



NEBRASKA ASSOCIATION OF RESOURCES DISTRICTS

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April 17, 2008

TO: NARD Board, NRD Managers and Conservation Partners
FROM: Dean E. Edson, NARD Executive Director
RE: April 17 NARD Sine Die Update

Session Ends -- The Nebraska Unicameral adjourned sine die on April 17th, ending the 60-day work session for 2008. All bills that did not receive final approval were indefinitely postponed. The Unicameral is scheduled to begin the 90-day work session on January 7, 2009. Please take time to thank your state senator for their work this session.

Term Limited Senators -- This session will be the last for 15 state senators due to term limits. These include: *Senator Ray Aguilar*, Grand Island, 9 years; *Senator Carroll Burling*, Kenesaw, 8 years; *Senator Ernie Chambers*, Omaha, 38 years; *Senator Pat Engel*, South Sioux City, 15 years; *Senator Phil Erdman*, Bayard, 8 years; *Senator Carol Hudkins*, Malcolm, 16 years; *Senator Ray Janssen*, Nickerson, 16 years; *Senator Joel Johnson*, Kearney, 6 years; *Senator Lowen Kruse*, Omaha, 8 years; *Senator Vickie McDonald*, St. Paul, 7 years; *Senator Dwite Pedersen*, Omaha, 16 years; *Senator Don Preister*, Omaha, 16 years; *Senator Ron Raikes*, Lincoln, 11 years; *Senator DiAnna Schimek*, Lincoln, 20 years; and *Senator John Synowiecki*, Omaha, 7 years. These senators will remain in office until newly elected senators are sworn in next January.

The following provides a list of bills passed (pages 1-4), those indefinitely postponed (pages 5-12), and a list of interim studies of interest (page 12-13). ***Unless otherwise noted, the bills passed and signed by the governor become law 3 months after the legislature adjourned the session.***

Bills Passed

LB 202 - Joint entities and liens. Senator Louden. The bill requires that any joint entity or joint public agency's governing board consist of elected officials, if that entity has the ability to place a lien on property for nonpayment of debt. It also requires that prior to a joint entity or joint public agency created under the Interlocal Cooperative Act or Integrated Solid Waste Management Act exercises its authority to place a lien on real property, its governing board must consist of elected officials. The Legislature gave final approval on a 44-0-5 vote in February and the bill was signed into law by Governor Heineman.

LB 724 - Change fees under the Remedial Action Plan Monitoring Act. Natural Resources Committee. The Legislature gave final approval on a 41-0-8 vote and the bill was signed into law by Governor Heineman. The bill lowers the application fee from \$5,000 to \$2,000 for entities that want to apply to the Department of Environmental Quality to monitor remedial action plans. The bill also lowers the additional deposit, which covers the department cost for the application, from \$5,000 to \$3,000.

LB 727 - Change provisions relating to hearings conducted by the Department of Natural Resources. Natural Resources Committee. The Legislature approved **LB 727** on a 43-0-6 vote and the bill was signed into law by Governor Heineman. The bill changes the time from 15 days to 30 days for a party to request the Department of Natural Resources to hold a hearing on a final decision made by the department that did not have an original hearing.

LB790 - Increase buffer strip payments. Senator Erdman. The bill increases the maximum payment through the Nebraska Buffer Strip Programs from \$150 to \$250 per acre. The Legislature approved **LB 790** on a 47-0-2 vote and the bill was signed into law by Governor Heineman.

LB 798 - Natural Resources Committee packaged bill (includes LB's 798, 799 & 800). Natural Resources Committee. The Legislature approved **LB 798** on a 44-0-5 vote and the bill was signed into law by Governor Heineman. The final version of the bill includes provisions of two other bills, **LB 799 and 800**. The original bill, **LB 798**, changes the definition of a headwater segment of a natural stream to an ephemeral natural stream, which would be exempt from state storage and use permits. The definition is further refined as that portion of a natural stream in which water flows only after a precipitation event or when augmented by surface water runoff caused by the pumping of ground water for irrigation. That portion of a natural stream that is shown as an intermittent stream on the most recent United States Geological Survey topographic quadrangle map published prior to the effective date of this act shall be considered an ephemeral natural stream, unless the Department of Natural Resources has investigated the stream and determined that the stream or a reach of the stream is perennial or intermittent and subject to Chapter 46, article 2. The department's determination for the purposes of this section shall be adopted and promulgated in rule or regulation.

Included in the bill is **LB 799**, which allows for a transfer of surface water for irrigation when there is a change in the point of diversion which meets the following requirements: (i) The new point of diversion is on the same named stream, the same tributary, or the same river or creek as the approved point of diversion; (ii) the proposed point of diversion will not move above or below an existing diversion point owned by another appropriator; and (iii) the proposed point of diversion is not above or below a tributary stream or a constructed river return or a constructed drain.

Also in the final version is **LB 800** which allows for all intentional underground water storage projects to charge a fee for withdrawal of water. Existing law prohibits projects existing on August 26, 1983 from charging a fee. The committee earlier rejected an amendment to involve the NRDs in the approval process for a fee on groundwater, which was rejected by Chairman Loudon as he wanted no oversight on the fee.

LB 961 - Biennium Budget. Speaker Flood on behalf of the Governor -- State senators gave final approval to the budget bills (**LBs 960& 961**) the last week of March. On Select File, **Senator Erdman** was successful in adopting **AM 2427 to LB 961** which incorporates part of **LB 862** to the budget. The portion added was the transfer of \$250,000 from the Commercial Feed Administrative Cash Fund to the Noxious Weed and Invasive Plant Species Assistance Fund.

The only significant change in funding for natural resources programs is new language to allow the Nebraska Game and Parks Commission to receive a federal grant of \$1,547,126 for Pallid Sturgeon Studies. There were no changes in NRD state aid or other NRD programs from the appropriations provided in last years biennium budget.

The rules of the legislature require the budget to be finalized by Day 50 of the session which was March 31st. The following chart shows funding levels for natural resources programs.

Funding for Natural Resources Programs (Approved in 2007 – No changes made in 2008)

Funding Levels Approved in the 2007 Session (no changes made in 2008)		
Program	FY 07-08	FY 08-09
State Aid to NRDs	\$1,545,502	\$1,545,502
Small Watersheds	\$500,000	\$500,000
Soil and Water Conservation Fund	\$3,193,454	\$3,193,454
Water Well Decommissioning	\$240,840	\$240,840
Resources Development Fund	\$3,373,066	\$3,373,066
Soil Survey Fund	\$75,000	0
Natural Resources Water Quality Fund	\$1,250,000	\$1,250,000
Interrelated Water Mgt Plan Program	\$2,412,854	\$2,412,854
DNR Agency Operations Fund	\$8,789,160	\$9,054,149

LB 962 - Change public body meeting provisions of the Open Meetings Act. Senator Preister. The bill prohibits public bodies from requiring that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The Legislature approved **LB 962** on a 46-0-3 vote and the bill was signed into law by Governor Heineman.

LB 986 - Electronic Recycling Act. Senator Preister. Senators passed **LB 986**, which creates the Electronic Recycling Act, on a 42-4-1 vote on the last day of the session. The Legislature adjourned before any action was reported on the bill from Governor Heineman. The governor has 5 days, not including Sundays, to sign or veto a bill. If no action is taken within the 5 days, the bill becomes law without his signature. 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 manufactures 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 infrastructure development, collection, transportation and recycling of electronic devices. The bill was introduced by Senator Preister, and is his personal priority bill.

When the bill came up for Select File debate, three of the four pending amendments were withdrawn. Senator Loudon did take **AM 2522** to a vote, but it was defeated. The amendment would have imposed an additional fee of \$2.00 per electronic device sold by retailers. The amendments withdrawn included **AM 2555, AM 2535 and AM 2536**.

Senator Loudon offered **AM 2555** which would have stricken the manufacturers fee refund. Senator Kopplin filed two amendments to the bill including: 1) **AM 2535** which would have terminated the program 3 months after adoption of a federal program; and 2) **AM 2536** which would have redirected funds remaining at the end of the fiscal year to the General Fund rather than allowing them to be carried over for the next fiscal year grant cycle. Concepts of these amendments were included in amendments adopted on Select File offered by Senators Preister (**AM 2730**) and Kopplin (**AM 2763**).

Senator Preister offered **AM 2730**, which was a made several minor changes, including; 1) to clarify fees only apply to electronic devises used in a home or residential environment and marketed to the general public; 2) Changes the fees under the act to the following -- \$1,000 for 500 to 1,000 electronic devices; \$7,000 for over 1,000 to 5,000 electronic devices; \$20,000 for over 5,000 electronic devices; 3) Beginning in FY 2010-11, authorizes the Department of Environmental Quality to adjust the fees on an annual basis to collect a minimum of \$1 million and a maximum of \$1.5 million; 4) Authorizes the director of the Department of Environmental Quality the ability to end the program, if a federal recycling program is established.

Senator Kopplin offered **AM 2763**, which changed the refund provision of the fee. In the version adopted and advanced on General File, up to 50 percent of the fee would be refunded if an approved plan is filed with the department. Under Senator Kopplin's amendment, a refund to the manufacturers would be tied to the percentage of products recycled as compared to the number sold. The amendment lays out: 1) If 10 to less than 20 percent were recycled, the refund would be 10 percent; 2) 20 to less than 30 percent were recycled, the refund would be 20 percent; and 3) if more than 30 percent were recycled, the refund would be 50 percent.

The accompanying appropriations bill, **LB 986A**, authorizes \$1,720,000 to be transferred to the fund from the cash fund created under the act in FY 2009-10.

LB 988 – School finance changes includes Insurance Risk Pool levy issue. Senator Raikes. Senator Raikes was successful in adopting **AM 2585 to LB 988**, the school finance bill. There are many unrelated natural resource issues in the bill, but AM 2585 was worked out to resolve some concerns about insurance payments by political subdivisions. The amendment incorporates **AM 2134 to LB 1017**, which would make taxes levied by Educational Service Units and schools for insurance payments subject to the levy limit. The original bill would apply to all political subdivisions. The final version limits the levy restrictions on insurance payments and bonds to school

districts and Educational Service Units. Pooling arrangements by other political subdivisions would be unaffected by the bill. Governor Heineman signed the bill into law after the Legislature approved **LB 988** on a 33-14-2 vote.

LB 1049 - Game and Parks Commission member terms. Senator Erdman. A bill to change the terms of the Nebraska Game and Parks Commission passed final reading on a 40-2-7 vote and was signed into law by Governor Heineman. The final version of the bill makes the following changes: 1) Adds an at-large member, bringing the total number of commission members to nine; 2) Eliminates the requirement that two of the members reside on a farm or ranch, but leaves the requirement that three of the members shall be actually engaged in agricultural pursuits; 3) Increases the limit from four to five of the members can be of the same political party and clarifies that the party affiliation would be determined as of the statewide general election prior to his or her appointment; and 4) The bill establishes that person can serve no more than two terms as a member of the commission.

LB 1094e - Republican Basin irrigator payment approved. Senator Carlson. -- The Legislature gave final approval to the bill on a 46-0-3 vote on April 7th and Gov. Dave Heineman signed the bill into law. The bill, **LB1094**, will loan \$9 million from its cash reserve to the Republican Basin NRDs to pay irrigators for water leased in 2007. The emergency clause was added to the bill so it became law upon signing.

Because of a pending lawsuit, the Republican Basin NRDs could not issue the bonds allowed under LB 701 to pay the irrigators who leased water to the NRDs. The lawsuit alleges a new state law (LB 701) that allows property taxes to be collected for the purchase of water is unconstitutional. The case is still pending in Lancaster County District Court.

If the state loses the lawsuit and the property taxes are ruled unconstitutional, the \$9 million could be paid back to the state through a current tax on irrigated acres or through some other mechanism approved by the Legislature.

The State of Nebraska should be 29-44,000 acre feet in the black for 2007 primarily due to the efforts of the NRDs through groundwater regulation and surface water leases.

Other bills included in LB 1094 -- State senators included a couple of other bills in **LB1094** in initial stages of debate, which now become law.

- On Select File, a revised version of **LB 975** was incorporated, which changes the criteria on groundwater use on acres that have leased surface water. The amendment changes the criteria on groundwater use on acres that have leased surface water. The amendment would eliminate the existing language and replace it with a requirement in that the agreement for the lease or purchase identify a) the method of payment, b) the distribution of funds by the party or parties receiving payment, c) the water use or rights subject to the agreement, and d) the water use or rights allowed by the agreement. Additional language was added to require that if any irrigation district is party to the agreement, the irrigation district shall allocate funds received under such agreement among its users or members in a reasonable manner, giving consideration to the benefits received and the value of the rights surrendered. Senator Christensen was successful in adopting **Floor Amendment 198** which clarified that the conditions placed on the landowners for the water leases would only apply to the specific contract period of the lease.
- A second amendment, **AM 2325**, offered by Senator Christensen, incorporates provisions of the committee amendment (**AM 1895**) to **LB 1131**. This amendment clarifies that occupation taxes imposed under LB 701 for the water leases shall be collected and delinquent in the same manner as property taxes. This committee amendment also allows the county treasurer shall publish and post a list of delinquent occupation taxes with the list of real property subject to sale for delinquent property taxes. The list would also be provided to the natural resources districts which levied the taxes. Finally, this amendment clarifies that the county treasurer shall receive the one percent fee provided for collection of general natural resources district money.

Bills indefinitely postponed

(Note – LB’s 13 through 652 were carry over bills from the 2007 Legislative Session.)

LB 13 - Interlocal Cooperation Act. Senator Mines. The bill proposed new procedures and oversight for entering into interlocal agreements. Any existing joint entities would have been required to complete this application and certification process.

LB 17 - Prohibit NRD Dual Office Holding. Senator Mines –As proposed the bill would have added the NRD office holders to the list of high elective offices that would be prohibited from filing as a candidate for another high elective office. Current law defines higher elective office as a member of the Legislature, county, city, or school district. Senator Ernie Chambers filed a motion to indefinitely postpone LB 17 on the second day of General File debate on the bill in 2007. Senator Mick Mines quickly asked to pass over the bill to avoid taking up the IPP motion. This bill was laid over until this year’s session, but never taken up. Senator Mines resigned from office prior to the 2008 session and was replaced by Senator Lautenbaugh.

LB 20 – NRD Projects and Public Access. Senator Mines. The bill proposed to require public recreation access to NRD water project properties and private lands under NRD easements if NRD contributions are 5 percent of the cost of the project. Current law, adopted in 2006, requires public access if the NRD cost is 20 percent of the total cost

LB42 – Change Distribution of Cigarette Tax. Senator Hudkins. This bill proposed that, commencing October 1, 2007, and continuing until October 1, 2012, the State Treasurer shall place the equivalent of forty-nine cents of cigarette tax in the Highway Allocation Fund, to be distributed in the same manner as all other funds accruing to the Highway Allocation Fund.

LB 78 – Recoverable Amounts. Senator Nantkes. The bill proposed to increase the amounts recoverable against any employee for claims filed pursuant to section 13-920 or under the Political Subdivision Tort Claims Act from \$1 million per occurrence and \$5 million aggregate to \$3 million per occurrence and \$12 million aggregate.

LB 105 - Nebraska Forest Service. Senator Louden. The bill proposed to appropriate \$425,000 from the General Fund for FY2007-08 and \$425,000 from the General Fund for FY2008-09 to the Nebraska Forest Service for forest fuels management. It is intended that funds appropriated be used in conjunction with federal and private resources to reduce forest fuel loads. Some increased funding occurred in the 2007 session for the Nebraska Forest Service.

LB 187 – Interlocal Agreements. Senator Mines. The bill would have prohibited agreements pursuant to the Interlocal Cooperation Act between: (a) A school district and a public power district for the purpose of contracting for utilities for use by the school district; or (b) A school district and an educational service unit for the purpose of contracting for the services of full-time or part-time employees for use by the school district.

LB 197 – Political Subdivisions Tort Claims Act. Senator Schimek. The bill proposed that if a political subdivision is transacting business under a name other than the true name of the political subdivision and has not registered a trade name as required, the time period for beginning suit under the Act shall commence upon the registration of the trade name.

LB 291 – Change membership on the Nebraska Environmental Trust Board. Senator Hansen. – Senators decided to pass over a bill that would change the membership on the Nebraska Environmental Trust Board. The measure would eliminate the representation by congressional district and set districts similar to the boundaries of the Nebraska Game and Parks Commission. Two pending amendments resulted in the action by the bills sponsor, Senator Tom Hansen from North Platte, to pass over the bill rather than drag out debate. One amendment offered would make the agency directors that sit on the trust board ex officio, nonvoting members. The second amendment would strike the enacting clause. The bill was on Select File from the 2007 session and was not debated in 2008.

LB 295 – Irrigation and Water Wells. Natural Resources Committee. This bill proposed to make a number of changes at the request of the Nebraska Department of Natural Resources, including:

- Adds U.S. Bureau of Reclamation on the list of entities which may have appropriations terminated for nonuse.
- Clarifies that no person shall use a water well for purposes other than its registered purpose until the water well registration has been changed to the intended new use.
- Provides an exception so that a person may use a water well registered for purposes other than its intended purpose for a de minimis use for livestock, monitoring, observation, or any other nonconsumptive use approved by the applicable natural resources district.

Provisions of the bill were incorporated into LB701 and approved in the 2007 session.

LB 387 – Require Water Meters on new Construction. Senator Langemeier. The bill proposed that beginning January 1, 2008, all new residential construction equipped with plumbing shall have water meters and plumbing installed in such a way as to separate potable water used outside the residence from potable water used inside the residence. Beginning January 1, 2015, all new construction equipped with plumbing and all new water service changes shall have water meters and plumbing installed in such a way as to separate potable water used outside the building or residence from potable water used inside the building or residence. The costs of implementing this section shall be borne by the property owner, except that water meters shall be supplied and maintained by the water service provider.

LB 391 - Copies of records and speaking at public meetings. Senator Mines. This bill was placed on General File in 2007 by the Government Committee with **AM 678**. The amendment would take place of the original bill, and proposes the following changes to open meetings laws. First, the amendment proposes requests for public records made during specific time must contain a specific subject matter. Second, the bill sets up a process for citizens to request an item be placed on the agenda for future meetings. Third, the amendment would not require members of the public to be on the agenda to speak on agenda items. **The third portion of the amendment was included in LB 962 and signed into law.**

LB420 – Change Cigarette Tax Distribution and Create Funds. Senator Erdman. This bill proposed to create the Agricultural Research Fund and the Water Resources Cash Fund. Both funds would be supported by cigarette taxes, and beginning July 1, 2008, \$1.5 million and \$1 million annually would be placed in the Agricultural Research Fund and the Water Resources Cash Fund, respectively.

LB 448 – Extend the time-frame to file lawsuit against political subdivisions. Senator Ashford. The bill proposed to extend the time frame for claims to be filed against a political subdivision or a employee of a political subdivision permitted under the Political Subdivisions Tort Claims Act from 1 year to 2 years. The bill maintains the limitations of two years to begin a lawsuit against a political subdivision.

LB488 - Income Tax Credit for Perpetual Conservation Easement Donations. Senator Wallman. – Senator’s debated a bill to allow for conservation easement tax credits on General File in 2007. Senator Wallman’s priority bill, LB 488, originally would have provided a 50% income tax credit to all donated conservation easements so long as that credit did not exceed \$250,000. The Revenue Committee amendment to the bill would place a cap of \$5 million in credit. After some debate and failed amendments to the bill, Senator Langmeier filed a motion to indefinitely postpone. The bill was laid over at the request of Senator Wallman rather than taking up the IPP motion and was never debated again.

LB 493 – Change requirements of the Water Policy Task Force. Senator Langemeier. The bill proposed to reduce the minimum number of meeting times the Water Policy Task Force from 2 to 1 time annually. The bill also requires the task force to review of the research done at the University of Nebraska relating to implementation of Laws 2004, LB 962, and a recommendation with respect to necessary research for continued implementation of LB 962.

LB 534 – Funding Storm Water Programs and Sewage. Senator Schimek. The bill proposed to allow cities, villages and counties in urbanized areas to issue revenue bonds to pay for development of storm water programs, including any storm sewer systems. An urbanized area means a statistical geographic area defined by the United States Department of Commerce, Bureau of the Census, consisting of a central place or places and adjacent densely settled territory that together contain at least fifty thousand inhabitants and have an overall population density of at least one thousand inhabitants per square mile.

The programs would be paid for by development of charges for the use of a storm sewer system which would be proportionate to the storm water contribution of the premises served and based upon sound engineering principles, as determined by the city or village, and may include allowances or adjustments for impervious land surfaces and land uses and credits for storm water quantity and quality best management practices.

Finally, the bill requires a city or village that is implementing a program to establish a system of exemption from storm water charges for the property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivision for a public purpose.

LB 566 – Recreational Liability Act. Senator Louden. The bill proposed to adopt the Public Recreation Liability Act which extends some recreational liability protection the land owners (defined as the state, a state agency, including the University of Nebraska and any state college or community college, or a political subdivision that is the title holder, tenant, lessee, occupant, or otherwise in control of the land). The liability protection would apply to the owner who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes. If there is no charge, the owner does not thereby (1) extend any assurance that the premises are safe for any purpose, (2) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed, or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

The liability protection would not extend for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity or for injury suffered in any case where the owner of land charges the person or persons who enter or go on the land. Recreational liability issues were incorporated into **LB564 in 2007 and passed into law**. That bill was introduced in response to a 2006 Nebraska Supreme Court decision, *Bronsen v. Dawes County*. In that case, the court overruled more than 25 years of precedent declaring that state law does not provide governmental entities with the same limited immunity. That law (**LB 564**) created three exemptions to the liability of state or local government for claims relating to recreational activities for which no fee is charged:

- 1) Claims resulting from the inherent risk of the activity;
- 2) Claims arising out of a spot or localized defect of the premises unless the defect is not corrected by the state or political subdivision within a reasonable time after actual or constructive notice of the defect; and
- 3) Claims arising out of the design of a skate park or bicycle motocross park that was constructed using generally recognized standards in existence at the time the facility was constructed.

LB 567 – Extend Recreational Liability Protection to private landowners that charge access. Senator Louden. The bill proposed to extend recreational liability protection to private landowner and private entities that charge for access. Current law provides this protection, if they do not charge for access.

LB 622 - Open Meetings Act Training Sessions. Senator Pirsch. Senator's failed to advance this bill on General File in 2007 that would have required training courses for members of a public body, public officers, and public employees on the issue of public records and open meetings no later than one year after taking the oath of office or assuming his or her duties as a member of the public body or agency. The bill was not debated in 2008.

LB 652 – Mandatory Energy Audits, White. The bill proposed to require every agency, department, commission and every political subdivision of the State of Nebraska to conduct an audit of its energy usage. Such audit shall examine the following: (1) Methods of reducing energy usage by such agency, subdivision; (2) The costs of implementing such energy efficiency measures. (3) The projected benefits, including long-term cost reductions, from such energy efficiencies; and (4) Whether there are alternative energy resources that may be used in combination with energy efficiencies to provide further benefits.

A report of each audit conducted by this act shall be provided to the Clerk of the Legislature on or before December 31, 2007. Entities required to conduct such an audit are authorized to seek technical assistance from public utilities, the Nebraska Energy Office, the University of Nebraska, and other available resources.

(Note: LB's 725 through 1164 were introduced in the 2008 Session.)

LB 725 - Provide for grants under the Waste Reduction and Recycling Incentive Act. Natural Resources Committee. The bill provides grants from the Waste Reduction and Recycling Incentive program for reimbursement of costs to cities of the second class, villages, and counties with a population of five thousand or fewer for the deconstruction of abandoned buildings. In order to be eligible for grant funding, the recyclable content and structure of such building shall be processed for recycling or reuse.

LB 751 - Change noxious weed funding provisions relating to stream vegetation removal. Senator Christensen.

The bill expands the area qualified for riparian vegetation management in fully and overappropriated streams from 100 feet to 1,320 feet of the banks of a channel of any natural stream.

LB 801 - Add a requirement for integrated management plans. Senator Louden. The bill would have required integrated management plan developed for fully and/or overappropriated basins to prevent or offset any increased depletion to the stream resulting from the removal of a surface water appropriation from a tract of land by an adjudication, voluntary relinquishment, or transfer when the land continues to be served by a ground water well.

LB 802 - Provide for water diversion during times of flooding. Senator Louden. The bill would have allowed water to be diverted from a stream for the purpose of alleviating harm to downstream landowners and appropriators during times of flooding upon approval by the department and with the consent of downstream appropriators who may be affected.

LB 862 - Change noxious weeds funding provisions. Senator Erdman. The bill proposed to increase funding to the Noxious Weed and Invasive Plant Assistance Fund, which is used to assist county weed programs. On or before October 1, 2008, \$200,000 from the Commercial Feed Administrative Cash Fund to the Noxious Weed and Invasive Plant Species Assistance Fund. Beginning January 1, 2009, 2 cents of the existing 10 cent/ton commercial feed inspection fee would be transferred to the Noxious Weed and Invasive Plant Fund. Finally, 25 percent of the sale price of each Weeds of the Great Plains book sold by the Department of Agriculture would have been credited to the Noxious Weed and Invasive Plant Species Assistance Fund. However, **Senator Erdman** was successful in adopting **AM 2427 to LB 961** which incorporates part of **LB 862** to the budget. The portion added was the transfer of \$250,000 from the Commercial Feed Administrative Cash Fund to the Noxious Weed and Invasive Plant Species Assistance Fund.

LB 880 - Flood Control Funding. Senator Kopplin. The Legislature debated **LB 880** for about two hours this session before a bracket motion was adopted on a 25-8-16 vote. The bracket motion, offered by Senator Chambers, ended any further debate on the issue this year. The bracket motion ended the filibuster on behalf of Washington County residents which included a dozen amendments to the bill. The legislation proposed a way to finance design, rights-of-way acquisition, and construction of multipurpose projects, flood control structures and practices for storm water management.

The rejection of the bill leaves the Omaha metropolitan area without an important tool to address flood control and storm water runoff. The Omaha area is under a federal mandate to deal with its storm water. The issue is pressing as more land is developed in Washington, Douglas and Sarpy Counties. The bill would have allowed the Papio-Missouri River NRD to issue bonds to be paid back within the existing levy authority to finance the projects.

The Papio-Missouri River NRD is a member of the Papillion Creek Watershed Partnership, which was formed to address the watershed's critical water quality and flood prevention needs. The watershed connects and joins communities in the area, encompassing 402 square miles and more than one-third of Nebraska's population.

The Partnership is comprised of 11 local governments that are wholly or partially in the Papillion Creek Watershed. Bellevue, Girls and Boys Town, Gretna, La Vista, Omaha, Papillion, Ralston, Douglas County, Sarpy County and the Papio-Missouri River Natural Resources District have an inter-local cooperative agreement to work together to resolve the water quality and flood prevention needs. The northern part of the watershed is in Washington County, a jurisdiction that chose not to participate in the Partnership.

The guiding principles of the Partnership are cooperation, community participation and comprehensive watershed planning. The Partnership works through an open process of looking at the communities' needs and building consensus for solutions. Open meetings have and will continue to be held to gather public input. The 11 government bodies each decide independently to adopt common policies.

The Natural Resources Committee added an amendment (AM 1787) that makes three additional changes to address the concerns raised by the Washington County residents, known as the Papio Valley Preservation Association (PVPA), as follows: 1) Bond proceeds could not be used for structures holding more than 500 acres of a permanent pool of water which would eliminate the establishment of large dams in Washington County; 2) Specific language prohibiting the use of eminent domain for the purposes of enhancing private developers; and 3) Public access would be required on any structure created under this program that is greater than 20 acre pool.

After adding the language to address the concerns they raised, the PVPA changed their minds and decided to still oppose Senator Kopplin's Priority Bill. The group has asked several senators to file amendments to filibuster the bill. **Senator Hudkins filed AM 2476**, which would require that any dam would not have a permanent pool. **Senator Dubas filed AM 2471**, which would prohibit cooperation and agreements between the NRD and anyone who is directly or indirectly involved in analyzing the feasibility of a water project. This amendment does not specify whether the party is opposed to or supportive of the project, rather it just prohibits cooperation.

Some of the language in other amendments include: 1) Prohibiting all NRDs from entering into agreements with consultants to work on any water projects, 2) eliminate the NRD eminent domain authorities; 3) prohibit private land ownership next to water structures, 4) mandate all cities and other zoning authorities prohibit residential or commercial development in a 100-year flood plain, and 5) mandate that all landowners contain the first ½ inch of rain on their property.

LB 881 - Impose an excise tax on production of ethanol. Senator Stutman. The bill proposes a 3 cent/gallon excise tax on the production of ethanol in the state. The proceeds would be distributed through the Highway Trust Fund as follows: 1) Fifty percent to the Highway Cash Fund for the Department of Roads; 2) Twenty-five percent to the Highway Allocation Fund for allocation to the various counties for road purposes; and 3) Twenty-five percent to the Highway Allocation Fund for allocation to the various municipalities for street purposes.

LB 922 - Adopt the Cellulosic Biomass Renewable Energy Initiative and impose and change taxes. Senator Dubas. The bill proposed to create the Cellulosic Biomass Renewable Energy Board consisting of three members appointed by the Governor. One member shall be appointed from the Nebraska Ethanol Board, one member shall be appointed from the Department of Economic Development, and one member shall be appointed from the Department of Agriculture. Members shall serve at the pleasure of the Governor. The board shall review and approve applications for incentives under the Cellulosic Biomass Renewable Energy Initiative and award incentives within four categories: (1) Cost-share grants; (2) Loans; (3) Production incentives; and (4) General grants.

The program would have been funded by an excise tax of one cent per one million BTU units would be imposed on natural gas imported to Nebraska for industrial use. The tax shall be imposed until the fund reaches \$10 million and resumed when the fund falls below \$5 million.

LB 924 - Provide for streamflow depletion offsets. Senator Fisher. The bill proposed to modify several statutes relating to water management.

First, it proposed to establish a clear procedure for natural resources districts to follow to quantify gains to stream flows by integrated management plans or programs, and acquisition of existing groundwater or surface water uses on a permanent or temporary basis. The NRDs would certify the amounts to DNR.

Second, it proposed to modify the state endangered species act to more closely resemble the federal act in two respects: (1) Allows the Nebraska Game and Parks Commission to develop a reasonable and prudent alternative to a project that has been judged to jeopardize the continued existence of a protected species or adversely impacts designated critical habitat. Existing state law does not so provide although the Game and Parks Commission Rules and Regulations allow it. (2) Creates a committee to grant exceptions for projects that may harm a species. However, the project must have great value and there is no reasonable and prudent alternative. Although authorized to the US Fish and Wildlife Service under the federal Endangered Species Act, existing state law does not provide this exemption. It should be noted that under the state law, all federally listed species are also protected by the state law. The state law, however, allows for the listing of species as threatened or endangered that may not meet the federal criteria.

Third, when applying for an instream flow right, the proposed change would have required the Nebraska Game and Parks Commission and the natural resources to agree on an application prior to filing the application with the Department of Natural Resources. The parties would have to work together, no matter which entity initially is seeking the flow right.

Fourth, proposed to change the annual river basin determination procedure by requiring the Department of Natural Resources to review existing surface water rights nonuse prior to the department making a preliminary conclusion that a river basin, subbasin, or reach presently is fully appropriated. If the right as been forfeited or abandon, the rights would be adjudicated under section 46-229.02.

Finally, the bill proposed to eliminate the reference all other applicable state or federal laws for the department to consider for determining whether a basin, sub-basin or reach is fully appropriated. This change eliminates uncertainty and/or interpretation of which other laws to consider.

LB 945 - Change authority of natural resources districts. Senator Peterson. The bill would have prohibited natural resources districts 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.

LB 946 - Impose an excise tax on production of ethanol. Senator Burling. The bill proposed a 2 cent/gallon excise tax on the production of ethanol in the state. The proceeds would be distributed through the Water Resources Cash Fund starting in 2009 and eliminate the additional corn and sorghum checkoff that was scheduled to be implemented in 2013.

LB975 - Change provisions relating to river-flow enhancement bonds. Senator Wightman. The bill proposed to clarify limitation of groundwater pumping on acres where surface water has been leased that was passed last year in LB 701. The bill clarifies that the limitation is on the specific acre that was served by the leased or purchased water. It also outlines limitation when groundwater is purchased or leased. The bill outlines four situations and incorporates the changes needed to address the concerns of the existing language as follows:

- a) Single year NRD groundwater or surface water leases.
- b) Multiyear NRD groundwater or surface water leases.
- c) Single year State of Nebraska groundwater or surface water leases.
- d) Multiyear State of Nebraska groundwater or surface water leases.

Finally, a variance procedure was offered to allow for a landowner to rotate irrigated acres while maintaining the reduction in use. **A compromise version of LB 975 was incorporated into LB 1094 and passed into law.**

LB998 - Appropriate funds to the Nebraska Innovation Zone Commission and provide for a transfer from the Cash Reserve Fund. Senator Gay. Appropriates \$150,000 from the General Fund for FY 2008-09 to the Nebraska Innovation Zone Commission for the purpose of conducting phase two of a study to identify a plan of development for the six-county region within the Innovation Zone (I-80 Corridor between Lincoln and Omaha).

Those counties include and are limited to Lancaster, Cass, Sarpy, Douglas, Saunders, and Washington. The commission or member organizations of the commission shall contribute not less than fifty thousand dollars to the study.

LB 1017 – Change provisions relating to tax levies of members of risk management pools. Senator Raikes. Proposed that all costs and expenses associated with membership in a risk management pool, including, but not limited to, standard insurance coverage's, group self-insurance coverage's, assessments levied by the pool, retirement of debt incurred by the pool, and operating expenses of the pool be subject to levy limitations. Although the bill was indefinitely postponed, Senator Raikes was successful in adopting **AM 2585 to LB 988**, the school finance bill. The amendment incorporates **AM 2134 to LB 1017**, which would make taxes levied by Educational Service Units and schools for insurance payments subject to the levy limit.

LB 1040 - Impose an excise tax on production of ethanol. Senator Louden. The bill proposed a 1 cent/gallon excise tax on the production of ethanol in the state. The proceeds would be distributed through the Water Resources Cash Fund starting in 2013 and eliminate the additional corn and sorghum checkoff that was scheduled to be implemented in 2013.

LB 1041 - Protect certain water purchased or leased for river flow enhancement. Senator Christensen. The bill would have required surface water or ground water purchased or leased by the state, or purchased or leased for river-flow enhancement purposes by a natural resources district described in section 2-3226.01, to be fully protected and accounted for by the Department of Natural Resources from the point of diversion to the intended destination or use of such purchased or leased water, except for normal carriage loss.

LB 1050 – Changes the Nebraska Game and Parks to a Code Agency. Senator Erdman. The bill proposed to make the Nebraska Game and Parks Commission a code agency under the governor's office. The commission members would be changed to advisory members and the director of the agency would be appointed by the governor rather than hired by the commission members.

LB 1061 - Provide for fees, rebates, and grants relating to electronic equipment recycling. Senator Louden. The bill proposed a \$3 fee on televisions, computers and computer monitors. Of the fee, \$2.50 would go to the Waste Reduction and Recycling Fund and \$.50 would be retained by the electronic equipment retailer. Beginning in 2009, an electronic equipment retailer who accepts electronic equipment for recycling could receive an annual rebate of one dollar per item of electronic equipment recycled, subject to the following conditions: (a) The total amount of rebates received b) The retailer shall certify the total amount of fees remitted the previous year pursuant to such section; (c) The retailer shall certify the amount of electronic equipment accepted for recycling; and (d) The retailer shall certify that the electronic equipment accepted for recycling was recycled. **Concepts of this bill were incorporated into LB 986 and passed into law.**

LB 1127 - Change permitted uses of the Water Resources Cash Fund. Senator Christensen. The bill proposed to allow the Water Resources Cash Fund to be used to provide aid to natural resources districts for drought relief assistance and river flow augmentation.

LB 1131 - Authorize a collection fee for collection of a natural resources district occupation tax. Senator Christensen. The bill proposed to clarify that the county treasurer can collect a fee of one percent of the occupation taxes collected for NRD river flow enhancement bonds. The concept was included into **AM 2325 to LB 1094** and signed into law.

LB 1132 - Change provisions relating to river-flow enhancement bonds. Senator Christensen. The bill proposed to clarify that occupation taxes shall be collected in the same time and manner and shall also become delinquent at the same time and manner as general real estate taxes. The concept was included into **AM 2325 to LB 1094** and signed into law.

LB 1150 - Appropriate funds to the Department of Natural Resources. Senator Langemeier. The bill proposed to increase the funding for the Nebraska Resources Development Fund from \$3,373,066 to \$7,000,000.

LB 1161 - Appropriate funds to the Department of Natural Resources. Senator Karpisek. The bill proposed to appropriate \$100,000 from the General Fund for FY2007-08 to the Department of Natural Resources, to contract for an environmental study to consider the impact of placement of a flood control dam on the Blue River near Crete.

LB 1164 - Adopt the Wildlife Damage Act. Senator Lautenbaugh. The bill proposed to create a wildlife damage claim program in the Nebraska Game and Parks Commission to provide a cost-share program to counties for abatement and damage claims. Wildlife damage from deer, geese, turkey and elk would be eligible for the program. The counties would be required to have a wildlife damage program for landowners to be eligible for the program. Damages would be paid out up to a maximum of \$15,000.

Interim Studies

Interim Study Resolutions Introduced – Before the end of the session, senators will introduce subject matters to be researched before the next session. Hearings may be held on these matters, but are not required.

Senator LeRoy Loudon, Chairman of the Natural Resources Committee, introduced the following interim study resolutions:

- **LR 286.** To study return flow issues as they affect surface water irrigation in the State of Nebraska.
- **LR 287.** To examine Nebraska state forests as potential renewable energy resources.
- **LR 288.** To study the effects of water depletion across the State of Nebraska as well as the causes of such depletion.
- **LR 289.** To examine public power issues relating to the generation of power in the State of Nebraska.
- **LR 290.** To study the possibility of recycling construction waste and deconstruction materials.
- **LR 291.** To examine the application process for obtaining an instream flow right by either a natural resources district or the Game and Parks Commission.
- **LB 364.** To investigate and review matters and issues arising during the interim which are within the jurisdiction of the Natural Resources Committee of the Legislature.

LR 330 – Study water transfers. Senator Christensen. The purpose of the study is to examine and identify points of diversion for transferring excess water, flood water, and storm water between river basins to increase water management capabilities in Nebraska. The study shall include, but not be limited to, the identification of specific canals, creeks, and streams or other possible means of transferring water.

LR 331 – Study basin water transfers. Senator Christensen. The purpose of the study is to examine how to simplify and grant authority to a single entity to divert excess water in the Platte River to Johnson and Elwood Reservoirs after stream flows in the Platte River reach a specific level of cubic feet per second above the flows necessary to meet all other obligations. The study shall include, but not be limited to, identifying who would be the single entity to initiate diversion, how the specific cubic-foot-per-second level would be calculated, and identifying the specific cubic foot-per-second level for initiating diversions.

LR 332 – Study stormwater water transfers. Senator Christensen. The purpose of the study is to examine the concept of transferring storm water runoff from cities to the Republican River Basin to help with interstate water compact compliance. The study should include, but not be limited to, identifying potential cities as sources of storm water runoff, identifying potential methods to deliver water to the Republican River, and identifying potential methods of cooperation between political subdivisions to fund such transfer projects.

LR 350 - Renewable fuels. Senator Dubas. The purpose of this resolution is to examine opportunities in the growth and development of renewable energy, including cellulosic ethanol, biodiesel, and other systems for capturing energy values from agricultural products and waste streams. This study should identify policies,

programs, and strategies to optimize economic value realized by production agriculture and related economic sectors in renewable energy development.

LR 352 – Wind and Solar Rights. Senator Dubas. The purpose of the study is to examine a model for wind and solar rights in the State of Nebraska and to make recommendations for an appropriate model for future legislation.

LR 353 – Wind Energy Development. Senators’ Preister and Dierks. The purpose of this study is to examine the rural economic development potential of wind energy development in Nebraska and legislation which may advance this goal.

LR 356 – Flood control funding. Senator Preister. To examine whether there is a need to adopt additional financing mechanisms relating to taxation and revenue potential for a natural resource district encompassing a city of the metropolitan class in order to implement necessary flood control and water quality projects.

LR 366 – Irrigation efficiency. Senators’ Christensen, Avery, Carlson, and White. The purpose of the study is to look at other ways to save water by promoting more efficient irrigation methods. Examples to look at include, but are not limited to center pivot irrigation which uses forty to sixty percent less water than surface irrigation and low-pressure irrigation systems that lose approximately fifty percent less water to evaporation than high-pressure systems.

LR 377 - Review of the Department of Natural Resources. Natural Resources Committee. – The Natural Resources Committee introduced LR 377 to examine issues relating to the Department of Natural Resources. The study shall include a review of the structure and responsibilities of the department. The study shall also consider the authorities and qualifications of the Director of Natural Resources and other staff and explore the processes by which decisions that affect the state’s water and other natural resources are made. The study shall identify funding and resource needs consistent with the responsibilities and mission of the department.