

January 21, 2022

TO: NARD Board, NRD Managers and Conservation Partners  
FROM: Dean E. Edson, NARD Executive Director  
RE: January 21 NARD Update

**NARD 2022 Legislative Conference** - The 2022 NARD Legislative Conference will be held at the Embassy Suites next week. Registration and hotel reservations are close to pre-pandemic normal.

The City of Lincoln reinstated their mask mandate effective January 15, 2022, after it was dropped December 23, 2021. The mask mandate is nothing new. We have been functioning with this mask mandate in Lincoln since the spring of 2020. There are no other mandates, guidelines, or restrictions in place. This mask mandate will not impact our conference.

The Lancaster County [DHM](#) includes exceptions. Masks are not required for the following:

- Children under two years of age
- If you are able to maintain at least 6 feet of distance from other individuals at all times or are not in the same room or workspace of any other individual
- Individuals eating or drinking or seated to eat or drink
- Those engaged in exercise
- Those engaged in an occupation that prevents the wearing of a mask
- Those obtaining a service or purchasing goods or services that requires the temporary removal of the mask during the service, purchase or activity
- A person giving a speech, lecture, or broadcast to an audience as long as six feet of distance from other individuals is maintained
- Those individuals who cannot otherwise wear a mask because of a medical condition, a mental health condition, or a disability that prevents the wearing of masks
- Courts of law; meetings or sessions of the Nebraska Legislature; state or federal operations; congregate living settings; group homes and residential drug and/or mental health treatment facilities; or shelters

On Monday, January 24<sup>th</sup>, the Benefits Committee quarterly meeting will be in the morning. At 1 p.m., the NRD Managers Meeting will meet to discuss legislation. The NARD Legislative and Executive Committees will meet after the managers meeting.

Highlights of the conference include:

- Governor Ricketts will open the conference Tuesday morning
- Update on water funding and the work of the STAR WARS Committee
- Discussion of 2022 Legislative Bills and Business Sessions
- An update on the Nebraska Department of Revenue Conservation Easement Requirements
- South Platte River Compact Update
- Presentations on nitrate management for groundwater quality
- Vendor Trade Show
- Senators Reception Tuesday Night

- Senator Hughes, Chairman of the Executive Board of the Legislature is the Tuesday lunch speaker
- Senator Bostelman, Chairman of the Natural Resources Committee is the Wednesday lunch speaker

NARD Delegates will meet during the conference to review and take a position of Monitor, Support, or Oppose on bills of interest to NRDs. A summary of bills of interest will be provided with conference registration packets.

**New Bills** – The following bills were introduced this week

**LB 1048 - Appropriate federal funds to the University of Nebraska to evaluate the chemicals released and pollution caused by ethanol production facilities. Blood.**

The bill proposes \$10M in Federal ARPA Funds for FY2022-23 be appropriated to the University of Nebraska Medical Center for purposes of evaluating the following:

- (a) Adverse long-term environmental, ecological, and human health effects of the chemicals released during:
  - (i) Production of ethanol made from grain or seed treated with pesticide; and
  - (ii) Storage of byproducts created by the production of ethanol made from grain or seed treated with pesticide; and
- (b) The effects of polluted ground water, soil, and air relating to any ethanol production facility.

**LB 1074 - Create the Surface Water Irrigation Infrastructure Fund and provide for a transfer from the Cash Reserve Fund. Bostelman.**

The bill proposes to create a \$50M transfer in FY2022-23 to a new Cash Fund titled the Surface Water Irrigation Infrastructure Fund to be administered by the Department of Natural Resources. Under the proposal the Department shall establish procedures and criteria for awarding grants to irrigation districts.

The funds could be used by irrigation districts for repair or construction of any headgate, flume, diversion structure, check valve, or any other physical structure used for irrigation projects. Grant funds could not exceed \$5M per applicant. Applicants would be required to provide matching funds equal to 10% of the grant award.

**LB 1081 - Provide for a grant program for the design, construction, and implementation of water transport infrastructure under the Department of Natural Resources and state intent to appropriate federal funds. Bostar.**

The bill proposes to appropriate \$200M of Federal ARPA Funds to the Department of Natural Resources in FY2021-22 to award grants for the design, construction, and implementation of water supply projects. Eligibility would be limited to a municipality that utilizes more than 30M gallons of water per day.

Eligible projects include, but are not limited to, a water treatment plant, land acquisition, permitting, a wellfield, pumping, and transportation of water over twenty-five miles for the purpose of providing potable water to the municipality.

**LB 1096 - Provide for participation in trusts and investment pools by certain governmental entities. Halloran.**

The bill proposes that any agency, besides a state created agency, public or private shall be able to partake in a trust or investment pool established within the office of the State Treasurer. The State Treasurer will administer and oversee the trust or investment pool.

**LB 1102 - Adopt the Nebraska Environmental Response Act and change provisions relating to enforcement of environmental protection. Bostelman.**

The bill proposes to create an environmental response cash fund and response act. Pollutant is defined under the act as one or more substances or combinations of substances that alter the natural physical, chemical, or biological properties of any air, land or waters of the state which is harmful, detrimental, or injurious to property or the public health, safety, or welfare. Whenever a pollutant is released, a person responsible for the release shall be responsible for the cleanup of the release.

If the state responds to a release, a person responsible for the release shall be liable to the state for the reasonable cleanup costs incurred by the state. Administrative penalties assessed by the Director of NDEE shall not exceed \$5,000 per day per violation. If the director finds that any person has performed or failed to perform any act that presents or may present a substantial harm to the environment, the director may issue a cease-and-desist order.

**LB 1135 - Change provision relating to conservation or preservation easements and property tax exemptions relating to such easements. Murman.**

The bill proposes that conservation or preservation easements are not authorized to be recorded if such conservation or preservation easement has not been approved by the appropriate governing body as defined under section 76-2.112.

The bill extends the governing bodies comment period for conservation easements from 60 to 90 days. If comments are not received from the governing body the easement shall be denied. Notice of approval or denial by the governing body shall be sent to the owner of the land and the holder of the conservation or preservation easement within seven days.

Proposes a new process of appeal following denial. Protests may be made to the county board of equalization within thirty days after the notice is sent. The final action of the county board of equalization may be appealed to the Tax Equalization and Review Commission within thirty days after the county board of equalization's final decision.

Additionally, the bill allows for an easement to be released by the holder without approval of the governing body that approved it.

The bill eliminates language allowing a conservation or preservation easement to run with the land and be perpetual. Under the bill, the duration of the easement shall be stated and cannot exceed 99-years. At the transfer of ownership, or within 6-months of stated easement end, the holder may extend the duration, but approval by the appropriate governing body is required.

Lastly, the bill adds language to exclude conservation or preservation easements held by educational, religious, charitable, or cemetery organizations from property tax exemption.

**LB 1146 - Change provisions relating to the Interlocal Cooperation Act. Friesen.**

The bill adds language to require that only members of the governing bodies of public agencies party to an agreement under the interlocal cooperation act comprise the membership of any such separate legal or administrative entity.

Additionally, only members of the governing bodies of the public agencies party to the agreement shall be represented on such boards.

**LB 1160 - Appropriate federal funds to the Department of Environment and Energy for reverse osmosis systems. Wishart.**

The bill proposes to appropriate \$10,000,000 in Federal ARPA Funds in FY 2022-23 to the Department of Environment and Energy for the purposes of providing grants for installation of reverse osmosis systems.

Grants shall be provided to communities with drinking water test levels above 10ppm nitrate and if appropriate, to install reverse osmosis systems if test levels are above 10ppm in private wells.

**LB 1262 - Adopt the Recreation Area Assistance Act and state intent regarding appropriation of federal funds. Murman.**

The bill proposes to appropriate \$8M in Federal ARPA Funds in FY 2022-23 to the newly created Recreation Area Assistance Fund to be managed by the NGPC for projects at a recreation area surrounding a lake measuring at least 3,000 but not more than 20,000 acres.

The funds could be used for the following purposes:

- (a) Provide new or refurbished boating docks;
- (b) Improve access roads and related infrastructure for the recreation area;
- (c) Improve Internet access and telecommunications service for the recreation area;
- (d) Promote the use of the recreation area and related tourism attractions, including, but not limited to, splash pads, dog parks, and dog runs;
- (e) Create recreational trails;
- (f) Promote fishing and create fish cleaning stations;
- (g) Create tourist attractions;
- (h) Create kayak landings; and
- (i) Create and improve camping and recreational vehicle sites.

The bill includes intent that the money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or biennium.

### **Committee Hearings**

The following bills had hearings this week.

**LB 746 - Eliminate the requirement that the Director of Natural Resources be a professional engineer. Friesen.**

The bill eliminates the professional engineer requirement for the position of the Director of Natural Resources. The bill retains language requiring five years' experience in irrigation work.

The Natural Resources Committee held a hearing for the bill on Jan. 20<sup>th</sup>. Sen. Friesen opened the hearing by outlining the role of the Director and summarizing the benefits of expanding the candidate pool. During questioning Sen. Groene stated he feels this requirement is a firewall to keep the position from being political.

### **Proponents**

NARD presented testimony in support of the bill. Testimony thanked Sen. Friesen for introducing the bill and expressed that the legislation is not targeting any current or past directors. The NRDs have an excellent

positive working relationship with the current director, and we look forward to many years of his continued leadership.

Instead, NARD supports striking the professional engineer requirement as a qualification for the Director position to help ensure that when future openings occur, the best overall candidate at the time can be appointed for the expanded duties the department has.

The requirement that the DNR Director be an engineer has its roots in the early 20th century when the duties of the DNR were performed by the Department of Roads and Irrigation. At that time, the director not only supervised construction of roads across Nebraska but also approved construction of surface-water projects. When those agencies were separated back in the early 1900s, the engineering requirement was retained for Department of Water Resources, but not the Department of Roads (named at the time).

The role of the DNR director today is significantly different. The Department of Water Resources was merged with the Natural Resources Commission and their duties have been combined. Under the current role, the director must cultivate partnerships with stakeholders that represent recreation, domestic, municipal, irrigation, industrial, manufacturing, agriculture, aquaculture, livestock, fish and wildlife interest.

While accomplishing that task, the director also must keep Nebraska in compliance with state laws and interstate compacts, which are legal in nature and not necessarily engineering specific. Additionally, the director oversees the Natural Resources Commission, administers state funds, and leads a large team of professionals.

A person that can balance of all those interests and tasks needs to have a multitude of skill sets that do not limit it to an engineering license. The engineering duties in the department can be hired by the agency director.

Like at the DNR, directors of other state agencies also make regulatory decisions based on highly technical data and information. Examples include the Department of Environment and Energy and the Game and Parks Commission. Despite the technical nature of the decisions directors at these agencies face, the directors are not required to hold any professional degree or license. Directors of these agencies are selected based on their individual experience and qualifications.

For the reasons outlined, NARD supports expanding the pool of future candidates and giving the governor the opportunity to appoint individuals that at the time best meet all the skill sets demanded of the job. If there are engineers that have these skill sets, nothing will prevent them from open competition for the job.

A larger candidate pool and open competition always brings out the best candidates.

A letter in support of the bill was submitted for the record from the Nebraska Cattlemen.

### Opponents

Michael Drain, Compliance Manager and Engineer with CNPPID, testified on behalf of CNPPID. His testimony claimed the director's most important functions are surface water appropriations and being quasi-judicial fact finder and that as an engineer the position is held to standards that provide assurance the director is making good decisions. He noted that KS, WY and CO have similar requirements. He also claimed that when departments were merged to create DNR, opposition was overcome by a compromise that the engineer requirement be maintained.

Michael Jess, former DNR Director, testified in opposition on behalf of the Nebraska State Irrigation Association (NSIA). He outlined that the responsibilities of the position are technical in nature. He also noted that KS, WY, and CO have similar requirements. His testimony claimed that there's been no difficulty filling the position with the requirement.

Jeff Schafer, NPPD Water Resources Advisor and former engineer for DNR, testified in opposition on behalf of NPPD. His testimony outlined that the department continues to undertake responsibilities including engineering and the requirement is important to NPPD.

Jeanne McClure testified in opposition on behalf of the American Council of Engineering Companies of Nebraska. His testimony mentioned the possibility of unintended consequences for removing the professional engineer requirement. It's a requirement that requires rigorous standards and protects the health and safety of Nebraska.

Andrew Dunkley, testified in opposition on behalf of Farm Bureau. Andrew noted it's an important topic and members of Farm Bureau want the best person for the job especially for our water. Andrew mentioned state policy passed in 2019 included that the director be a licensed engineer or licensed hydrologist. We want to be involved in any discussion moving forward of widening the role or how we approach management going forward.

#### Neutral

Jon Wilbek, testified on behalf of the Nebraska Board of Engineers and Architects. He provided the committee with an overview of the Nebraska Engineers and Architects Regulation Act that governs the practice of engineering in the state of Nebraska, noting the requirements are in place to safeguard life, health, property, and promote the public welfare through licensing and enforcement of state statutes.

In closing, Sen. Friesen noted that it was mostly engineers that testified in opposition. He said he is not opposed to the director being an engineer, so long as it's the best person for the job. He noted that in today's world it could be that an individual with a law degree that may be best suited for the position, again noting that by expanding the candidate pool it ensures that the best person for the job can be appointed by the governor.

The Committee reported no action on the bill.

#### **LB 775 - Prohibit land disposal of wind turbine blades and their component parts. Brewer.**

The bill would prohibit land disposal of wind turbine blades and the component parts of wind turbine blades.

The Natural Resources Committee accepted testimony on Jan. 19<sup>th</sup>. Tony Baker, legislative staff, introduced the bill on behalf of Sen. Brewer. He testified that rainwater should not filter through fiberglass and other chemicals wind turbines are constructed of. He asked the committee to put an x on the map of where the wind turbine graveyard would be and watch what would happen. He noted that turbine blades need to be replaced every 10 years and we are just starting to reach the 10-year limit on many of the turbines. During questioning it was asked if there are any sites that take blades now – it was discussed that the landfill at David City had previously but is no longer accepting blades.

There were no proponents for the bill.

#### Opponents

Richard Lombardi testified in opposition on behalf of Advanced Power Alliance, a regional trade association of wind, solar and battery developers. He testified that the bill would amount to making an act of commerce illegal. He testified that wind turbines don't pollute water, don't pollute air, don't use water, in fact 90% of wind turbines are recyclable or repurposed. Blades are an area they are working to reduce waste and repurpose with additional developments coming. He noted that this industry is an economic driver and discriminating against industry by limiting access to landfills would not be good policy.

Al Davis testified in opposition on behalf of the Nebraska Sierra Club. The wind industry is misunderstood, and this is just an attempt to throw sand in the face of the industry. He noted that it is known that Sen. Brewer is against wind energy and this is his attempt to limit it.

There was no Neutral testimony.

In closing, Senator Brewer acknowledged Lombardi's effort in trying to find a solution to recycling the turbine blades so we don't have to worry about the problem.

The Committee reported no action on the bill.

**LB 805 - Change provisions relating to prioritization of applications and intent to appropriate funds under the Noxious Weed Control Act. Hughes.**

Beginning in FY 2022-23, the bill proposes to increase the appropriation from \$1 million to \$3 million annually for vegetation management programs that have as their primary objective improving conveyance of streamflow in natural streams.

Under current law, this program is limited to vegetation within the banks of a stream or within 100 feet of the banks. The bill strikes the 100-foot limitation and expands to the flood plain of the stream.

The bill maintains the limitation that such funds shall only be used to pay for activities and equipment as part of vegetation management programs. This program is operated by the Nebraska Department of Agriculture.

The Natural Resources Committee held the hearing for the bill on Jan. 18<sup>th</sup>. Sen. Hughes opened the hearing by providing an overview of the bill.

**Proponents**

Mike Reed, Weed Superintendent of Douglas County, testified in support of LB 805. He noted that over the years the workload of managing weeds in the Lower Platte has shifted from the main channel to include the flowing tributaries. He mentioned the flooding of 2019 and the impact it had on Nebraska and said the flooding would have been far greater if Nebraska had not maintained weeds along waterways. Reed stressed the goal is to proactively manage for water conveyance and maintenance in tributaries is key.

Todd Boller, Noxious Weed Superintendent for Fillmore County, highlighted the work in the Republican River Basin that has removed phragmites along the river to improve water flow to Kansas. Todd gave examples of how acreage coverage of invasive species has successfully been reduced. However, the one plant that has shown an increase in acres is phragmites. In order to control the species, we must expand our work outside of the river channel. While portions of the rivers in Nebraska are in maintenance phase there is still work to be done.

NARD provided testimony in support of the bill. NARD thanked Senator Hughes for staying engaged on this issue and working with all the parties involved to control invasive species on Nebraska's rivers and streams. It is very much appreciated by the local NRDs.

The local NRDs have been very active in joint ventures with the State of Nebraska to control the spread of Phragmites in Nebraska's river systems. The local NRDs have been providing additional cost share dollars to leverage the state funds that are appropriated to this program. We have also been working directly with the local weed management authorities and others to coordinate efforts to keep the river conveyance open for all water users.

When we started addressing this issue over a decade ago, both the Platte and Republican rivers were infested to the point where you could not see the river at all in some areas. The Phragmites is a very invasive plant that spreads through the root system.

While we have been able to clear the channels, if we don't stay ahead of it, the streams will get clogged again. It is imperative that we continue to take annual actions necessary to support water conveyance programs so all water users that depend on the river get adequate water supplies. This on-going preventive maintenance can be critical to preventing re-infestation of the invasive plants.

The additional funding provided will assist the local efforts. We are also supportive of changing the 100-foot limitation and expand to the flood plain of the stream. This would allow control measures to reach beyond an arbitrary 100-foot line. We would suggest that the primary focus needs to be on the stream.

Jon Cannon, Executive Director of NACO, mentioned the lawsuit with Kansas noting a potential \$72M liability was reduced to \$5.2M because of the increased stream flows partially due to reducing phragmites along the Republican River. He addressed a question that was previously asked "why should the state bear the cost and not the landowner?" his response was the control provides a community benefit and further that Kansas will not sue an individual landowner, rather they will sue the state.

Andrew Dunkley, Nebraska Farm Bureau, testified that noxious weeds can be a real threat to crops and that their members are in favor of using taxpayers' money wisely and further funding this program.

There was no Opposition or Neutral testimony.

In closing, Sen. Hughes addressed some of the questions asked during testimony. Why more money? It costs more money to do business these days.

There is landowner cost share because it is in the best interest of everyone in the state. Further he outlined that it does take specialty equipment and chemicals to address this issue.

The Committee reported no action on the bill.

**LB 809 - Change powers and duties of the Department of Environment and Energy and provisions relating to the use of certain funds relating to water. Moser.**

The bill proposes several modifications to the use of the funds and the assets of the Safe Drinking Water Act, Drinking Water State Revolving Fund Act and Wastewater Treatment Facilities Construction Assistance Act.

Under the Safe Drinking Water Act, it adds the ability to use the fund to buy or refinance the debt obligation of any municipality for a public water supply system if the debt was incurred and construction began after July 1, 1993.

Under the Drinking Water State Revolving Fund Act, it expands the cost share for public water systems of 10,000 or less from 50% to 75% to provide grants and for the purpose of providing loan forgiveness. The bill also expands the authority to provide grants in addition to loans for this size of system.

It allows for grants and loan forgiveness, for up to 75% of eligible project costs, concurrent with loans to public water systems for lead service line replacement projects in accordance with all federal regulatory and statutory provisions under the Drinking Water State Revolving Fund Act.

Under the Wastewater Treatment Facilities Construction Assistance Act, the bill increases the grants from 50% to 75% of the eligible project cost for municipalities with populations of ten thousand inhabitants or less.



The Natural Resources Committee accepted testimony on Jan. 20<sup>th</sup>. Sen. Moser introduced the bill by noting it updates funds to be consistent with federal law and allows flexibility for NDEE to administer funds. He noted the bill was brought on behalf of NDEE.

### Proponents

Jim Macy, NDEE Director, provided an overview of the Clean Water and State Revolving Fund loan programs. The funds provide below market rates loans to eligible communities. This bill updates State statute to be consistent with federal regulation. Grant and forgiveness assistance is being increased from 50% to 75%. A separate grant and financial assistance program is needed for lead service lines of public water systems. Over 33,000 lead service lines have been identified in Nebraska. This new standalone section is needed to comply with federal guidelines. In FY22 NDEE will receive approximately \$18M in CWA funds and up to \$68M in Drinking Water programs on top of normal allocations which typically are \$8.5M for DW and \$6.8M for CW.

Director Macy was asked if this grant would apply to a community to replace filters in reverse osmosis systems? Macy responded that operation and maintenance of existing facilities is usually the responsibility of the community and not included in these types of loans.

Elizabeth Elliott, Director of Lincoln Transportation and Utility Department, testified that lead service lines impact all communities across the state. The homeowner is responsible for the line from the street to the house and the bill would help those people. She noted there are 5,600 homes in Lincoln with lead service lines and 3,200 homes with galvanized lines near lead lines that EPA requires to be replaced. Additionally, there are 10,400 unknown, and most if not all of those likely contain lead. The cost of replacing just the known lines could cost \$53,000,000 and that amount is expected to be more than double when you add in the 10,400 unknown lines. This bill would create opportunity to assist with replacing those lines for residents.

Lash Chaffin, League of Nebraska Municipalities, testified that this is becoming a critical issue very quickly and we need to deal with it as quick as we can. He noted this bill brings a lot of effort to lead line replacement. Lash mentioned Jim Macy sold the department short of how sophisticated their grant program has become. NDEE works very closely with small communities, USDA, and other entities to fashion a loan grant program specific to a utility.

Annette Sudbeck, Manager of the Lewis and Clark NRD, testified in support on behalf of LCNRD and the NARD.

All of communities located in the Lewis and Clark NRD have populations fewer than 10,000 residents and their drinking water systems serve the individual community, the community may purchase or sell drinking water to another community, and several communities are served by the Cedar Knox Rural Water Project. The water project serves 902 rural connections, four communities, and several sanitary improvement districts (SIDs) in northern Cedar and Knox Counties. Of particular interest to the district is the portion of the bill pertaining to changing the available amount of grant and loan forgiveness for eligible projects from 50% to up to 75%.

LB 809 as proposed, will level the financial playing field for communities of less than 10,000 residents when faced with the need to make modifications to their drinking water systems. Small communities are required to meet drinking water regulations just as large communities. When smaller communities are faced with expensive improvements or repairs to existing systems those expenses are shared among a smaller population which can significantly increase water rates among the smaller user base in comparison to larger communities. For example, a \$1 million system repair or upgrade with 50% loan forgiveness in a community of 200 households would cost each resident \$2,500 over the course of the repayment period where it would be \$250 in a community of 2,000 households and \$25 for a community of 20,000 households. Increasing the percentage of available grant or loan forgiveness from 50% to up to 75% will significantly

improve the repayment rate for the remaining loan portion for communities under 10,000 residents. In the case above it would decrease the cost for the community of 200 households to \$1,250, and \$125 for the community of 2,000 households while the repayment rate would remain the same for the community of 20,000 households.

Sudbeck noted state funding is key for many communities and rural water projects who face system upgrades to maintain drinking water rates that will better allow loans to be repaid in a timely fashion while lessening the impact to individuals in the affected communities. LB809 will positively impact the funding capability of communities of less than 10,000 residents by allowing increased grant and loan forgiveness for eligible projects. The changes proposed in LB809 are important to communities and rural water projects of the district and to communities and rural water projects across the state for providing sustainable funding levels that facilitate affordable drinking water service.

Rick Kubat, Metropolitan Utilities District, testified that Omaha has 17,000 lead service lines with an average replacement cost of \$7K for a total of \$119M in homeowner liability. Lead service lines exist in older parts of town. Once you start funding something like this you need to be able to pay and replace all lines over time. Kubat addressed questions from the committee over the difference between ARPA and Infrastructure funding, noting that ARPA money was distributed to cities and counties, and that MUD to date has not received any of the ARPA funds.

There was no Opposition or Neutral testimony.

In closing, Sen. Moser summarized proponent testimony during closing and reiterated that this bill helps Nebraskans and small communities.

The Committee reported no action on the bill.

**LB 953 - Change provisions relating to open burning permits and provide limitations on liability and nuisance relating to land-management burning. Cavanaugh, J.**

The bill proposes to change open burning permit provisions to allow permits to be issued electronically.

Additionally, the bill proposes that no landowner, tenant, or other landowner's agent of the land where land-management burning occurs shall be personally liable for damages caused by land-management burning conducted in accordance with permit requirements, except in cases of willful misconduct or gross negligence.

The bill proposes that evidence that a fire from a land-management burn has spread outside of the authorized burn area on the day of the land-management burn or continued to smolder resulting in a subsequent wildfire does not, without further evidence, constitute gross negligence.

The bill also proposes that a fire chief of a local department, or such chief's designee, shall not be liable for damages caused by a land-management burning simply for issuing such land-management burning permit or assisting with a properly permitted land-management burning for training purposes.

Under the proposal, land-management burning shall be considered in the public interest and shall not be considered a nuisance if conducted in accordance with required permitting law and any applicable state or local air pollution law, rule, or regulation.

The Judiciary Committee held a hearing on Jan. 21<sup>st</sup>.

In his opening, Senator Cavanaugh expressed interest in healthy grasslands and preventing the loss of grasslands and habitat from Cedar trees and other invasive species. He supports controlled burns as it improves the land. The liability issue keeps many landowners from participating.

Alicia Hardin testified in support on behalf of the Nebraska Game and Parks Commission. Support controlled burns to improve grassland and bird habitat. This legislation helps alleviate landowners concern about liability, which will result in more improved habitat.

Mark Roblee testified in support for the Curtis, NE Volunteer Fire Department. He noted the area has a large invasive species problem, and the prescribed fires help clean up the problem. He noted that years ago this was not the case as we did not have experience with controlled prescribed fire. Over the years, they have worked with professional burn bosses and landowners to develop plans to control the burn. It has been very successful to help clean up many of the pastures which improves the grasslands and habitat.

Jerry McDonald, testified in support for Pheasants Forever. He explained that PF has been involved with prescribed burns since 2008. There are four key areas for a successful burn and PF has addressed three of them. 1) Training - PF has created volunteer training programs; 2) Access to People – PF has created 11 Burn Associations across Nebraska that have successfully burned over 80,000 acres; 3) Access to Equipment – PF has provided local organizations with the right equipment to use at controlled burns; and 4) Liability - This is where we need help to protect landowners and encourage more grassland improvement.

Scott Schout – A Technical Support Provider for NRCS that writes burn plans for landowners appeared in support as an individual. He noted most plans are about 30 pages long and include, but are not limited to; location, wind direction, control plan which includes ignition sequence, number of people available to help control the burn, a list of equipment available for control. The biggest issue for landowners is the liability.

Eric Hansen testified in support on behalf of the Nebraska Cattlemen. He noted years he spent controlling cedars on his ranch by mechanical means and was against controlled fires. He has learned that controlled prescribed burns work not only to control cedars but improves grasslands. The liability issue is a concern which keeps many landowners from engaging in the practice of controlled burns.

Jay Ferris, testified in support on behalf of Nebraska Farm Bureau and noted the benefits of controlled burns.

James Lowery II – rancher in Garfield County testified as an individual and encouraged the use of controlled burns on school lands.

#### Opponents –

John Lindsay represented the Nebraska Association of Trial Attorney's in opposition to the bill. He noted that he was very impressed with the professional burn people involved at the hearing. They show that they are very careful with the controlled burns they do. If they do a good job, they should not need this broad liability protection. We don't want the legislature to relax laws to encourage less focus on controlling the burns.

#### Neutral-

Jerry Stilmock, Nebraska State Volunteer Firefighters Association. Not sure what immunity is applied in the bill to the local volunteer fire department and firefighters. There are many levels of liability exposure in many other statutes.

Dirac Twidwell, Assistant Professor, Rangeland Ecology talked about the cedar infestation in the central plains.

Shelly Kelly testified on behalf of the Sandhills Task Force. She raised concern about the inability to purchase liability insurance for controlled burns.

In his closing, Senator Cavanaugh thanked everyone for testifying and bringing attention to this very important land management tool of prescribed burns. He mentioned the willingness to work on some language to alleviate concerns.

### **Committee Hearings Next Week**

The following bills are scheduled for hearings next week.

#### **Monday, January 24<sup>th</sup>**

Appropriations, Room 1524 - 1:30 PM

Budget bills scheduled at this time for official record purposes. Testimony on the overall budget is appropriate at this time, however testimony on specific issues and/or agencies should be presented at the later date scheduled for the relevant agency.

A summary of the budget adjustments related to Natural Resources is on the last page.

#### **LB 1011 - Provide, change, and eliminate provisions relating to appropriations. Speaker Hilgers, at the request of the Governor.**

The bill proposes changes to appropriations for FY 2021-22 and FY 2022-23 that were adopted last year. Related to natural resources, the following changes are proposed:

**DEPARTMENT OF NATURAL RESOURCES** – No increase in FY 2021-22 and a \$550,090,237 increase in FY 2022-23 for Program No. 334 - Soil and Water Conservation. Included in the increase is a general fund increase of \$88,473 in FY 2022-23, with the remainder of the FY 2022-23 increase representing the appropriation for the following two new cash funds created by provisions of LB 1012.

First, the appropriation includes \$150,000,000 in Cash Funds for the Statewide Tourism and Recreational Water Access and Resource Sustainability projects designated by the Legislature. The funds shall only be used for such purpose.

Second, the appropriation includes \$400,000,000 in Cash Funds to protect Nebraska's water resources with a canal and associated storage facilities. The funds shall only be used for such purpose.

The funding for the Perkins County Canal Project Fund would come from a transfer to the cash fund as outlined in provisions of LB 1013.

**GAME AND PARKS COMMISSION** -- No changes in FY 2021-22 and the following increases to programs of interest in FY 2022-23:

Program 162 - Environmental Trust: \$4,368; Program 330 - Habitat Development: \$16,930; Program 336 - Wildlife Conservation: \$207,189; Program 550 - Planning & Trails Coordination: \$12,195.

The proposal also includes a \$450,000 increase in FY 2021-22 and a \$1,047,886 increase to NGPC Administration - Program 337 in FY 2022-23. A \$1,500,000 increase is proposed in FY 2021-22 for Improvements to State Parks – Program 967.

**DEPARTMENT OF ENVIRONMENT & ENERGY** -- No changes in FY 2021-22 and \$180,060 increase to Program 513 – Environmental Quality in FY 2022-23.

**LB 1012 - Provide for funds transfers, create funds, and change and eliminate provisions regarding a fund and reimbursement provisions. Speaker Hilgers, at the request of the Governor.**

The bill proposes to create two new funds related to Natural Resources.

The first fund created is the Statewide Tourism And Recreational Water Access and Resource Sustainability Fund. The fund shall be administered by the Department of Natural Resources.

The State Treasurer shall credit to the fund any money transferred by the Legislature and such grants, loans, donations, gifts, bequests, or other money received from any federal or state agency or public or private source for water and recreational projects authorized by the Legislature. Any investment earnings of the fund shall be credited to the fund.

The second fund created is the Perkins County Canal Project Fund. The fund shall be administered by the Department of Natural Resources.

The state treasurer shall credit to the fund any money transferred by the Legislature and such grants, loans, donations, gifts, bequests, or other money received from any federal or state agency or public or private source for use by the department for the canal project.

Any investment earnings of the fund shall be credited to the fund. After the Director of Natural Resources certifies the completion of the Perkins County Canal Project to the Department of Administrative Services, the State Treasurer shall transfer any remaining Perkins County Canal Project Funds to the Cash Reserve Fund.

The bill also modifies the United States Space Command Headquarters Assistance Fund to allow the fund to contribute to the support and profile of the Strategic Air Command and Offutt Air Force Base.

**LB 1013 - Change provisions relating to the Cash Reserve Fund. Speaker Hilgers, at the request of the Governor.**

The bill proposes the following transfers from the cash reserve fund.

\$175,000,000 to the Nebraska Capital Construction Fund on or after July 1, 2022, but before June 15, 2023.

\$400,000,000 to the Perkins County Canal Project Fund on or before June 30, 2023.

The bill also strikes language tying use of United States Space Command Headquarters Assistance Fund to Nebraska being selected as the site of the US Space Command Headquarters. Since Nebraska was not selected, the bill modifies the amount to be transferred from \$50 million to \$5 million from the Cash Reserve Fund to the United States Space Command Headquarters Assistance Fund.

**Tuesday, January 25<sup>th</sup>**

Appropriations, Room 1524 - 1:30 PM

**LB 1014e - Appropriate Federal Funds allocated to the State of Nebraska pursuant to the federal American Rescue Plan Act of 2021. Speaker Hilgers, at the request of the Governor.**

The bill directs the appropriations allocated to the State of Nebraska from the federal Coronavirus State Fiscal Recovery Fund pursuant to the federal American Rescue Plan Act of 2021. Of the \$1.04 Billion in funds, the following are appropriated to ag and natural resources for the next two fiscal years:

For the Department of Agriculture:

- \$10 Million is proposed FY2021-22. Of that, \$9,875,000 is for grants for small-to-medium meat processors. The remaining balance, \$125,000, is for a dairy industry study.

For the Department of Natural Resources:

- \$10 Million is proposed in FY2022-23 to provide enhanced data collection requirements and quality through improvements to flood-stage monitoring and inundation mapping, water efficiency monitoring, and drought monitoring, which shall only be used for such purpose.
- \$23.1 Million in FY2021-22 to provide a grant to an irrigation district to offset costs related to the permanent main canal and tunnel repairs which is part of an interstate irrigation system that experienced a failure (Ft. Laramie – Gering Irrigation Canal).
- \$50 Million (\$25M for FY2022-23 and \$25M for FY2023-24) for the Statewide Tourism And Recreational Water Access and Resource Sustainability (STAR WARS) projects designated by the Legislature.
- \$100 Million (\$50M for FY2022-23 and \$50M for FY2023-24) to stabilize Nebraska's water resources with a canal and associated storage facilities (Perkins County Canal on the South Platte River).

Nebraska Game and Parks Commission:

- \$8.1 Million for wastewater projects within the state park system.

Nebraska Department of Environment and Energy:

- \$25 Million in FY2022-23 for wastewater and drainage system updates at the state fairgrounds.
- \$60 Million (\$30M in FY2021-22 and \$30M in FY2022-23) for drinking water projects under the Drinking Water Facilities Loan Fund.

In addition to the appropriations set forth, all unexpended appropriation balances of the Federal Funds appropriated in this act existing on June 30, 2022, for FY2022-23 and FY2023-24 are reappropriated to the respective agencies, programs, and funds listed in this act, except as otherwise provided in this act

The bill includes the emergency clause.

**Wednesday, January 26<sup>th</sup>**

Natural Resources, Room 1525 - 1:30 PM

**LB 925 - Adopt the Resilient Soils and Water Quality Act and state intent regarding appropriations. Gragert.**

The bill proposes to adopt the Resilient Soils and Water Quality Act which would create demonstration and research farms across the state to provide demonstration of healthy soil practices in support of the educational and research programs of the producer learning community. Lease agreements would be allowed with private landowners for the purpose of establishing demonstration and research farms.

The program would be organized by the Department of Natural Resources. The Department shall provide technical and legal assistance in the formation of a producer learning community comprised of active agricultural producers, landowners, and others who have an interest in soil health and water quality.

The department shall assist the producer learning community in building awareness and knowledge relating to soil health and water quality to guide agricultural producers and landowners in making informed decisions to bring about a more rapid and widespread adoption of best management practices.

The department shall hire a facilitator to lead a collaborative effort to organize the producer learning community and assist the producer learning community in acquiring gifts, grants, and sponsorships. The department shall authorize the facilitator to serve as an ex officio member of the producer learning community and may locate the facilitator outside of the City of Lincoln.

Under the proposal, a producer learning community is defined as an agricultural producer-led, nonprofit, voluntary membership organization dedicated to fostering learning, skills, and abilities, and the gathering and sharing of knowledge for the purpose of carrying out the Resilient Soils and Water Quality Act.

The department may partner or contract with any entity or entities that have resources that would assist in the formation of the producer learning community including, but not limited to, the University of Nebraska and any association of natural resources districts.

The department may also collaborate with the Corn Board, the Soybean Board, the Grain Sorghum Board, Wheat Board, and any private farm and ranch associations or membership organization.

The department shall divide the state into different regions in which to establish demonstration and research farms that are representative of each region's particular agricultural diversity. In establishing such regions, the department may use the land management areas of the Natural Resources Conservation Service of the United States, the state's natural resources district boundaries, and Nebraska Extension Engagement Zones of the University of Nebraska Institute of Agriculture and Natural Resources as guidance in establishing boundaries.

Beginning in 2022, the department shall submit an annual report on or before December 31 to the Governor and electronically to the Agriculture Committee of the Legislature and the Natural Resources Committee of the Legislature to report on the status and progress of implementing the Resilient Soils and Water Quality Act and any impacts and accomplishments made in protecting and improving soil and water quality across the state.

The bill includes intent language to appropriate \$250,000 beginning in FY2022-23 through FY2026-27 to carry out the Resilient Soils and Water Quality Act.

**LB 981 - Revive the Trail Development Assistance Act and state intent to transfer funds. Hilkeemann.**

The bill proposes to revive the Trail Development Assistance Act which previously terminated on January 1, 2010.

The fund is administered by NGPC and shall be used to assist in the purchase, development, and maintenance of recreational trails in the state.

The bill includes intent to transfer \$15 million from the General Fund to the Trail Development Assistance Fund in FY 2022-2023 and that NGPC would be authorized to use \$750,000 annually beginning in FY 2022-2023 for ongoing maintenance of designated rail-trails.

**LB 978 - Provide powers and duties relating to the treatment of dredged and fill material under the Environmental Protection Act. Hughes.**

The bill proposes to add power and duties of the Environmental Protection Act to the Department of Environment and Energy to prohibiting or permitting the discharge of dredged or fill material into waters of the United States, commonly referred to as the 404-permitting process.

Under the proposal, the department would receive and initiate complaints, hold hearings, and institute legal proceedings in the name of the state for the control, prevention, or abatement of the discharge of dredged and fill material into waters of the United States. The department will recover penalties, in accordance with the Environmental Protection Act.

The bill allows the council to establish fees to be collected by the Department for applications, determinations, permits, licenses, or similar authorizations for the discharge of dredged and fill material under section 404 of the Clean Water Act, as amended. The fees shall be sufficient to pay the department for the direct and indirect costs of administering a permitting program under section 404 of the Clean Water Act.

The bill proposes the Dredge and Fill Cash Fund. The department shall remit all fees collected and money received by the department in the form of gifts, grants, reimbursements, or monetary transfers from any source intended to be used for the purposes of the fund, to the State Treasurer for credit to the fund. The fund shall be used to pay the reasonable direct and indirect costs required to develop and administer a program to regulate discharges of dredged and fill material under section 404 of the Clean Water Act, as amended. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The bill adds that any person who knowingly or willfully violates any law, rule, regulation, permit, license, or permit or license condition or limitation for the discharge of dredged and fill material under section 404 of the Clean Water Act shall be guilty of Class IV Felony.

Finally, the bill adds property where dredged or fill material is being discharged to the list of purposes for the department to enter and inspect property with consent.

**Wednesday, January 26<sup>th</sup>**

Government, Military & Veterans Affairs, Room 1507 - 1:30 PM

**LB 778 - Adopt the Government Neutrality in Contracting Act. Brewer.**

The bill proposes that unless otherwise required by federal law, a governmental unit shall ensure that any requests for proposals or bid specifications for a public contract or the procurement procedures for a public contract do not contain:

- (1) A term that requires, prohibits, encourages, or discourages bidders, public contractors, or subcontractors from entering into or adhering to a collective-bargaining agreement relating to construction.
- (2) A term that discriminates against bidders, public contractors, or subcontractors based on status as a party or nonparty to, or the willingness or refusal to enter into, a collective-bargaining agreement relating to construction under the public contract; or
- (3) Contract award pass or fail scoring criteria regarding a bidder's hiring requirements, labor assignments, local headquarters, political affiliation, political activity, or demographic makeup.



**Budget Summary - A summary of the budget proposals follow:**

		Final Budget 1st Session		LB 1011 Appropriation		LB 1014 ARPA Funds	
		FY 21-22	FY 22-23	FY 21-22	FY 22-23	FY 21-22	FY 22-23
<b>Agency 84 - Department Environmental &amp; Energy</b>							
Program 513, 586, 587, 588 - NDEE <sup>1</sup>	General Fund	\$ 4,826,993	\$ 4,862,565	\$ -	\$ 35,337	\$ -	\$ -
	Cash Fund	\$ 38,185,376	\$ 38,345,459	\$ -	\$ 59,219	\$ -	\$ -
	Federal Fund est.	\$ 19,475,423	\$ 19,635,506	\$ -	\$ 85,504	\$ -	\$ -
	Program Total	\$ 62,487,792	\$ 62,487,792	\$ -	\$ 180,060	\$ -	\$ -
	Salary Limit	\$ 16,282,707	\$ 16,519,455	\$ -	\$ 225,610	\$ -	\$ -
Program 523 - Wastewater Loan Fund	Cash Fund	\$ 600,000	\$ 600,000	\$ -	\$ -	\$ -	\$ -
	Federal Fund est. <sup>5</sup>	\$ 6,940,000	\$ 6,940,000	\$ -	\$ -	\$ -	\$ 25,000,000
	Program Total <sup>5</sup>	\$ 7,540,000	\$ 7,540,000	\$ -	\$ -	\$ -	\$ 25,000,000
Program 528 - Drinking Water Facilities Loan Fund	Cash Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Federal Fund est.	\$ 8,500,000	\$ 8,500,000	\$ -	\$ -	\$ 30,000,000	\$ 30,000,000
	Program Total	\$ 8,500,000	\$ 8,500,000	\$ -	\$ -	\$ 30,000,000	\$ 30,000,000
<b>Agency 33 - Game &amp; Parks Commission</b>							
Program 162 - Environmental Trust	Cash Fund	\$ 20,676,142	\$ 21,182,946	\$ -	\$ 4,368	\$ -	\$ -
	Program Total	\$ 20,676,142	\$ 21,182,946	\$ -	\$ 4,368	\$ -	\$ -
	Salary Limit	\$ 292,196	\$ 296,460	\$ -	\$ 5,929	\$ -	\$ -
Program 330 - Habitat Development	Cash Fund	\$ 7,582,108	\$ 7,605,938	\$ -	\$ 16,930	\$ -	\$ -
	Federal Fund est.	\$ 3,900,673	\$ 3,900,673	\$ -	\$ -	\$ -	\$ -
	Program Total	\$ 11,482,781	\$ 11,506,611	\$ -	\$ 16,930	\$ -	\$ -
	Salary Limit	\$ 1,597,748	\$ 1,608,622	\$ -	\$ 32,172	\$ -	\$ -
Program 336 - Wildlife Conservation	General Fund	\$ 1,825,024	\$ 1,867,895	\$ -	\$ 15,403	\$ -	\$ -
	Cash Fund	\$ 32,061,087	\$ 32,469,593	\$ -	\$ 189,605	\$ -	\$ -
	Federal Fund est.	\$ 4,218,927	\$ 4,230,422	\$ -	\$ 2,181	\$ -	\$ -
	Program Total	\$ 38,105,038	\$ 38,567,910	\$ -	\$ 207,189	\$ -	\$ -
	Salary Limit	\$ 16,056,219	\$ 16,370,045	\$ -	\$ 319,133	\$ -	\$ -
Program 338 - Niobrara Council	General Fund	\$ 50,000	\$ 50,000	\$ -	\$ -	\$ -	\$ -
	Cash Fund	\$ 1,000	\$ 1,000	\$ -	\$ -	\$ -	\$ -
	Federal Fund est.	\$ 125,000	\$ 125,000	\$ -	\$ -	\$ -	\$ -
	Program Total	\$ 176,000	\$ 176,000	\$ -	\$ -	\$ -	\$ -
Program 550 - Planning & Trails Coordination	General Fund	\$ 493,544	\$ 500,230	\$ -	\$ 4,303	\$ -	\$ -
	Cash Fund	\$ 1,167,922	\$ 1,183,924	\$ -	\$ 7,276	\$ -	\$ -
	Federal Fund est.	\$ 109,361	\$ 110,556	\$ -	\$ 616	\$ -	\$ -
	Program Total	\$ 1,770,827	\$ 1,794,710	\$ -	\$ 12,195	\$ -	\$ -
	Salary Limit	\$ 970,827	\$ 984,299	\$ -	\$ 19,686	\$ -	\$ -
<b>Agency 29 - Department of Natural Resources</b>							
Program 303 - Small Watersheds	Cash Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Program Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Program 304 - Nebraska Soil & Water Conservation Fund	General Fund	\$ 1,806,112	\$ 1,806,112	\$ -	\$ -	\$ -	\$ -
	Cash Fund	\$ 50,000	\$ 50,000	\$ -	\$ -	\$ -	\$ -
	Program Total	\$ 1,856,112	\$ 1,856,112	\$ -	\$ -	\$ -	\$ -
* Program 306 - Water Well Decommissioning	Cash Fund	\$ 70,000	\$ 70,000	\$ -	\$ -	\$ -	\$ -
	Program Total	\$ 70,000	\$ 70,000	\$ -	\$ -	\$ -	\$ -
Program 307 - Nebraska Resources Development Fund - Unexpended General Fund & Cash Fund appropriation balances existing on June 30, 2021, are reappropriated.							
Program 309 - Natural Resources Water Quality Fund	Cash Fund	\$ 1,187,500	\$ 1,187,500	\$ -	\$ -	\$ -	\$ -
	Program Total	\$ 1,187,500	\$ 1,187,500	\$ -	\$ -	\$ -	\$ -
Program 313 - Water Sustainability Cash Fund	Cash Fund	\$ 10,865,033	\$ 10,865,033	\$ -	\$ -	\$ -	\$ -
	General Fund Transfer	\$ 11,000,000	\$ 11,000,000	\$ -	\$ -	\$ -	\$ -
Program 314 - Critical Infrastructure Facilities <sup>3</sup>		\$ -	\$ -	\$ -	\$ -	\$ 23,100,000	\$ -
Water Resources Cash Fund	LB 298 Transfer	\$ 3,300,000	\$ 3,300,000	\$ -	\$ -	\$ -	\$ -
STAR WARS Cash Fund <sup>2</sup>		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Perkins County Canal Project Cash Fund <sup>2</sup>	LB 1013 Transfer	\$ -	\$ -	\$ -	\$ 400,000,000	\$ -	\$ -
Program 334 - Soil & Water Conservation (General Operations) <sup>1</sup>	General Fund	\$ 11,020,779	\$ 10,972,796	\$ -	\$ 88,473	\$ -	\$ -
	Cash Fund	\$ 8,259,150	\$ 8,263,380	\$ -	\$ 550,001,764	\$ -	\$ -
	Federal Fund est. <sup>4</sup>	\$ 855,021	\$ 872,032	\$ -	\$ -	\$ 75,000,000	\$ 85,000,000
	Program Total	\$ 20,134,950	\$ 20,108,208	\$ -	\$ 550,090,237	\$ -	\$ -
	Salary Limit	\$ 7,086,478	\$ 7,194,701	\$ -	\$ 123,661	\$ -	\$ -

<sup>1</sup>Reflects Appropriation of Cash Fund transfers of \$400,000,000 Perkins County Canal and \$150,000,000 for STAR WARS which shall only be used for those purposes

<sup>2</sup>New Cash Fund Created (2022) By LB 1012

<sup>3</sup>Grant to an irrigation district to offset cost related to canal & tunnel repairs that experience failure which shall only be used for that purpose.

<sup>4</sup>Includes \$50,000,000 in each FY to stabilize water resources with canal & storage & \$25,000,000 in each FY for STAR WARS & \$10,000,000 in FY 23 for water management.

<sup>5</sup>Includes \$25,000,000 for wastewater & drainage system updates at state fair grounds which shall only be use for those purposes.