



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 23 NARD Update

Nebraska Unicameral Floor Action

LB 18 -- Prohibit irrigation on new school land leases -- Sen. Mark Christensen filed a motion to withdraw LB 18 which prevailed. The bill would have prohibited irrigation on state school lands in fully appropriated basins when new leases are negotiated. Senator Christensen was the sponsor of the bill.

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

Wednesday, Jan 28, Natural Resources

LB 54 – Change integrated management plan provisions under the Nebraska Ground Water Management and Protection Act, Fischer. This bill originated from LB 924 last year and is a product of consultation with ag groups, irrigation districts, DNR and NARD. In order to provide a process for economic development opportunities and economic sustainability within a basin declared fully appropriated, the bill creates a process for NRDs and DNR to use for procedures to track depletions and gains to stream flows from new, retired or other changes to uses within the river basin.

LB 56 – Change the Livestock Waste Management Act, Fischer. Makes several changes to the livestock waste permit system including, but not limited to: 1) Changes the standard for small operations to be subject to inspection, construction permit and operating permit would 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; and 3) proposes to count those violations on a per facility basis, rather than the current per operator basis.

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.

LB 218 – Change, eliminate, and provide state aid to various political subdivisions, Cornett. The bill primarily makes changes to aid to 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.

Thursday, Jan 29, Natural Resources

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 482 – Change provisions of the Nebraska Ground Water Management and Protection Act, Langemeier. The bill eliminates obsolete language in the act that refers to initial start dates of LB 962 such as “Beginning in 2006”, etc. The bill also increases the number of public hearings from “one or more” to “two or more” after a final determination by the department that a river basin, sub-basin, or reach is fully or over appropriated. The purpose for these public hearings is to determine whether the stays on the issuance of new water well permits, on the construction of new water wells, or on increases in ground water irrigated acres should be terminated.

LB 483 – Change well moratoriums, Langemeier. The bill changes the planning process for NRDs to allow limited growth when a determination is made that the district is not fully appropriated and a stay on well drilling has expired or that a preliminary determination was made that a basin, sub-basin, or reach is fully appropriated but a final determination finds that it is not fully appropriated.

Friday, Jan 30, Natural Resources

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, the person making such application shall 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 246 – Reestablish the Biopower Steering Committee; 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.

NEW BILLS

The Legislature concluded introduction of bills on Wednesday, January 21st. The following bills were introduced this week.

LB 438 -- Prohibits instream appropriations in fully or overappropriated areas, Fischer. The bill prohibits the Director of Natural Resources from approving an instream flow appropriation in a river basin, subbasin, or reach that has been determined or designated by the department to be fully appropriated or overappropriated. Current law already prohibits new appropriations of water in such areas.

LB 466 -- Eliminate an excise tax on corn and grain sorghum, Wallman. The bill eliminates the corn and grain sorghum check-off that is scheduled to go into the Water Resources Cash Fund for FY's 2012-13 through 2018-2019 and replaced it with a \$10 million annual General Fund appropriation.

LB 477 -- Change provisions relating to water transfer permits, Carlson. The bill changes requirements when water is transferred to include evidence of lien holder's agreement to allow the transfer of water. The bill also clarifies in law that districts can certify irrigated acres and other beneficial uses of water. The bill then requires that participation in any financial incentive program and/or any transfer of certified acres or uses, include similar evidence of the lien holder's agreement to allow the transfer.

In the case of certified uses of groundwater, the person seeking such transfer or participation in such program would have to submit to the district a report of title issued by an attorney or a licensed abstractor, on a form prescribed by the DNR. If the transfer is approved, an instrument of transfer of water rights shall be recorded by a natural resources district with the register of deeds in each county in which is situated the real estate, or any part thereof, from which a transfer of certified water uses or certified irrigated acres occurred.

In the case of surface water transfers approved by the department or any groundwater transfer permits issued by the department, the application for such approval shall be accompanied by a report of title issued by an attorney or a licensed abstractor, on a form prescribed by the department, similar to the requirement for issues before NRDs. However, filing an instrument of transfer of water rights would not be required.

LB 482 -- Change provisions of the Nebraska Ground Water Management and Protection Act, Langemeier. The bill eliminates obsolete language in the act that refers to initial start dates of LB 962 such as "Beginning in 2006", etc. The bill also increases the number of public hearings from "one or more" to "two or more" after a final determination by the department that a river basin, sub-basin, or reach is fully or over appropriated. The purpose for these public hearings is to determine whether the stays on the issuance of new water well permits, on the construction of new water wells, or on increases in ground water irrigated acres should be terminated.

A similar change is made to increase the public hearings from “one or more” to “two or more” relating to controls proposed by the Director of Environmental Quality for a management area for quality purposes. Current law requires these hearings prior to the adoption of controls.

LB 483 - Change well moratoriums, Langemeier. The bill changes the planning process for NRDs when a determination is made that the district is not fully appropriated and a stay on well drilling has expired or that a preliminary determination was made that a basin, sub-basin, or reach is fully appropriated but a final determination finds that it is not fully appropriated.

The bill would require districts in either one of the situations to create and implement a policy for the prioritization and granting of water well permits for the four-year period following such situations. The policy shall include, but need not be limited to, the following:

- i) Water well permits may be issued that will result in no more than 2,500 irrigated acres within a basin, sub-basin, or reach for each calendar year of the four-year period following the date of a determination described above; and
- ii) A district may, after the initial four-year period has expired, annually determine whether water well permit limitations should continue and may enforce such limitations.

LB 504 - Authorize permits and provide penalties relating to discharge of dredged or fill material into the waters of the state, Langemeier. Authorizes the Nebraska Department of Environmental Quality to take over the 404 permit process from the U.S. Army Corps of Engineers.

LB 520 - Provide for an income tax credit for perpetual conservation easement donations, Hadley. The bill allows for a refundable income tax credit to a taxpayer who donates all or part of the value of a perpetual conservation easement upon real property the taxpayer owns to the state, to a political subdivision of the state, or to a charitable organization.

The income tax credit would be an amount equal to 15% of the appraised value of the donated portion of the perpetual conservation easement, not to exceed \$50,000 per tax year or a total of \$250,000 over five years. A taxpayer would be limited to claim the income tax credit on only one conservation easement per taxable year.

The Department of Agriculture would have oversight and would approve qualifying conservation easements by November 1 each year. The department shall not approve applications for tax credits which would total more than 5 million dollars for any one year. If qualified applications would result in tax credits totaling more than 5 million dollars in the year, including qualifying carryover credits from previous years, the department shall prioritize qualifying applications.

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 565 -- Adopt the Woody Biomass Energy Act, Louden. The bill creates the Woody Biomass Energy Revolving Loan Fund to be administered by the State Energy Office. The fund would be created from a \$2.5 million General Fund appropriation in each of the next two fiscal years.

The fund would be used for loans to convert heating and cooling systems in public buildings from current energy sources to the use of woody biomass. The State Energy Office would adopt and promulgate rules and regulations to carry out the act.

Any agency of state or local government would be eligible to apply to the State Energy Office for a loan from the fund. The Energy Office would be responsible for adopting and promulgating rules and regulations to implement the act.

LB 577 – Change provisions relating to improvement project areas of natural resources districts, Rogert. The bill limits the power or authority of NRDs to cooperate with or enter into agreements with, or to furnish financial or other aid to, any person who is in the business of selling or leasing, offering for sale or lease, or advertising for sale or lease, residential or commercial real property, when the cooperation, agreement, or financial or other aid relates to real property taken by the district through the use of eminent domain.

The bill also makes major changes to the improvement project statutes to limit the district’s ability to utilize the act for improvement projects. Specifically, the bill would prohibit the authority for 1) development and management of fish and wildlife habitat and 2) development and management of recreational and park facilities.

The bill strikes all existing law relating to benefits, benefit areas, benefit units, special benefits, geographic areas, etc., under the program and creates new definitions for such. The bill also requires for districts that encompass a metropolitan class, owners of land outside the benefit area would have to approve of a project if they felt they may be impacted.

The bill further prohibits a project and any cooperation, agreement or financial aid with any person, company, firm, corporation, or other entity that owns land within the proposed improvement project area at the time the project is proposed if they have owned the land for less than ten years.

Finally, the bill limits the total bonding authority for a project to no more than 12 percent of the taxable value of the property.

LB 581 -- Change disposition of funds from Pesticide Act fees and weed book sales, Carlson. The bill makes changes to the distribution of pesticide fees to increase funding to the noxious weed program. The bill shifts \$10 per product from the Buffer Strip Program to the Noxious Weed Program as shown in the chart below

Pesticide Product Registration Fee

	Specialty (5700 Products)		Non-Specialty (5,490 Products)	
	Current Fee	Proposed	Current Fee	Proposed
Pesticide Act Administration	\$70	\$70	\$0	\$0
Noxious Weed Regulatory	\$30	\$40	\$30	\$40
Buffer Strip Program	\$60	\$50	\$60	\$50
Water Resources Fund	\$0	\$0	\$110	\$110
Total	\$160	\$160	\$200	\$200

The bill also transfers \$100,000 from the Buffer Strip Program to the Noxious Weed Program in FY 09-10 for a contract between the Department of Ag and UNL for water conservation research.

LB 582 -- Create the Nebraska Invasive Species Council, Dierks. The bill establishes the Nebraska Invasive Species Council to recommend action to minimize the effects of harmful invasive vegetation in Nebraska.

The 14-member council would consist of:

- 1) The regional director of the Midwest Region of the National Park Service or a designated representative;
- 2) The Executive Director of the Nebraska Association of Resources Districts or a designated representative;
- 3) The head of the Nature Conservancy, Nebraska Office, or a designated representative;
- 4) The Director of Agriculture or a designated representative;
- 5) The Secretary of the Game and Parks Commission or a designated representative;
- 6) The director of the Nebraska Forest Service or a designated representative;
- 7) A representative of the Nebraska Weed Control Association;
- 8) The Chancellor of the University of Nebraska-Lincoln or a designated representative;
- 9) The local representative of the

Animal and Plant Health Inspection Service of the United States Department of Agriculture or a designated representative; 10) A representative of the Natural Resources Conservation Service of the United States Department of Agriculture or a designated representative; 11) A representative of the United States Geological Survey or a designated representative; 12) The unit leader of the Nebraska Cooperative Fish and Wildlife Research Unit or a designated representative; and 13&14) Two members-at-large appointed by the Governor.

The responsibilities of the council would include: 1) Develop and periodically update a statewide adaptive management plan for invasive vegetation; 2) Serve as a forum for discussion, identification, and understanding of invasive vegetation issues; 3) Facilitate the communication, cooperation, and coordination of local, state, federal, private, and non-governmental entities for the prevention, control, and management of non-native invasive vegetation; 4) Assist with public outreach and awareness of invasive vegetation issues; and 5) Provide information to the Legislature for decision making, planning, and coordination of invasive vegetation management and prevention.

The adaptive management plan will address the following: (1) Statewide coordination and intergovernmental cooperation; (2) Prioritization of invasive species response and management; (3) Early detection and prevention of new invasive species through deliberate or unintentional introduction; (4) Inventory and monitoring of invasive species; (5) Identification of re-vegetation, reclamation, or restoration of native vegetation following control or eradication of invasive vegetation; (6) Identification of research and information gaps; (7) Public outreach and education; (8) Identification of funding and resources available for invasive species prevention, control, and management; and (9) Recommendations for legislation regarding invasive species issues.

The adaptive management plan, submitted to the Governor and the Agriculture Committee of the Legislature, would be updated at least once every three years following its initial development. Prior to the start of the 2012 legislative session, the council shall prepare a report to the Agriculture Committee of the Legislature that makes recommendations as to the extension or modification of the council.

LB 624 -- Provide for energy efficiency loans for public buildings, Haar. The bill creates the Public Building Energy Efficiency Fund for use by any political subdivision for a public building energy efficiency loan.

Loans received pursuant to this section shall be used only for energy-efficiency projects approved by the State Energy Office at the time the loan is approved. Energy-efficiency projects may include building and equipment improvements. Building and equipment improvements include, but are not limited to, lighting, heating, ventilation and air conditioning, windows, insulation, and energy control or management systems.

The State Energy Office shall compile records of all loan applications and the amount of energy and financial savings resulting from approved loans. Loans would be distributed geographically throughout the state to the extent possible.

LB 626 -- Change prohibited activities for public officials and public employee's use of public resources, Karpisek. The bill makes several changes and clarifications regarding incidental use of governmental property by governmental employees. First, the bill outlines that use of public resources by a public official or public employee which is incidental, de minimis, or unintentional shall not constitute a violation of the Nebraska Political Accountability and Disclosure Act.

Second, the bill proposes that an employment contract, a collective-bargaining agreement, or a written agreement or policy with a provision regarding the use of personnel, resources, or property which is approved by a government body shall be exempt from the Nebraska Political Accountability and Disclosure Act.

Third, and unless otherwise provided by an employment contract, a collective-bargaining agreement, or a written agreement or policy approved by a government body, a public official or public employee may use a telecommunication system or computer under the control of a government body for email, a text message, a local call, or a long-distance call to a child at home, a teacher, a doctor, a day care center, a baby-sitter, or a family member to inform any such person of an unexpected schedule change or for other essential personal business. Any such communication shall be kept to a minimum and shall not interfere with the conduct of public business. Any such communication made by way of a long-distance call shall be made by collect call, charged to a personal credit card, or charged to a third-party number which does not belong to a government body.

Fourth, the bill allows public employees to respond to specific inquiries by the press or the public as to his or her opinion regarding a ballot question or providing information in response to a request for information. It also allows public officials or public employees under the direct supervision of a public official to make use of public resources in expressing his or her opinion regarding a candidate or a ballot question or to communicate that opinion. These authorities are currently extended to members of the Legislature.

Finally, the bill outlines that nothing shall prohibit a public official or public employee from identifying himself or herself by his or her official title.

LB 632 -- Adopt the Nebraska Green Building Advantage Act and authorize a sales tax refund, Mello. The bill adopts the Nebraska Green Building Advantage Act and provides a sales tax credit to those commercial buildings that use the Leadership in Energy and Environmental Design Green Building Rating System (LEED). Commercial building is defined to mean a building that will be or is being used for commercial activities, including retail, medical, distribution, wholesale, manufacturing, or rental property.

The sales tax refund would graduate from 10 to 50 percent as more LEED Standards are incorporated into the building.

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 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.

LB644 - Adopt the Electronics Recycling Act, Mello. The bill creates a recycling program for electronic devices. Electronic device is defined in the bill to mean a computer, video display device, or television. The bill establishes fees on the manufacturer of these devices based upon the volume sold in Nebraska to generate funds for recycling.

The bill also requires manufacturers to develop a plan for recycling and file it with the Department of Environmental Quality. The fund from the fees would be earmarked to award grants for education and information about electronics recycling, infrastructure development, collection, transportation and recycling of electronic devices.

On or before January 31, 2010, and each January 31 thereafter, a manufacturer shall remit to the department the following registration fee based on the number of electronic devices sold in this state by the manufacturer in the previous calendar year: (a) \$1,000 for sales of 500 to 1,000 electronic devices; (b) \$7,500 for sales of 1,000 to 5,000 electronic devices; or (c) \$20,000 for sales of more than 5,000 electronic devices.

The fee would be reduced to the manufacturer or group of manufacturers based on a certain percentage of units recycled to units sold. These reductions would be as follows: 1) 10 to less than 20 percent, a 10% reduction in the fee; 2) 20 to less than 30 percent, a 20% reduction in the fee; or 3) 30 percent or more, a 50% reduction in the fee.

LB 651 – Create Water Resources Revolving Loan Fund Act, Christensen. (NARD Bill) The bill creates the Water Resources Revolving Fund to provide low interest loans to natural resources districts or any joint entity with a joint project which is to be owned, operated, or financed by the joint entity or joint public agency for the benefit of its member natural resources districts for the purposes of developing and protecting water resources in the state. The Natural Resources Commission would have oversight over the program and an administrative fee would be allowed to pay for operational cost of the program.

The loans under the program would be for activities related to financing or refinancing the costs of eligible projects including,

(1) acquisition by purchase or lease of water rights in accordance with Chapter 46, article 6, pertaining to ground water, and Chapter 46, article 2, pertaining to surface water, including storage water rights with respect to a river or any of its tributaries,

(2) acquisition by purchase or lease or the administration and management, pursuant to mutual agreement, of canals and other works, including reservoirs, constructed for irrigation from a river or any of its tributaries,

(3) vegetation management, including, but not limited to, the removal of invasive species in or near a river or any of its tributaries,

(4) the augmentation of river flows consistent with the authority granted under Chapter 2, article 32, and

(5) to develop, store and transport water, and to provide, contract for, and furnish water for domestic purposes, agriculture, manufacturing, and any and all other beneficial uses.

The initial funding source for the program would come from the repayment of the loan provided by the State of Nebraska to the natural resources districts in the Republican River Basin last year under LB 1094.

LB 656 Adopt the Health Care Accessibility and Affordability Act, Harms. Establishes a Health Care Plan Advisory Council to develop recommendations for a comprehensive plan to require all Nebraskans not covered by Medicare to have a basic health insurance plan which includes preventive services, behavioral health care, dental care, and long-term care, which is developed and reviewed periodically by health care professionals and members of the public, and which allows for purchase by employers or individuals.

The council would be made up of six persons appointed by the chairperson of the Health and Human Services Committee of the Legislature and six persons appointed by the chairperson of the Banking, Commerce and Insurance Committee of the Legislature. The council shall include, but not be limited to, at least one representative from each of the following classes of persons: Health care providers, health care consumers, and consumer advocates, business representatives, insurers, and elected officials.

The recommendations for the plan would be submitted to the Legislature on or before September 1, 2010.

LB 666 – Changes to the Niobrara Scenic River Council, Langemeier. The bill removes the requirement that the Niobrara Scenic River Council has to approve of zoning requirements imposed by cities, villages and counties in the area covered by the designation. The change places the appointed council in an advisory role to local elected officials rather than an oversight role.

The bill redefines the mission of the council to provide local representation to the National Park Service and report to the county boards of Brown, Cherry, Keya Paha, and Rock counties. The bill changes the membership requirements of the council for three representatives on the council so that they must reside in a county that includes land in the Niobrara Scenic River corridor. These representatives include: 1) the recreational business representative; 2) the timber industry representative; and 3) the recognized, nonprofit, environmental, conservation, or wildlife organization representative.

The bill further encourages the use and enjoyment of the Niobrara River for recreational, fish and wildlife, geological, historical, cultural, or other assets, and encourage continuance of existing agricultural, horticultural, forestry, and open space land and water uses.

Finally, the bill strikes the authority of the council to hold titles to real estate, accept gifts of real estate, or obtain conservation easements in the name of the council.

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.