

February 12, 2021

TO: NARD Board, NRD Managers and Conservation Partners
FROM: Dean E. Edson, NARD Executive Director
RE: February 12 NARD Update

Priority Bills & Floor Debate Update

Speaker Hilgers provided an update on deadlines for priority bills and a timeline for when the legislature is expected to begin floor debate. The deadline for filing of all Committee and Senator Priority Bills is March 11th. The deadline for submitting bills for consideration of Speaker Priority is March 10th. Speaker Priority bill designations will then be announced March 16th.

Debate of bills in worksheet order is expected to begin next week. Full morning floor debate will begin March 4th, and full day floor debate is expected to begin March 16th. Speaker Hilgers also noted that there will be a consent calendar this year, with guidelines for consent calendar expected to be announced next week.

Committee Action

LR 5 - Accept the findings and recommendations of the Healthy Soils Task Force submitted to the Governor and the Agriculture Committee. Gragert.

The Agriculture Committee reported LR 5 to the legislature for further consideration with AM 197 on February 11th by an 8-0 vote. The amendment (AM 197) changes one word in the first resolved clause to state that the Legislature "acknowledges" the task force report.

A legislative resolution that accepts the report, findings, and recommendations that the Healthy Soils Task Force submitted to the Governor and the Agriculture Committee of the Legislature. It further resolves that the Legislature supports and encourages a voluntary grassroots effort to accelerate means to protect and enhance Nebraska's soil and receive the benefits described in the report from the Healthy Soils Task Force.

Finally, it resolves that the Legislature encourages the Department of Agriculture, the Department of Natural Resources, and other state agencies to assist in the voluntary grassroots effort.

The Agriculture Committee accepted testimony on LR 5 on February 2nd.

Senator Gragert opened the hearing by outlining the requirements of LB 243 and actions taken by the task force. He told the committee he introduced the resolution so the legislature can send a message that they support soil health and continued action. He said the legislature supporting the report sends a message to state agencies to assist with the voluntary effort. He noted that the task force held 25 meetings, listening sessions with 31 groups, and received 28 letters of support. He told the committee the report lays out a blueprint to enhance existing efforts and that findings and recommendations don't take away from existing programs but builds on them and pulls them together.

Proponents

Keith Burns, Farmer and Agribusiness, testified on behalf of the task force. He distributed copies of the report and noted that 31 different organizations had input into the idea of Soil Health for Nebraska Wealth. He reviewed the process followed by the task force and outlined the action plan created. He told the committee 35-40 other states they explored have varying levels of similar soil health programs. He noted that Nebraska has many soil health programs underway by UNL, NRCS and the NRDs, but stressed what kept coming up over and over again is that even though there is a lot of work going on, everyone agrees that more needs to be done, and there is a need for further collaboration. He gave the example that an NRD may be holding a meeting, but someone down the road may not even know about it, saying there is a need for better communication. Economics was a constant theme and economic data is included in the report.

Burns outlined the task force's proposed five action steps: noting that it first calls for the creation of a Nebraska state soil health hub. He noted that would be the center of everything, made up of all groups currently doing soil health work. He also outlined how the report recommends six additional regional grounds within the hub to split up varying landscapes across the state. He said the second action item is to setup a producer learning network. Third he spoke about developing and training soil practitioners. He testified that the fourth item is to bring in \$50 million in additional funding, noting they're not looking for tax money, but looking for outside corporate money, providing The Nature Conservancy working with NRDs as an example. He told the committee the fifth action item is to get a handle on where we are in the state by developing a standard of soil health benchmarks.

During questioning, Senator Cavanaugh asked who would undertake these objectives? Burns responded that it would have to be a grassroots effort and that they really don't know, noting that if LR 5 passes they'd have to bring 31 entities back together and identify the leadership.

Senator Brandt, raised questions over the benefits of carbon sequestration. Burns noted that there is a lot of money being put into carbon, and probably even more now with the new administration. He noted he feels we need a hub to help evaluate some of the information about carbon programs.

Senator Groene raised questions about why additional programs are needed if producers are already doing no-till and soil health practices for economic reasons? Senator Groene also noted that Extension service is already providing these services.

Tim Kalkowski, past chairman of Nebraska Grazing Lands Coalition, agriculture banker, member of NRCS state technical committee, and ranch owner, testified in support of the resolution. He spoke about the importance of protecting the environment and economy for future generations.

Tom Hoegemeyer testified in support, noting that soils are exceedingly important. He noted that previously everyone always thought about soils from a physical standpoint but we're learning that biology is key to a lot of properties. He testified that according to Dr. Ray Ward approximately 90% of soils in Nebraska are degraded. He told the committee it's key as leaders to understand that there is serious demand-driven changes coming from Millennials and Gen Z, noting that they expect healthy foods that are traceable back to farms and ranches that have sustainable soils. He also reiterated that companies are making promises to be carbon neutral and sequestration in soil is a mechanism they will use to achieve it.

During questioning Senator Brewer brought up the constant struggle in the Sandhill's to address blowouts and the inability to recapture the land.

John Hansen testified in support on behalf of the Nebraska Farmers Union. He noted they strongly encourage the committee to accept the report and allow the groups to continue focusing on improving soil.

Greg Licktig, Iowa landowner and land manager, testified in support. He noted that there are organic practices that are applicable to production ag. He noted that financial success in the current subsidized market is the biggest impediment to change.

Mike McDonald testified in support of the resolution. He requested the committee consider the idea of the Nebraska Ag business consumer act. He noted that 3 out of 17 members on the task force were from NRDs. He reiterated that the task force purposely did not ask for money or submit a bill this year. He told the committee they do not want mandates, instead they want this to be a grassroots effort.

Opponents

There was no opposition testimony.

Neutral

Steve Ebke, farmer from Daykin, testified in a neutral capacity on behalf of the Ag Leaders Working Group (including Nebraska Cattlemen, Corn Growers Association, Farm Bureau, Soybean Association, Dairy Association and Wheat Association). He noted that Nebraska producers will continue to work to support and enhance soil health. He noted there is no need for a new layer of salaries and overhead to achieve the goals, and noted instead it would be better to ask Nebraska Extension to work with assistance from partners. He also addressed a lingering concern that developing and working to meet metrics could result in mandates and regulations. He testified that they take the report at its intent, but there are examples from other states of similar efforts leading to mandates. He noted that the groups he was representing at the hearing endorse voluntary incentives and look forward to improving soil health.

Written testimony was submitted by nine supporters. No written opposition letters were submitted. One neutral letter was submitted by Nebraska Department of Agriculture.

During closing, Senator Gragert noted the report isn't perfect, but it contains excellent recommendations. He said it's understood that a lot is already being done, but the suggested hub becomes a one stop shop and will help individuals know what's going on and how to get involved. He noted there is no silver bullet to fix these issues, but this resolution shows a commitment for moving us in the right direction.

LB 91 - Change germination seed testing provisions under the Nebraska Seed Law. Brandt.

The Agriculture Committee advanced LB 91 to General File with AM 96 on February 11th by an 8-0 vote.

The amendment (AM 96) makes several changes, first it strikes the proposed revision to the definition of "agricultural seed" and revises the definitions of native and non-native plant species to include plant species indigenous to North America prior to European settlement. It strikes the inclusion of yellow bluestem in Section 2 of the bill. It adds language that reduces the allowable period after germination or viability (TZ) testing native seeds may be offered for sale without being mislabeled from 15 months to 12 months and removes the option for viability (TZ) testing of hermetically sealed seeds of non-native seeds.

The bill makes several technical changes to regulation of native and nonnative plant species.

With AM 96, the two new proposed definitions for regulation of plant species read as follows:

- Native plant species means any grass, sedge, rush, or forb indigenous to North America prior to European settlement.
- Nonnative plant species means any grass, sedge, rush, or forb not indigenous to North America prior to European settlement.

It also adds the term "habitat restoration or maintenance" to the list of agriculture seeds to be regulated.

The Agriculture Committee accepted testimony on LB 91 on January 26th.

In his opening, Senator Brandt noted he brought the bill to assist some wild native seed dealers with some issues that affect their business.

Dr. Kay Kottas, representing Prairielegacy, Inc, Wittsend Homestead LLC and the Nebraska Native Seed & Plant Producers, testified in support of the bill. She noted that current law limits some of their native wildflower seeds to nine-month limit after testing before they can be planted. She believes this should be expanded to fifteen months as the seed is still fine.

Scott Merritt, executive Director of the Nebraska Agribusiness Association Testified in opposition. He noted the bill creates an opportunity for inconsistency in product quality for Nebraska consumers. Under current statute, commercial seed must have a germination test performed, and be labeled with a germination rate, every nine months. He noted a limited number of grasses are allowed to be tested every twelve months. The bill changes this to allows for a new category, titled, “native plant species,” to be stored and sold without retesting for 15 months.

Merritt noted their first concern is the difficulty in determining what plant species are categorized as native and non-native. This change has the potential to create confusion as classification may be open to interpretation for some plant species. He noted their second concern is with the length of time seed may go without verifying the germination rate. Consumers rely on the accurate labeling to make growing decisions. There are multiple factors that affect seed viability rate, including processing, handling and storage conditions. Guaranteeing an accurate or consistent germination rate beyond the current 12 months could be difficult. The result would be a loss of consumer confidence in the stated seed label germination rates.

LB 368 - Provide the Auditor of Public Accounts enforcement powers for failure of political subdivisions to file reports. Sanders.

The Government Committee advanced LB 368 to General File with AM 66 on February 8th by an 8-0 vote. The amendment (AM 66) deletes a redundant grant of authority to the Auditor of Public Accounts.

The bill proposes when a political subdivision fails to file a required report with the Auditor of Public Accounts by the applicable due date, the Auditor may assess the political subdivision a late fee of twenty dollars per day for each calendar day the required report remains not filed. The late fee would begin on the day following the date the report is due. The total late fee assessed shall not exceed two thousand dollars per filing.

The bill also outlines that at the auditor's discretion, the expense of the audit of the political subdivision shall be paid by the political subdivision.

The Government Committee accepted testimony on LB 368 on January 29th.

In her opening, Senator Sanders said the bill was brought to her office by the Auditors office. She told the committee the auditor’s office receives reports from 2800 political subdivisions, of which 309 were filed late, and 19 still have not filed FY2019 audit reports. She noted that chasing reports is expensive and frustrating for the auditor’s office. She stressed that the bill says may assess a penalty, so they have discretion. She also outlined a committee amendment (AM 66) which strikes the portion of the bill outlining that the auditor can audit the political subdivision, noting that under existing law they already have the ability to audit any given subdivision at any time, and that section of the bill is repetitive and unnecessary.

Proponents

Russ Karpisek testified on behalf of the Auditor of Public Accounts. He outlined the need for the bill and told the committee the main issue is the requirement is already in statute, but there is no teeth to make people get things in on time. He reiterated that trying to chase down people to submit the reports is time consuming and expensive, but there is nothing they can do right now.

Opponents

There was no opposition or neutral testimony.

A position letter in support was submitted by the Platte Institute.

LB 369 - Provide the Auditor of Public Accounts access to working papers and audit files. Sanders.

The Government Committee advanced LB 369 to General File with AM 67 on February 8th by an 8-0 vote. The amendment (AM 67) deletes a redundant grant of authority to the Auditor of Public Accounts.

The bill outlines that the Auditor of Public Accounts shall have unrestricted access to the working papers and audit files for any audit report required to be filed with the office of the Auditor of Public Accounts.

Under the bill, working papers and audit files are defined to mean those documents containing evidence to support the auditor's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the auditor during the audit.

The bill also incorporates provisions proposed under LB 368. This includes when a political subdivision fails to file a required report with the Auditor of Public Accounts by the applicable due date, the Auditor may assess the political subdivision a late fee of twenty dollars per day for each calendar day the required report remains not filed. The late fee would begin on the day following the date the report is due. The total late fee assessed shall not exceed two thousand dollars per filing.

The bill also outlines that at the auditor's discretion, the expense of the audit of the political subdivision shall be paid by the political subdivision.

The Government Committee accepted testimony on LB 369 on January 29th.

In her opening Senator Sanders mentioned the bill was brought to her by the State Auditors office. Provisions of the bill were outlined and she offered a Committee Amendment (AM67) which strikes the portion of the bill outlining that the auditor can audit the political subdivision, noting that under existing law they already have the ability to audit any given subdivision at any time, and that section of the bill is repetitive and unnecessary.

Proponents

Russ Karpisek testified on behalf of the auditor of public accounts in support. He told the committee the intent of the bill is essentially the same as LB 368, and just about improving compliance with existing law. He expressed that the auditor's office has had challenges with a specific CPA firm. He told the committee their office has not heard of any opposition.

Opponents

There was no opposition or neutral testimony. A position letter in support was submitted by the Platte Institute.

The Following Bills Had Hearings This Week

LB 9 - Change annexation requirements and property tax special valuation provisions. Blood.

The bill adds criteria for annexing contiguous property. This bill addresses an issue with land around Offutt Air Base in Sarpy County.

Under the proposal, lands, lots, tracts, streets, or highways shall be deemed contiguous although property owned by the federal government or a natural resources district lies between the same and the corporate limits, so long as the lands, lots, tracts, streets, or highways sought to be annexed are adjacent to or contiguous with the property owned by the federal government or a natural resources district.

The bill also adds criteria for special valuation of ag and horticultural land subject to a conservation or preservation easement as provided in the Conservation and Preservation Easements Act within the corporate boundaries of a city or village if : 1) The land is subject to air installation compatible use zone regulations; or 2) the land is within a flood plain.

Current law requires only that the governing body of the city or village approves the agreement creating the easement.

The Urban Affairs Committee accepted testimony on LB 9 on February 9th

In her opening, Senator Carol Blood mentioned the purpose of the bill deals with land in cities of the first class, it addresses an issue where there is land owned by Offutt Air Force Base in between parcels that the city of Bellevue wants to annex.

She offered an amendment to remove the language dealing with land owned by the NRD as it is not needed in this situation.

Two major focal points - The flood control efforts to protect the base creates a situation that the city of Bellevue needs to annex to assist with removing the area from the flood plain. A second issue is to skip over some ag land so that land does not lose its special valuation.

Proponents

Rusty Hike, Mayor of Bellevue, testified in support of the bill. He noted there have been some issues with contiguous land surrounding the air base for years. The base has land called “safety zones” around the base which separates the lands in question and makes it non-contiguous. These zones can’t be developed but could be farmed. They don’t want to annex those properties and want the land to stay as agriculture and keep it is the special valuation as ag land. The city does not want to cause the land to lose its special valuation as ag land. The city wants to skip over these zones and leave them alone.

The growth of Bellevue is to the south and they want to work around Offutt.

Joe Kohout, representing United Cities of Sarpy County, testified in support of the bill. He mentioned this has been a problem for some time and voiced support for the bill to fix the problems and protect the ag land in the safety zones

Christy Abraham, League of Municipalities, testified in support and mentioned this is a unique situation to Bellevue and want to work with them to address the problem.

There were four letters of support and one neutral letter.

There were no opponents and no neutral testimony. The Committee reported no action on the bill.

LB 65 - Change contractual conflict of interest provisions under the Nebraska Political Accountability and Disclosure Act. Williams.

The bill proposes under the conflict of interest statutes for officers to remove the language “a direct pecuniary fee” from the law dealing with contracts. It replaces the term with “a payment or fee”.

The Government Committee accepted testimony on LB 65 on February 10th

During opening Senator Williams outlined the bill and noted it only proposes a change that is technical in nature.

Proponents

Frank Daley testified in support on behalf of the Nebraska Accountability and Disclosure Commission. He reiterated that the bill is technical in nature and removes a conflicting section of statute.

A letter of support was submitted by the League of Municipalities.

There was no opposition or neutral testimony and Sen. Williams waived closing.

The Committee reported no action on the bill.

LB 189 - Change provisions relating to property tax refunds. Halloran

The bill proposes to change procedures for making a property tax refund. Under the bill, if sufficient funds are not available, the county treasurer shall register the refund which remains unpaid as a claim against each political subdivision and shall issue the person entitled to the refund a receipt for the registration of the claim.

The bill eliminates existing language regarding the political subdivision certifying to the county treasurer that a hardship would result and create a serious interference with its governmental functions if the refund is paid. It adds language to require the political subdivision to make provisions in its next budget for the refund claim amount. The bill also eliminates the five-year allowance for refund.

The Revenue Committee accepted testimony on LB 189 on February 10th

During his opening remarks, Sen. Halloran mentioned the Mid-America Agri Products-Wheatland (MAP-W) ethanol plant in Madrid, Nebraska, protested their taxes and found that they were being charged double what they should have owed. Perkins County owed the MAP-W ethanol plant a repayment of nearly \$110,000. Per statute, political subdivisions can declare a hardship and not have to make the repayment. This bill would require them to include the repayment in their next budget to ensure the taxpayer, who was overcharged receives their money. He noted that the MAP-W ethanol plant is just one example of a taxpayer not being repaid and we need to hold political subdivisions to repayments.

Proponents

David Bracht, attorney at Kutak Rock representing MAP-W ethanol plant, testified in support. Bracht noted that MAP-W employs 30-35 employees in Madrid and has some of the highest salaries in Madrid and Perkins County. He said the hardship clause in statute, doesn't have a specific meaning other than the repayment would interfere with the government operation. The political subdivision also doesn't have to pay interest on that repayment unless it is still unpaid after five years. Bracht asked the committee to contrast that with the taxpayer, who pays 14 percent interest if they don't pay their taxes in first year and could lose their property if they don't eventually pay.

Frederick Stehlik, attorney with Gross and Welch and represented MAP-W on various tax appeals, testified in support. Frederick noted that it can take some time for the clock to even start on repayment. In MAP-W's case, they appealed the 2017 tax valuation and three years later the Nebraska Supreme Court heard the case

and made a judgement, which then started the five-year clock for the county to make repayment. Frederick noted there is no way for the taxpayer to enforce repayment of the taxes and they can't ask the political subdivision to take the repayment off the next year's taxes. He said it's essentially an interest-free loan for the political subdivision and there is no rule that says the political subdivision can't come back the next year and raise the taxes back up. He noted when the ethanol plant or another manufacturer is the largest employer, this can happen.

Robert Lundeen, CEO of MAP-W and Mid-America Bio Energy, testified in support. Lundeen noted that in the early 2000s they built two ethanol plants – one in Cambridge and one in Madrid. They have a board member who serves on both ethanol plant boards, and they discovered that the Cambridge plant was valued at 50 percent less than the Madrid plant even though they were identical. Lundeen noted the board tried to be respectful as a member of the community and employer in Perkins County, but the fact that they were being charged twice than an identical plant 80 miles away was not OK. Lundeen said his board directed him to take action and they started litigation and exhausted their means, and now they are before the legislature pleading for fairness. We buy 16 million bushels of corn in the area and we help increase the value of the corn basis. Lundeen noted that if it's happening to them, it's happening to others but since their revenue is larger, they went through the extra cost to litigate it. He said counties are indebted to various taxpayers.

Don Kain, representing himself and the Independent Cattlemen of Nebraska, testified in support. He noted that he just raises cows and is not a CEO of anything, but his ranch in Custer County had a 250% tax increase in one year. He noted he has two Nebraska Supreme Court decisions in his favor and has only received one partial payment (\$12,000 of \$18,000) for being overtaxed. He noted he is concerned the county will use the hardship clause to hurt him financially and get out of repaying him. He said it's such a ludicrous situation in Custer County and it's happening across the state, not only to the big guy but also the little guy. He said he often gets phone calls from people who are going through this same situation and would try to provide a list for the committee.

Opponents

Jon Cannon, NACO, testified in opposition. He noted that in some cases the hardship clause is certainly needed as in case of MAP-W the village of Madrid's repayment would have been 1/3 of their budget. He said, the clause is for the benefit of all taxpayers, because the levy would have to be increased for everyone to offset the repayment. The reason the hardships are in statute is because the burden would be shifted onto every other taxpayer. Cannon noted that Perkins County repaid the settlement, however the ESU, NRD and smaller subdivisions still have the judgment outstanding.

Lynn Rex, League of Municipalities, testified in opposition. Repayment might become a levy issue and come down to issuing a bond, vote of the people, etc. Rex noted that the hardship line is critically important as in the case of the village of Madrid with it being 1/3 of the budget. Rex note if there is budget capacity, the political subdivision would get it paid because they don't want that repayment sitting on their books. Rex said she didn't believe this bill is ready to pass, because there is more information that is needed like how many refunds are pending and how widespread of an issue this is.

Neutral

There was no neutral testimony and no letters were submitted for the record.

In closing, Sen. Halloran said that Sen. Flood hit it on the head, "it's not their money." He said it's about equity and fairness for the taxpayer, and it's essentially an interest-free business loan for the political subdivision.

The Committee reported no action on the bill.

LB 644 - Adopt the Property Tax Request Act. Hansen, B.

The bill proposes to eliminate and replace the resolution/ordinance process for budgeting that was adopted in 2019 for political subdivisions that have a property tax request greater than the previous year.

A political subdivision may set its property tax request at an amount that exceeds its property tax request in the prior year if: (a) A public hearing is held and notice of such hearing is provided in compliance with all notice and other requirements for a hearing; and (b) The governing body of such political subdivision passes a resolution or an ordinance that contains all of the necessary information in the resolution. The new process would be as follows:

Hearing Process:

Each political subdivision within a county that seeks to set its property tax request at an amount that exceeds its property tax request in the prior year shall participate in a joint public hearing. At such hearing, there shall be no items on the agenda other than discussion and action on each political subdivision's intent to approve a property tax request that exceeds the political subdivision's property tax request in the prior year.

The joint hearing shall be held on or after August 20 and prior to September 20 and before any of the participating political subdivisions file their adopted budget statement. The joint public hearing shall be held after 6 p.m. on the relevant date.

At the joint public hearing, each political subdivision shall give a brief presentation on the political subdivision's intent to approve a property tax request that exceeds the political subdivision's property tax request in the prior year and the effect of such request on the political subdivision's budget.

The presentation shall include: (i) The name of the political subdivision; (ii) The amount of the property tax request; and (iii) The following statements: (A) The total assessed value of property differs from last year's total assessed value by the specified percent; (B) The tax rate which would levy the same amount of property taxes as last year, when multiplied by the new total assessed value of property, in dollars per \$100 of assessed value; (C) The new rate of property tax, in dollars per \$100 of assessed value; (D) Based on the proposed property tax request and changes in other revenue, the total operating budget of the political subdivision outlining the percentage change that the budget would exceed last year's budget;

At the joint public hearing, interested parties desiring to be heard shall be given an opportunity to present oral testimony: (i) Within reasonable time limits, which shall be no less than three minutes; and (ii) Without unreasonable restriction on the number of individuals allowed to make public comment.

Public Notice Requirements:

Public notice of the joint public hearing shall be provided: (i) By sending a postcard to all affected property taxpayers. The postcard shall be sent to the name and address to which the property tax statement is mailed; and (ii) By posting notice of the hearing on the main page of the relevant county's web site.

The county shall mail the postcards and the cost of mailing the postcards shall be divided among the political subdivisions participating in the joint public hearing. The postcard sent by the county under this subsection and the notice posted on the county's web site shall include the date, time, and location for the public hearing, a listing of and contact information for each political subdivision that will be participating in the public hearing, and the amount of each participating political subdivision's property tax request.

The notice shall also contain the following information with respect to each participating political subdivision: 1) In all uppercase letters, the name of the political subdivision requesting a tax increase; 2) The total assessed value of property differs from last year's total assessed value by the specified percent; 3) The tax rate which would levy the same amount of property taxes as last year, when multiplied by the new total assessed value of property, in dollars per \$100 of assessed value; 4) The new rate of property tax, in dollars per \$100 of assessed value; 5) Based on the proposed property tax request and changes in other revenue, the

total operating budget of the political subdivision outlining the percentage change that the budget would exceed last year's budget

Resolution or Ordinance:

The political subdivision increasing the tax would be required to have a record vote of the governing body in passing such resolution or ordinance. The resolution or ordinance setting a property tax request shall be certified and forwarded to the county clerk on or before October 15 of the year for which the tax request is to apply.

Any levy which is not in compliance with the Property Tax Request Act shall be construed as an unauthorized levy.

The Revenue Committee accepted testimony on LB 644 on February 10th

Senator Hansen opened by providing an overview of the truth in taxation initiative. He noted the model was first enacted in Utah in 1985. He noted this is an informed consent bill that provides taxpayers information about what taxes are going up, by how much, who is raising them, and provides a mechanism to make elected officials more accountable for decisions. Hansen said current law does not require political subdivisions to send taxpayers direct notification of a property tax request hearing and that a postcard showing the amount that an individual's taxes would increase would be more effective at getting their attention than the currently required newspaper advertisement.

Proponents

Jessica Shelburn with Americans for Prosperity-Nebraska testified in support. She commented that Nebraska has excessive taxation, noting that the state ranks in bottom for property taxes. She testified that the Utah model would strengthen the impact of LB 103, which was passed during the previous session.

Sarah Curry testified in support on behalf of The Platte Institute. She commented that this is an extension of LB 103 and puts teeth in current law. She provided results from an institute poll that said 77% of respondents supported mailed notification of property tax hearing. She commented that there is no mechanism to check if all tax entities are complying with law and holding hearings. She noted that other states including IL, MN, TX and AZ have implemented measures similar to the Utah model.

Written testimony in support of the bill was provided by the Nebraska Chamber of Commerce and the Nebraska Bankers Association

Opponents

Lynn Rex testified in opposition on behalf of the League of Municipalities. She outlined a number of unworkable issues with the bill. The first being related to the timeline and the issues the bill would create with meeting the filing deadline. She expressed concern over the hearing process, providing an example for Polk County, where there are 29 Political Subdivisions that would all have to come together at 1 hearing. She raised the issue of how political subdivisions with jurisdiction in multiple counties would determine where to hold a hearing.

Jon Cannon testified in opposition on behalf of NACO and raised the same concerns outlined by Lynn Rex.

Colby Coash testified in opposition on behalf of the Nebraska Association of School Boards. He noted that provisions of LB 148 just passed last session, already require separate hearings to be noticed and conducted for budgets.

Written testimony in opposition was submitted by the Nebraska Community College Association and Lancaster County.

Neutral

No neutral testimony was provided and a letter in the neutral position was submitted by Open Sky.

In closing, Sen. Hansen noted that the postcard is key and what gets people interested. He addressed some questions raised by opponents and noted that the bill allows for an extra week by pushing the filing deadline to September 27th. He also noted that hearings would not be too large to manage because the bill lists that only specific subdivisions are required to participate, so not all would be at the hearings. He also noted that the postcards would be shared cost only of those subdivisions raising taxes.

LB 591 - Require a permit for any natural resources district water augmentation project. Groene.

The bill would require permits for augmentation projects operated by natural resources districts.

Under the proposal, before any natural resources district may create an augmentation project to add water to a natural stream or channel of the state to offset water depletion, the natural resources district shall first obtain a permit from the department. Application for the permit shall be made on a form provided by the department.

The application shall include plans and specifications detailing the intended times, amounts, stream-entry locations, stream-reach locations, and such other information as required by the department. The water subject to such permit shall be deemed appropriated for streamflow enhancement. Permitholders shall be liable for any damages resulting from the overflow of such stream or channel when water so conducted contributed to such overflow.

The Natural Resources Committee accepted testimony on LB 591 on February 10th

During his opening Senator Groene expressed his desire to get the state involved in the permitting process for augmentation.

Proponents

There were no proponents for the bill.

Opponents

Don Blankenau testified in opposition on behalf of NARD. He outlined four primary reasons NRDs oppose the bill. First, the bill is both anti-agriculture and anti-municipality. Under 591, augmentation water discharged to a stream - either from surface or ground water sources - would be "appropriated" and protected from being used by irrigators and municipalities. The word "appropriation" or "appropriated" has specific meaning under Nebraska law that gives the holder of the appropriation exclusive rights to the water subject to the prior appropriation doctrine.

The point and goal of many augmentation projects is the opposite. Those projects allow farmers and cities to withdraw and use water at times when they would otherwise be prohibited from so doing. In other words, augmentation projects help existing appropriators by providing water during times of need. For example, NCORPE provides augmentation water during certain years to the Republican River Basin expressly to allow both surface and ground water users to take water when they would otherwise be shutdown. Had NCORPE been required to operate under this bill, thousands of water users would have been shut off and the State of Nebraska would likely have been subject to yet another suit by Kansas. Kansas might have been happy with this bill but the costs to Nebraska's water users and taxpayers would have been enormous.

Second, to the extent NRDs develop augmentation projects to protect and deliver water from the point of discharge to a specific location using natural streams, the law already requires NRDs to obtain a permit from

the Department of Natural Resources ("DNR"). Under Neb. Rev. Stat. § 46-252, any person, including an NRD, who wishes to convey water from one point to another using a natural stream and have that water protected from use along the way, needs a permit from DNR. Simply put, that permitting requirement is already in place and treats NRDs just like any other water user.

Third, from a water management perspective, the "permit" required by 591 is unnecessary. If the source of the augmentation water is ground water, the regulatory body is the NRD. If an NRD develops the augmentation project, they would do so within the scope of their Integrated Management Plan ("IMP"), which, as we discussed last week at the hearing on 589, is a planning document, jointly developed with the Department of Natural Resources - the state authority for the administration of surface water rights. Under this bill, a permit would be required by the NRD to use the groundwater it regulates within the scope of its State approved IMP.

By contrast, if the NRD wished to develop an augmentation project using surface water as the source of water, the law already requires the NRD to obtain a permit from DNR - just like any other surface water user. In fact, there is a pending application before DNR right now for an augmentation project that uses excess surface water for its source. So, whether the source of water is ground water or surface water, the management implications are already carefully vetted by the appropriate regulatory bodies.

The fourth reason NRDs oppose this legislation: Pointless bureaucracy. This bill, without identifying any actual management reason for a permit or any criteria by which it may be granted or denied, simply requires the applicant to blindly jump through a permitting hoop. Projects that may cost many millions of dollars and years to plan could be trapped for many more years in an utterly undefined permitting labyrinth without any criteria as to what state regulators are to review. It is truly a case of government for the sake of government at the expense of the taxpayers.

In sum, this bill represents a fatal misunderstanding of what augmentation projects are and what they seek to accomplish. It is anti-farmer, anti-municipality, and wraps potentially urgent water augmentation projects in government red tape without any purpose. As testified last week, NARD believes that any legislation impacting augmentation projects should be developed with all stakeholders first agreeing that there is a problem that needs to be fixed, and next, what that fix needs to be. This legislation simply seeks to fix a non-existent problem with a destructive non-solution.

During questioning, Sen. Gragert asked about impacts to the surrounding aquifer, Blankenau noted that the NRDs worked with DNR to complete modeling to ensure pumping from the location wouldn't have long term consequences and only proceeded after concluding it would be beneficial, he also pointed out that water levels and potential impacts are continuously monitored.

Sen. Bostelman addressed the history of decreasing streamflow in the Republican River. Blankenau outlined that prior to the NRDs managing the groundwater, it was the position of every governor and the federal government to encourage wells to be drilled, he also pointed out the impact terraces have had.

Tom Riley, Director of the Department of Natural Resources, also testified in opposition. He noted the bill would limit the use of down-stream appropriators. He mentioned the process outlined in the bill is vague and very different from the current permitting processes. He told the committee it would be better to study a process over the interim.

Letters in opposition were submitted by NWRA and the URNRD.

There was no neutral testimony and the Committee reported no action on the bill.

LB 650 - Adopt the Nebraska Geologic Storage of Carbon Dioxide Act. Flood.

The bill proposes the Nebraska Geologic Storage of Carbon Dioxide Act to promote the geologic storage of carbon dioxide.

The purpose is to benefit the state and the global environment by reducing greenhouse gas emissions, help ensure the viability of the state's energy and power industries, provide storage of carbon dioxide to allow for its ready availability if needed for commercial, industrial, or other uses.

A permitting process would be established and regulated by the Nebraska Oil and Gas Commission (NOGC) to provide for injection of carbon dioxide underground, via injection wells, and provide for an underground storage right.

Title to any reservoir estate underlying the surface of lands and waters would be vested in the owner of the overlying surface estate unless it has been severed and separately conveyed. The ownership of reservoir estates may be conveyed in the manner provided by law for the transfer of mineral interests in real property.

The NOGC would be required to hold a public hearing before issuing a permit. Notice of the hearing shall be provided in accordance to commission rules and regulations. Notice of the hearing shall be given to each mineral lessee, mineral owner, and reservoir estate owner within the storage reservoir and within one-half mile of the storage reservoir's boundaries. Notice of the hearing shall also be given to each surface owner of land overlying the storage reservoir and within one-half mile of the storage reservoir's boundaries.

Before issuing a permit, the commission shall find:

- (1) That the storage operator has complied with all requirements set by the commission;
- (2) That the storage facility is suitable and feasible for carbon dioxide injection and storage;
- (3) That the carbon dioxide to be stored is of a quality that allows it to be safely and efficiently stored in the storage reservoir;
- (4) That the proposed storage facility will not endanger surface waters or underground sources of drinking water;
- (5) That carbon dioxide will not escape into the atmosphere or surface waters from the storage reservoir;
- (6) That the storage facility will not endanger human health or unduly endanger the environment;
- (7) That the horizontal and vertical boundaries of the storage reservoir are defined;
- (8) That the storage operator will establish a testing and monitoring plan to assess the location and migration of carbon dioxide injected for storage and to ensure compliance with all permit, statutory, and administrative requirements;
- (9) That the storage operator has satisfied all of the requirements under the act and if the storage operator has obtained all permits required by the applicable underground injection control program permitting authority for each storage facility injection well;
- (10) That the storage facility is in the public interest;
- (11) That the storage operator has made a good-faith effort to obtain the consent of all persons who own reservoir estates within the storage reservoir;
- (12) That the storage operator has obtained the consent of persons who own reservoir estates comprising at least sixty percent of the physical volume contained within the defined storage reservoir;
- (13) Whether the storage reservoir contains commercially valuable minerals. If it does, a permit may be issued only if the commission is satisfied that the interests of the mineral owners or mineral lessees will not be adversely affected or have been addressed in an arrangement entered into by the mineral owners or mineral lessees and the storage operator; and
- (14) That all nonconsenting reservoir estate owners are or will be equitably compensated.

Senator Flood opened by noting the bill is the result of collaboration of several individuals and groups. He noted that the bill is about employing the best technology to expand the market for Nebraska products, while also addressing climate issues. He discussed that the climate change discussion has costal states prioritizing energy sources that meet climate friendly guidelines, noting that if Nebraska can store carbon deep underground as the bill allows to be permitted, they're going to look at Nebraska and it will make our products more marketable.

Sen. Flood noted this is a unique opportunity where all sides can come to together to create a win-win scenario. He noted that the bill would allow ethanol producers to capture CO₂ that would otherwise be emitted and safely inject it 3-10K feet underground. It was discussed that EPA currently has regulatory measures in place and the bill does not diminish existing EPA standards, rather it supplements and builds a state framework around existing EPA regulations.

Sen. Flood noted that groundwater protection is an important priority, and it has been demonstrated that underground injection can be done to ensure groundwater is protected. Storage is intended to be safe and stable in perpetuity, but there were questions from the committee on who is responsible as companies come and go. He noted that financial assurances are in place for the state to address any potential issues, he also reiterated that the EPA regulatory measures have the state's best interest in mind.

Proponents

Troy Bredenkamp testified in support on behalf of Renewable Fuels Nebraska. He noted that technology is becoming increasing important for Nebraska's ethanol industry and that low carbon fuel standards are being adopted. He noted that ethanol is already a very low carbon producing energy source, but allowing for injecting CO₂ emissions will only make Nebraska ethanol more marketable and competitive in low carbon energy markets.

Hal Demuth, owner of Petretech Corporation a company specializing in oil and gas wells, testified in support. Mr. Denuth provided the committee with a lengthy overview of deep injection wells and how they work. He noted that the EPA UIC program focuses on protection of groundwater with six different classes of injection wells, CO₂ injection wells are classified as class 6 wells. He stressed that the existing EPA permit process requires a rigorous process for ensuring protection of water and safe long-term containment. He stated that the injected CO₂ is in a super critical state that is slightly heavier than water. He told the committee there are over 800 injection wells already across the country, however only one location where wells of this specific nature are operating is in Illinois.

Charles Goreckey with the University of North Dakota's Energy & Environmental Research Center testified in support of the bill. He outlined similar legislation introduced in North Dakota in 2009. He noted this framework would be needed for Nebraska to address management of the pore space and it would also allow for the state to seek primacy if needed. He provided examples of several similar injection projects across the globe.

Chuck Woodside, CEO of KAPA Ethanol holdings also testified in support. He reiterated the opportunity this would provide for ethanol to expand markets and become an even more competitive low carbon energy source.

Kristen Hassebrook testified in support on behalf of the Nebraska Chamber. The chamber supports the bill due to the opportunity to encourage business growth.

Jan Tenbenschel testified in support for the Nebraska Ethanol Board. He echoed the advantages of being competitive in low carbon fuel markets. He specifically addressed the risk of being out competed by

neighboring states if they enact similar legislation and can offer lower carbon fuel. He noted there is even the potential for ethanol to be a negative carbon fuel.

Written testimony in support of the bill was submitted Nebraska Corn Growers and the Nebraska Farmers Union.

Opponents

There was no opposition testimony.

Neutral

John Rundel, Chair of the Nebraska Oil and Gas Conservation Commission testified in a neutral position. He spoke to the advantages of injection wells and told the committee the Commission is best equipped to provide oversight for this process. He noted they are a cash funded agency funded through mill levy's assessed on oil and gas production. He noted that the bill has funding mechanisms in place to make this a self-funded program, however there may need to be some appropriations made to bridge a funding shortage during startup of the program. He outlined the rules and hearing process that would begin once the bill is passed. He noted that primacy would stay with EPA for now, but in the future if directed the state and commission could apply for primacy. He noted that currently the state has primacy over class II wells – with 110 active wells in the state.

Matt Joeckel, Director of Nebraska CSD, testified in a neutral capacity on behalf of himself. He provided the committee with a quick overview of the approximately 20 similar projects across the globe. He spoke about the need for trained geologist and engineers to provide assessments. He noted that due to geologic features these projects are feasible in several parts, but not all parts of Nebraska. He outlined the need for appropriate long-term monitoring. He addressed a question from the committee about the potential for earthquakes, noting that underground injection can result in earthquake, the risk can be addressed by running geology and engineering assessments.

Several position letters both in support and opposition of the bill were submitted for the record. Sen. Flood waived closing. The Committee did not report any action on the bill.

LB 483 – Require the University of Nebraska to develop a Climate Action Plan. Cavanaugh, J.

The bill proposes that the University of Nebraska shall develop an evidence based, data-driven, strategic action plan to provide methods for adapting to and mitigating the impacts of extreme weather events or climate change. The action plan would include the following:

- (a) A baseline measurement of greenhouse gas emissions, also called a carbon footprint, of the state;
- (b) Measurable benchmarks and goals, including actions needed to meet the goals and benchmarks;
- (c) Assessment of risks and vulnerabilities from negative impacts of climate change;
- (d) Opportunities presented by strategies for adaptation and mitigation of the impacts of climate change;
- (e) Opportunities to improve and increase resilience to the impacts of climate change;
- (f) Potential economic impacts of climate change, both positive and negative;
- (g) Examination of impacts of climate change upon the following sectors:
 - Agriculture;
 - Water resources;
 - Health care and public health;
 - Transportation; and
 - Commerce and industry;

(h) Recommendations for new policies and changes to policies and programs that support the goals based on the information and data collected and generated, including funding needs and recommendations for legislation.

The process for developing the action plan shall include:

- (a) Extensive opportunities for public comment and engagement, including, but not limited to, online input, public hearings, and public and private sector engagement;
- (b) Input from entomological, climate, water, agricultural, and natural resource experts in Nebraska;
- (c) Examination of comparable strategic action plans from other states; and
- (d) Such other activities as may be deemed necessary.

The cost for developing the action plan would come from a transfer of \$250,000 from the Petroleum Release Remedial Action Collection Fund to the University of Nebraska.

The action plan would have to be submitted to the Governor and the Executive Board of the Legislature on or before December 15, 2022.

The Natural Resources Committee accepted testimony on LB 650 on February 11th

Opening on the bill, Senator Cavanaugh noted this is a continuation from efforts in 2016. He distributed handouts that portrayed the continuous increase in temperature, noting UNL predicts a 5-9-degree temperature increase in coming years, and stressed that it must be addressed. He told the committee it's not the intent to have another study, but rather have a real road map to bring up an evidence-based, data-driven strategic plan to provide methods for adapting to and mitigating the impacts of extreme weather events. He stressed that changes in weather are affecting our economy.

Proponents

Al Davis testified in support on behalf of the Nebraska Sierra Club. He referenced a 2013 study completed by UNL that demonstrated grim results due to climate change, he referenced projections in that study that say by 2075 North Platte will have climate like that of Lubbock Texas. He stressed that natural disasters and economic collapse are a real threat if we do nothing.

John Hansen testified on behalf of Nebraska Farmers Union. He noted that UNL is a leader in drought and climate planning and have a lot of expertise and that should be utilized to minimize adverse impacts and take advantage of opportunities that come with it.

Ken Winston testified in support for Nebraska Interfaith Power and Light. He told the committee that climate change is the most important moral issue today and that we have faith and spiritual obligation to address it since its greatest impact on low income and vulnerable populations. University resources could be utilized and could help people of the state adapt to changes and help prepare for severe weather events. He noted they also support similar efforts like the healthy soil task force.

Jesse Starita testified in support on behalf of himself. He told the committee we are already on a dangerous path and spoke to the dire implications of not taking action. He noted that the bill contains no mention of regulations but focuses on the opportunities.

Written testimony in support of the bill was provided by St. Paul Climate Justice Team, City of Lincoln, the Nature Conservancy and a couple of individuals.

Opponents

Mark Whitehead testified in opposition on behalf of the Nebraska Petroleum Marketers Association. He noted that they're not testifying to offer an opinion or to debate climate, rather their opposition is due to the funding mechanism in the bill. He provided the committee with the history and structure of the Petroleum Release Remedial Action Collection Fund and stressed their opposition to using the fund as a funding source for other purposes.

During closing Sen. Cavanaugh noted he was pleased to see everyone in agreement and see that the only opposition was on how to pay for it. He further referenced previous studies and how their projections have already been proven conservative. He stressed that it's not a question of whether climate change is happening, rather it's a question of if we are going to do anything about it. He also noted that he is actively exploring other funding mechanisms.

There were a number of position letters submitted for the record. The Committee reported no action on the bill.

Hearings Continue Next Week

Hearing Protocols - Legislative hearings continue next week and the Legislature continues to utilize new protocols for testifiers and submitting testimony. Here is a summary:

- Hearings will run all day, rather than just afternoons. There will be a morning session from 9:30-noon and a second session starting at 1:30 pm.
- In person testimony is generally limited to 5 minutes, although the chair of each committee has discretion to modify that time limit.
- In lieu of in-person testimony, written testimony for the hearing record must follow these new guidelines:
 1. Submission of written testimony will only be accepted between 8:30 a.m. and 9:30 a.m. in the respective hearing room where the bill will be heard later that day.
 2. Individuals must present their written testimony in person during this time frame and sign the submitted written testimony record at the time of submission on the day of the hearing on the bill.
 3. The testifier must submit 12 copies. Failure to submit the required number of copies will result in the treatment of the submission as a position letter and not written testimony.
 4. The written testimony must be a written statement that is no longer than 2 single-spaced, typed pages or 4 double-spaced, typed pages in length.
 5. Only the written testimony from the person delivering the testimony will be accepted. No handouts, testimony, or letters from other individuals may be included outside of an individual's written testimony.
 6. Written testimony will be handed out to each member of the committee during the hearing and made available as part of the hearing transcript when the transcript is made public.

Failure to meet all of these procedures for submitted written testimony will result in the person providing the testimony to not be listed on the committee statement as a written testifier, however, the testimony will be included in the official hearing record as an exhibit.

- If you are not testifying in person on a bill or resolution, or submitting written testimony in person on a bill, but would like to submit a position letter to be included in the official hearing record as an exhibit, you must deliver your letter to the office of the committee chair or email it to the committee's email account by noon. CST on the last work day prior to the public hearing.

A list of the committee email accounts can be found at:

<https://nebraskalegislature.gov/committees/committee-emails.php>.

- In order to facilitate public input on legislation, a new feature has been added to the Nebraska Legislature's website for submission of written statements on pending legislation at any stage of the process.

To access this feature, use the Legislatures bill search feature and enter the bill you are interested in. Once the information for the bill comes up, there is a tab just below "History" labeled "Submit Written Statement for LB ...". Just click on that and you can submit up to 300 words.

These submissions will not be considered testimony or part of the public hearing record, but the submitted statements will be available on the UniNet for access by senators and staff throughout the session. Please note, there should be no expectation of privacy regarding comments submitted in this format. If a citizen uses the database to submit his or her views prior to the public hearing on a bill or resolution, this option will allow input to the members of the committee prior to any committee votes.

A full description of the public hearing process can be found at:

<https://nebraskalegislature.gov/committees/public-input.php>

Hearing Schedule – February 16-19, 2021

Tuesday, February 16th

Appropriations Committee – Room 1524 – 1:30 PM

LB 576 - Appropriate funds to the University of Nebraska. Bostar.

The bill appropriates \$50,000 annually from the General Fund for FY2021-22 and FY2022-23 to the Institute of Agriculture and Natural Resources and the Cooperative Extension Program for research on climate change and produce an updated version of the Assessing Climate Change report released in 2014. The Legislature intends for such report to be delivered electronically to the Governor and the Legislature by December 1, 2022.

Wednesday, February 17th

Revenue Committee – Room 1524 – 1:30 PM

LB 622 - Limit the growth of real property valuations and provide for adjustments to assessed values. Friesen.

The bill proposes to limit the growth of real property values to not exceed three percent per year.

For nonagricultural real property for any year shall not be more than three percent greater than the total assessed value of all such property in the prior year, excluding any new growth occurring since the prior year's assessment. If the rate of growth exceeds three percent, the Tax Commissioner shall calculate an adjustment ratio to uniformly and proportionately adjust the assessed value of all such property so that the limit is not exceeded.

For agriculture lands, the limit is a three percent increase in values. If the rate of growth exceeds three percent, the Tax Commissioner shall calculate an adjustment ratio to uniformly and proportionately adjust the assessed value of all such property so that the limit is not exceeded.

Thursday, February 18th

Judiciary Committee – Room 1113 – 9:30 AM

LB 52 - Provide for immunity for injury or death resulting from COVID-19 exposure. Lathrop.

Under the proposal, no person shall be liable in any civil action for any injury or death resulting from an alleged exposure to COVID-19 if such exposure occurred after the effective date of this act.

For purposes of the bill, (a) COVID-19 means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom, and the health conditions or threats associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom; and (b) Person means (a) any natural person, sole proprietorship, partnership, limited liability partnership, corporation, limited liability company, business trust, estate, trust, unincorporated association, or joint venture, (b) the State of Nebraska and any political subdivision of the state, (c) any public or private school, college, university, institution of higher education, religious organization, or charitable organization, or (d) any other legal or commercial entity.

LB 54 - Change immunity for intentional torts under the Political Subdivisions Tort Claims Act and the State Tort Claims Act. Lathrop.

The bill proposes that the Political Subdivisions Tort Claims Act does not apply to claims arising from such an act that is the direct result of the negligent failure of a political subdivision or an employee of a political subdivision to protect a person to whom the political subdivision or employee owes a duty of care.

LB 71 - Change provisions relating to intentional tort claims under the Political Subdivisions Tort Claims Act and State Tort Claims Act. Wayne.

The bill would allow claims based on acts committed by a third party as a result of negligence by a political subdivision or an employee of a political subdivision. Allows for the refiling of certain claims that had already been dismissed.

LB 139 - Adopt the COVID-19 Liability Protection Act. Briese.

The bill proposes some liability protection for first responders, health care workers, person, business, political subdivision, organizations, entities from lawsuits related to COVID-19.

Under the bill, an individual shall not bring or maintain a civil action seeking recovery for any injuries or damages sustained from exposure or potential exposure to COVID-19 unless the plaintiff can prove, by clear and convincing evidence, that the civil action relates to a minimum medical condition resulting from gross negligence or willful misconduct.

Under the proposal, the following definitions are used:

- Person means: (a) any natural person, sole proprietorship, partnership, limited liability partnership, corporation, limited liability company, business trust, estate, trust, unincorporated association, or joint venture, (b) the State of Nebraska and any political subdivision of the state, (c) any school, college, university, institution of higher education, religious organization, or charitable organization, or (d) any other legal or commercial entity.
- First responder includes state and local law enforcement personnel, including University of Nebraska police department personnel, fire department personnel, emergency medical personnel, ambulance service provider personnel, emergency management personnel, and public works personnel who may be deployed in response to a COVID-19 state of emergency.
- Gross negligence means a conscious, voluntary act or omission in reckless disregard of (a) a legal duty, (b) the consequences to another party, or (c) applicable government standards or guidance.
- Health care facility means (a) any facility in which health care services are provided, including, but not limited to, any health care facility, health care practitioner facility, hospice facility or program, elder group home, assisted-living program, and any other licensed or state-approved facility providing health care or (b) any field hospital, modular field treatment facility, or other facility designated by the Department of Health and Human Services or the Nebraska Emergency Management Agency for temporary use for the purpose of providing health care services related to a COVID-19 state of emergency;
- Health care provider means (a) a person who is licensed, registered, permitted, or certified in any state to provide health care services, whether paid or unpaid, including persons engaged in telemedicine or telehealth, and any employee, agent, or contractor of such person, (b) an emergency medical technician who is licensed in any state, or (c) a volunteer or military personnel who are approved by or work under the direction of the Department of Health and Human Services or the Nebraska Emergency Management Agency and who provide health care services in response to a COVID-19 state of emergency in the State of Nebraska.
- Health care service means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition.
- Minimum medical condition means a diagnosis of COVID-19 that requires inpatient hospitalization or results in death;
- Premises means and includes any physical place, any real property, and any appurtenant building or structure serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

A person shall not bring or maintain a civil action seeking recovery for any injuries or damages sustained from exposure or potential exposure to COVID-19 if the act or omission alleged to violate a duty of care was permitted by, in substantial compliance with, or consistent with any federal or state statute, regulation, or order or public health guidance related to COVID-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.

A person who owns, occupies, possesses, or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises for any purpose, shall not be liable in any civil action seeking recovery for any injuries or damages sustained from the individual's exposure or potential exposure to COVID-19, whether the exposure or potential exposure occurs on the premises or during any activity managed by the person who owns, occupies, possesses, or is in

control of a premises, unless the plaintiff can prove, by clear and convincing evidence, that the person who owns, occupies, possesses, or is in control of the premises engaged in gross negligence or willful misconduct that caused the individual's minimum medical condition.

The COVID-19 Liability Protection Act shall not be construed to (1) create, recognize, or ratify a claim or cause of action of any kind, (2) eliminate or satisfy a required element of a claim or cause of action of any kind, (3) affect the rights or limits under the Nebraska Workers' Compensation Act, or (4) abrogate, amend, repeal, alter, or affect any statutory or common law immunity or limitation of liability or constitute a waiver of the sovereign immunity of the State of Nebraska.

Notwithstanding any other provision of law, any civil action seeking recovery for any injuries or damages sustained from exposure or potential exposure to COVID-19 shall be brought within two years after the cause of action shall have accrued.

The COVID-19 Liability Protection Act shall apply to any cause of action accruing on or after the effective date of this act and before the earlier of (1) December 31, 2022, or one year after the end of the COVID-19 state of emergency.

Friday, February 19th

Revenue Committee – Room 1524, 1:30 PM

LB 178 - Adopt the Infrastructure Improvement and Replacement Assistance Act and provide for a turnback of state sales tax revenue. Lindstrom.

The bill proposes to return a portion of the state sales tax collected on water and sewage service to political subdivisions or water utility that operate such systems to assist in repairs and improvements to such systems.

Refunds of sales taxes would be on the following schedules:

- For sales taxes imposed from July 1, 2021, through June 30, 2022: 36.36 percent;
- For sales taxes imposed from July 1, 2022, through June 30, 2024: 54.54 percent; and
- For sales taxes imposed on and after July 1, 2024: 72.72 percent.

Funds received under this section shall be used exclusively to assist in: (a) Paying for infrastructure improvements relating to constructing, upgrading, redeveloping, or replacing sewer and water infrastructure facilities; (b) Paying for the redevelopment and replacement of obsolete water or sewer facilities; or (c) Repaying bonds issued and pledged for such work.

It is the intent that funds received under the section be used to defer increases in sewer and water rates. Each political subdivision receiving funds under this section shall include, in its budget statement, the amount of funds received under this section and the percentage by which its sewer and water rates would have increased if not for the receipt of such funds.