed. The only surface water appropriations that may be closed for a riparian water right are appropriations held by persons who were parties to the lawsuit validating the riparian water right or appropriations with a priority date subsequent to the date of the court order.

**LB 209 -- Change provisions relating to time for construction of irrigation projects and dams, Langemeier (NARD Bill).** The bill changes the time frame from 6 months to 12 months after the approval of any application for water for irrigation, power, or other useful purpose by the department, to commence the excavation or construction of the project. The bill also clarifies that the Department of Natural Resources may extend, for reasonable lengths of time, the time for commencing excavation or construction.

**LB 210 -- Change provisions relating to aid to natural resources districts, Langemeier (NARD Bill).** Changes the state aid formula for natural resources districts so that the amount of property tax levied by the district shall not include the property tax levied to principal or interest on bonds. State aid to NRDs are calculated on the ratio of property taxes levied by a district compared to the total property taxes levied by all districts

**LB 218 -- Change, eliminate, and provide state aid to various political subdivisions, Cornett.** The bill primarily makes changes to aid for counties by incorporating changes relating to jail standards and reimbursements for incarceration of prisoners. The bill also strikes language in statute relating to the outdated specific amount to be appropriated to counties and NRDs. However, the appropriations committee has not followed those amounts for several years. This may just be a bill to watch.

**LB 235 -- Provide the Board of Educational Lands and Funds with the power to issue leases relating to solar and wind energy and enter into contracts relating to carbon sequestration rights, Adams.** Authorizes the board to issue leases solar or wind energy for such durations and under such terms and conditions as the board shall deem appropriate. In

making such determinations, the board shall consider comparable arrangements involving other lands similarly situated and any other relevant factors bearing upon such leases.

For the sale of carbon sequestration rights, the board could enter into contracts not to exceed 10 years. The board shall consider comparable arrangements involving other lands similarly situated and any other relevant factors bearing upon such contracts.

**LB 246 -- Reestablish the Biopower Steering Committee and to provide for a study, Dubas.** The bill re-establishes the Biopower Steering Committee terminated on December 31, 2008 and extends the term of the committee until December 31, 2012. The new study included in the bill is a study on the current and potential impact of bioindustry in the State of Nebraska and to prepare a strategic plan for developing biotechnology in the Nebraska. The strategic plan shall propose development over a five-year period and shall include, but not be limited to, the production of valuable products from corn, second generation cellulosic technologies, bioplastics, and advanced biofuels.

The proposal requires the committee to present the study and plan to the Natural Resources Committee of the Legislature on or before December 1, 2010, and to present updates to the plan annually thereafter.

Finally, the bill outlines the intent of the Legislature to appropriate two hundred thousand dollars for fiscal year 2009-10 from the General Fund to the Biopower Development Cash Fund.

**LB 263 - Provide that state law pre-empts local law for the Nebraska Seed Law and the Nebraska Commercial Fertilizer and Soil Conditioner Act, Rogert.** The bill proposes that the Nebraska Seed Law 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. No political subdivision would be able to prohibit or in any other manner regulate any matter relating to the registration, labeling, or sale of seeds based upon the type, nature, or genetic makeup of such seeds.

The bill outlines that the Nebraska Commercial Fertilizer and Soil Conditioner Act and any rules and regulations adopted and promulgated thereunder shall supersede and pre-empt any ordinance, rule, regulation, or resolution enacted by any political subdivision of the state regarding the regulation of fertilizer and soil conditioners. No political subdivision would be able to prohibit or in any other manner regulate any matter relating to the registration, labeling, or sale of fertilizer and soil conditioners. No political subdivision shall prohibit or in any other manner regulate any matter relating to the storage, transportation, distribution, notification of use, or use that are in addition to or in conflict with the Nebraska Fertilizer and Soil Conditioner Act and any rules and regulations adopted under the act.

Regarding the fertilizer and soil conditioners, the bill outlines that nothing in this proposal shall be construed to pre-empt or otherwise limit the authority of any city or county to adopt and enforce zoning regulations.

**LB 286 --Change the distribution of lottery funds, General Affairs Committee.** The bill proposes to change the way lottery proceeds are transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund.

Current law starting July 1, 2009 would require the transfer of at least 25 percent of the dollar amount of the lottery tickets which have been sold on an annualized basis.

The proposal would transfer the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03 or (b) any amount which constitutes at least 22 percent and no more than 25 percent of the dollar amount of the lottery tickets which have been sold on an annualized basis.

To the extent that funds are available, language is also added for the Tax Commissioner to authorize a transfer exceeding 25 percent of the dollar amount of the lottery tickets sold on an annualized basis.

**LB 289 -- Appropriate funds to the Game and Parks Commission, Christensen.** Appropriates \$55,554.25 from the General Fund for FY 2008-09 to the Game and Parks Commission, to match federal dollars for the repair of flood damage done to the dam at Champion Mill State Historical Park.

**LB 304 -- Change limitation of action provisions under the Political Subdivisions Tort Claims Act, Council.** Extends the time frame in which to file a claim against an employee of a political subdivision or against a political subdivision permitted under the Political Subdivisions Tort Claims Act from one year to two years.

**LB 315 – Mainline appropriations for state government operations. Speaker Flood on behalf of the Governor.** The following are items of interest relating to natural resources.

**AGENCY NO. 11 — ATTORNEY GENERAL**

**Program No. 496 - Interstate Water Litigation**

	<u>FY2009-10</u>	<u>FY2010-11</u>
GENERAL FUND	1,000,000	-0-
PROGRAM TOTAL	1,000,000	-0-

**AGENCY NO. 12 — STATE TREASURER**

**Program No. 119 - Aid to Natural Resources Districts**

	<u>FY2009-10</u>	<u>FY2010-11</u>
GENERAL FUND	1,545,502	1,545,502
PROGRAM TOTAL	1,545,502	1,545,502

**AGENCY NO. 29 — DEPARTMENT OF NATURAL RESOURCES**

**Program No. 303 - State Aid - Small Watersheds**

	<u>FY2009-10</u>	<u>FY2010-11</u>
CASH FUND	500,000	500,000
PROGRAM TOTAL	500,000	500,000

**Program No. 304 - Nebraska Soil and Water Conservation Fund**

	<u>FY2009-10</u>	<u>FY2010-11</u>
GENERAL FUND	2,688,454	2,688,454
CASH FUND	405,000	405,000
PROGRAM TOTAL	3,093,454	3,093,454

Re-appropriates the unexpended General Fund balance existing on June 30, 2009.

**Program No. 306 - Water Well Decommissioning**

	<u>FY2009-10</u>	<u>FY2010-11</u>
CASH FUND	240,840	240,840
PROGRAM TOTAL	240,840	240,840

Re-appropriates the unexpended General Fund balance existing on June 30, 2009.

**Program No. 307 - Nebraska Resources Development Fund**

	<u>FY2009-10</u>	<u>FY2010-11</u>
GENERAL FUND	3,373,066	3,373,066
CASH FUND	50,000	50,000
PROGRAM TOTAL	3,423,066	3,423,066

Re-appropriates the unexpended General Fund balance existing on June 30, 2009.

The bill also provides direction for the use of the funds as follows: 1) Appropriation to this program for state aid shall first be utilized for projects which have been allocated funds but for which only a portion of the allocation has been actually obligated. 2) The total amount of funds allocated for projects less the amounts obligated for such projects shall not exceed \$18,500,000.

The definitions of the terms allocated and obligated shall be based on the terminology utilized by the Department of Natural Resources in the Nebraska Resources Development Fund Status Report.

**Program No. 309 - Natural Resources Water Quality Fund**

	<u>FY2009-10</u>	<u>FY2010-11</u>
CASH FUND	1,250,000	1,250,000
PROGRAM TOTAL	1,250,000	1,250,000

*Notwithstanding other provisions of this bill, all appropriations within this program existing on June 30, 2009, in excess of expended or encumbered amounts are hereby lapsed.*

**Program No. 311 - Interrelated Water Management Plan Program**

	<u>FY2009-10</u>	<u>FY2010-11</u>
GENERAL FUND	2,412,854	2,412,854
PROGRAM TOTAL	2,412,854	2,412,854

Re-appropriates the unexpended General Fund balance existing on June 30, 2009.

**Program No. 334 - Soil and Water Conservation, General Operation**

	<u>FY2009-10</u>	<u>FY2010-11</u>
GENERAL FUND	9,417,678	9,417,678
CASH FUND	3,499,475	3,500,729
Estimated FEDERAL FUND	513,046	522,846
PROGRAM TOTAL	13,430,199	13,441,253
SALARY LIMIT	5,593,370	5,718,503

Re-appropriates the unexpended General Fund balance allocated in budget subprograms 19 (integrated management), 20 (Water Resources Cash Fund), and 21(Interstate Compacts) of Program 334 existing on June 30, 2009.

**LB 316 - Budget cash fund transfers. Speaker Flood on behalf of the Governor.** The bill makes several transfers from the general fund and cash reserve fund for several programs. For natural resources programs the bill transfers \$2,700,000 from the General Fund to the Water Resources Cash Fund for Fiscal Years 09-10 and 10-11.

**LB 336 -- Exempt municipal water from sales tax, Friend.** The bill exempts water supplied by a municipal water supplier from sales tax.

**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 devices.

**LB 362 -- Change requirements for candidate filing forms, Avery.** The bill adds the following requirements to all candidate filing forms: 1) The candidate's name; 2) residence address; 3) mailing address if different from the residence address; 4) telephone number; 5) office sought; and 6) party affiliation if the office sought is a partisan office.

**LB 379 -- Extend the scrap tire grant program, Haar.** Extends the grant program for scrap tires from June 30, 2009 to June 30, 2014.

**LB 389 -- Change appointment provisions for the Climate Assessment Response Committee, Carlson.** The bill eliminates the provision that members appointed by the governor to the Climate Assessment Response Committee be confirmed by the legislature. The bill also makes the chairpersons of the Committee on Agriculture and Natural Resources non-voting, ex-officio members of the committee.