



Nebraska's
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TO: NARD Board, NRD Managers and Conservation Partners
FROM: Dean E. Edson, NARD Executive Director
RE: March 19 NARD Update

State Budget – The Appropriations Committee is nearing the final work on the state budget. They are scheduled to finalize and vote the budget to the floor next week. Below are some preliminary provisions in the budget waiting on final committee action:

- More than \$1.45 billion to direct property tax relief over two years, including \$63 million more for the property tax credit program for the two years ending June 30, 2023.
- Increase the new property tax income tax credit. The new program started at \$125 million, and the program is expected to top \$313 million for each of the next two fiscal years. In FY 2024-25 the program would grow to \$375 million a year, then grow at the pace of inflation thereafter.
- Increase the Cash Reserve to \$763 million by June 30, 2023, by transferring \$50 million in each of the two budget years into the fund. The infusion of money would put the reserve at about 14.2% of state revenue.
- The total budget is \$9.7 billion over the next two fiscal years.
- The plan leaves \$210 million for other legislative priorities.

Floor Debate

The Legislature transitioned to full day debate this week. The agenda included debate of LB 83 which was advanced to Select File. A summary of the bill follows.

LB 83 - Change the Open Meetings Act to provide for virtual conferencing. Flood. Government Committee Priority Bill.

The Legislature advanced LB 83 to Select File on March 15th by a 48-0 after adopting AM 127 on a 48-0 vote.

Previously, the Government Committee reported LB 83 to General File with AM 127 on February 16th following an 8-0 vote. The Government Committee declared the bill a priority bill for the session.

The committee amendment (AM 127) adds language to the bill that ratifies actions taken by public bodies in reliance on Governor's executive orders issued during the pandemic. The amendment also adds MUD and regional metropolitan transit authorities to the list of political subdivisions that may utilize virtual conferencing for public meetings. The amendment adds a requirement that when multiple public participation sites are offered that each meeting site be attended by at least one member of the public entity or their designee. The amendment includes a revision clarifying that the documents that must be made available at each meeting site are those documents being considered at the meeting. The amendment requires an emergency declaration by the Governor under section 81-829.39 to trigger emergency meeting procedures under the bill. Lastly, the amendment provides an exception to an address publication requirement in instances where that address requirement may endanger a person's security.

The bill allows for virtual conferencing for the following entities:

- (i) A state agency, state board, state commission, state council, or state committee, or an advisory committee of any such state entity;
- (ii) An organization, including the governing body, created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act;
- (iii) The governing body of a public power district having a chartered territory of more than one county in this state;
- (iv) The governing body of a public power and irrigation district having a chartered territory of more than one county in this state;
- (v) An educational service unit;
- (vi) The Educational Service Unit Coordinating Council;
- (vii) An organization, including the governing body, of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act;
- (viii) A community college board of governors;
- (ix) The Nebraska Brand Committee;
- (x) A local public health department;
- (xi) A natural resources district; and
- (xii) The Judicial Resources Commission

To hold such meeting the following criteria must be met:

- (1) Reasonable advance publicized notice is given including providing access to a dial-in number or link to the virtual conference;
- (2) Reasonable arrangements are made to accommodate the public's right to attend at a physical site and participate including seating, in at least one designated site in a building open to the public and identified in the notice, recording of the hearing by audio or visual recording devices, and a reasonable opportunity for input, such as public comment or questions, is provided to at least the same extent as would be provided if virtual conferencing was not used;
- (3) At least one copy of all documents for the meeting is available at any physical site open to the public where individuals may attend the virtual conference. The public body shall also provide links to an electronic copy of the agenda, all documents being considered at the meeting, and the current version of the Open Meetings Act; and
- (4) Except as otherwise provided in this subdivision, no more than one-half of the meetings of the state entities, advisory committees, boards, councils, organizations, or governing bodies are held by virtual conferencing in a calendar year.

The bill also allows for virtual conferencing if an emergency is declared pursuant to the Emergency Management Act. Under this provision, a public body the territorial jurisdiction of which is included in the emergency declaration, in whole or in part, may hold a meeting by virtual conferencing during such emergency if the public body gives reasonable advance publicized notice. The notice shall include information regarding access for the public and news media.

In addition to any formal action taken pertaining to the emergency, the public body may hold such meeting for the purpose of briefing, discussion of public business, formation of tentative policy, or the taking of any action by the public body. The public body shall provide access by providing a dial-in number or a link to the virtual conference.

The public body shall also provide links to an electronic copy of the agenda, all documents being considered at the meeting, and the current version of the Open Meetings Act. Reasonable arrangements shall be made to accommodate the public's right to hear and speak at the meeting and record the meeting.

The nature of the emergency shall be stated in the minutes. Complete minutes of such meeting specifying the nature of the emergency and any formal action taken at the meeting shall be made available for inspection.

The bill also has changes regarding individuals that speak at meetings. The body shall require any member of the public desiring to address the body to identify himself or herself, including an address and the name of any organization represented by such person. Under current law, this is voluntary.

Finally, beginning July 31, 2022, the governing body of a natural resources district, the city council of a city of the metropolitan class, the city council of a city of the primary class, the city council of a city of the first class, the county board of a county with a population greater than twenty-five thousand inhabitants, and the school board of a school district shall make available on such entity's public website the agenda and minutes of the governing body.

The agenda shall be placed on the website at least 24 hours before the meeting of the governing body. Minutes shall be placed on the web site at such time as the minutes are available for inspection under existing law. This information shall be available on the public website for at least six months.

The bill includes the emergency clause so it would become effective as soon as it is approved by the Governor.

The Government Committee accepted testimony on the bill on January 27th.

In his opening, Senator Flood noted this bill is a step toward modernizing the way meetings are done. He stressed that a lot of people have worked together as a coalition to draft this bill and that testimony would be consolidated. During questioning, Senator Flood was asked about the right to declare an emergency, and it was noted that this is a point of contention with the bill, but he noted he feels the local individuals are best positioned to determine the best way to address an emergency.

Proponents

Proponents of the bill included Larry Ruth testifying on behalf NARD and the LPSNRD. Ruth demonstrated the practical need for the bill by outlining the struggles and obstacles the LPSNRD board has had to overcome during the pandemic. During questioning, Senator Halloran raised concern about the issue of rural connectivity and how it could prevent constituents from participating. Senator Lowe raised questions and spoke to the need to add something in the bill to ensure board members stay actively engaged and away from outside influence.

Other proponents included Shelly Sahling-Zart testifying on behalf of the Nebraska Power Association. She told the committee the bill is not changing how ordinary meetings are conducted, it's about continuing to do public business during moments of extraordinary emergencies. She noted the bill is first and foremost about addressing safety and including transparency.

Mike Rogers of Gilmore and Bell testified on behalf of the city of Lincoln. He spoke about the unclarity in the Governor's pandemic executive order and the potential legal challenges it presents, noting that this bill adds clarity.

Lynn Rex testified in support on behalf of the League of Nebraska Municipalities and the Nebraska Association of School Boards. Rex thanked the Governor for his orders allowing for continuation of virtual conferencing. She outlined how the bill merges two sections of statute for video conferencing and teleconferencing into one section for virtual conferencing.

Sean Kelley testifying on behalf of the Douglas County Board of Commissioners told the committee they have successfully utilized virtual meetings during the pandemic and simply wanted their support for the bill on the record.

Edison McDonald testifying for Arc of Nebraska noted the bill would ensure there is more opportunity for engagement for individuals with disabilities.

Danielle Conrad for the ALCU of Nebraska told the committee this is a good government bill with increased transparency and flexibility. She noted the ALCU is pleased to hear there are amendments to offer additional privacy.

There were eleven written testimonies and nineteen position letters submitted from proponents.

Opponents

Lance Molina of Gretna testified in opposition. He testified that the bill would allow the government body to mute any individual they disagree with. He provided an example of a meeting in Gretna where proponents were unlimited in testimony, but opponents were filtered.

Written testimony in opposition to the bill was submitted from the Governor's Office. No opposition position letters were submitted.

Neutral

Neutral testimony was provided by Tim Texel on behalf of the Nebraska Power Review Board. He testified simply to raise questions about three technicalities. Asking for clarification on what does all documents mean in contrast to current law of all documents considered at the meeting. He also noted he is not clear on what is meant by sites for copies and how an electronic copy of an agenda needs to be made available.

Neutral written testimony was submitted by Media of Nebraska. One neutral position letter was submitted.

Senator Flood waived closing.

Speaker Priority Designations

Speaker Priority Bills were announced this week. Summaries for bills of interest are as follows:

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

The Urban Affairs Committee reported LB 9 to General File with AM 231 on February 18th, following a 7-0 vote. The amendment (AM 231) limits the bill to cities of the first class located in a county with at least three cities of the first class. The amendment limits property deemed contiguous to the corporate limits and only applies if property owned by the federal government lies between the newly annexed area and the corporate limits of the city. The amendment also requires that any change to the service area of any electric utility without agreement from the electric utility serving the newly annexed area at the time of annexation.

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 wants 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.

LB 406 - Create the Lower Platte River Infrastructure Task Force and provide funding. McDonnell. Speaker Priority.

The bill proposes to create the Lower Platte River Infrastructure Task Force to study three to five potential flood-control infrastructure projects along the river basin of the lower Platte River.

The task force shall consist of the following members, appointed by the Director of Natural Resources: (a) Four directors or their designees, each from the board of directors of four natural resources districts with boundaries that include river basins along the lower Platte River, (b) the dean of the College of Engineering at the University of Nebraska-Lincoln or the dean's designee, (c) the mayor of a city of the primary class or such mayor's designee, (d) three representatives from communities located adjacent to the lower Platte River, and (e) the Director of Natural Resources as a nonvoting, ex officio member.

The task force would be housed in the Department of Natural Resources for administrative purposes. The task force shall select a chairperson and may hire consultants. Task force members shall receive no compensation for their services on the task force other than reimbursement for expenses incurred in carrying out their duties.

The task force would be required to (i) identify potential project locations and project size based on existing constraints, (ii) develop threshold criteria for project size to be of adequate scale to serve regional, or at a minimum, sub-regional populations, with appropriate amenities, and (iii) establish criteria for regional and sub-regional projects.

The task force would gather the following data and information to compile an analysis:

- (a) Hydrology and water supply;
- (b) Topography of the area;
- (c) Geotechnical information;
- (d) Existing infrastructure that may be impacted;
- (e) Existing and future recreation and economic needs of the area;
- (f) Existing and expected economic data of the area;
- (g) Existing and expected demographic data of the area;
- (h) Environmental data of flood sites and regional environmental data;
- (i) Future land-use master plans;
- (j) Existing and planned transportation infrastructure; and
- (k) Land ownership data.

Factors for task force consideration include:

- (i) Location. The proximity to urban areas and centers of economic development;
- (ii) Size. Identify opportunities to serve regional or sub-regional populations;
- (iii) Water supply and land availability. Identify minimum water supplies required to sustain and support a water-based project in addition to sediment storage for reservoir sustainability and identify contiguous land areas for a project;
- (iv) Infrastructure considerations. Assess public and private infrastructure that presents opportunities or may pose constraints, and to what degree;
- (v) Socioeconomic considerations. Assess socioeconomic factors that are opportunities or constraints;
- (vi) Environmental considerations. Assess environmental resources that may be augmented, or possibly impacted, and that may influence siting; and
- (vii) Public acceptance. Assess the general likelihood of public acceptance of a project in a proposed area.

The task force shall define project elements to maximize project benefits within physical constraints of a project, including concept level definition of project features sufficient to estimate costs, benefits and anticipated water-based project benefits that could include flood control, water supply, water quality, and hydropower.

An event based hydrologic model shall be developed and used in conjunction with existing hydrologic models to define flood-risk-reduction benefits. A long-term hydrologic model shall be used to determine firm yield of a potential site for assessing pool viability, water quality, water supply, and hydropower benefits.

The definition of project features shall include type and size of project infrastructure, property acquisition, existing infrastructure impacts, recreation amenities, relocations, if applicable or required, and an estimate of costs.

The task force shall also perform an economic analysis to assess project economic benefits, including:

- (a) Flood-risk reduction;
- (b) Water supply;
- (c) Hydropower;

- (d) Increased flat water recreational opportunities near the major population centers of Nebraska;
- (e) Enhanced tourism in Nebraska from surrounding areas, capitalizing on and complimenting existing state recreational facilities in eastern Nebraska;
- (f) Direct and indirect regional economic benefits associated with development of major recreation opportunities in eastern Nebraska;
- (g) Population and workforce retention; and
- (h) Any other relevant benefits.

The task force shall also perform an environmental analysis to identify environmental constraints, impacts, and challenges to project development, including a general socioeconomic and natural resource assessment and evaluation of potential project-related effects. Such assessment and evaluation shall be performed in the context of a federal National Environmental Policy Act evaluation and evaluate typical social and natural resource categories, identify federal, state, and local regulatory authorizations that would be required, and evaluate the complexity of obtaining any regulatory authorizations.

The date for completing the report to the legislature is left blank in the proposed bill.

Funding for the task force would come from a \$900,000 transfer from the Water Sustainability Fund to the Critical Infrastructure Facilities Cash Fund to carry out the purposes of the Lower Platte River Infrastructure. Funds could only be expended on a dollar-per-dollar basis with matching funds from private sources in support of the study.

The Natural Resources Committee accepted testimony on LB 406 on January 28th.

Opening on the bill, Tim Pendrell, legislative staff for Senator McDonnell, provided the committee with an overview of the need for the bill. He noted this bill is a follow up to LR 138 from last year. It was discussed that the tools outlined to be studied in the bill would have assisted in mitigating an estimated \$3 billion worth of damages from flooding in 2019 alone. He mentioned that while Governor Ricketts has joined a coalition to advocate for USACE to address flooding, we need to understand that the 2019 flooding was not just from Missouri River flooding, rather it was from the Platte and its uncontrolled tributaries.

Proponents

John Winkler, General Manager of the Papio-Missouri River NRD, testified on behalf of NARD. Winkler outlined the need to mitigate extremes to improve safety and protect communities. He reiterated that up to \$3 billion in damages could have been prevented from one single event. He outlined the impact of drought on the area and the benefits reservoirs could provide in protecting against the impacts of drought, including supplementing municipal water supplies, and ensuring junior irrigated users are not shut down. He also outlined the additional benefits of recreation that the reservoirs could provide. Winkler told the committee a large reservoir could have a \$200-\$300 million economic impact annually, not including the conservation benefits.

Winkler was asked several questions by committee members. Senator Gragert asked if this is about a large lake at Ashland, and if not, what type of infrastructures is the bill considering. Winkler discussed that historically this has been about one large reservoir near Ashland, but this bill and effort is different. It is taking a look at the whole basin, and would evaluate the potential of smaller reservoirs, evaluating all options beyond just the reservoir near Ashland. Winkler reiterated this is about much more than one big reservoir, noting that the Platte River is the wild west of flood control right now with lots of opportunities.

It was discussed that with matching funds the total study would provide \$1.8 million in funding, which would utilize existing data and work to narrow down and refine locations, many of which have been considered previously in some cases as early as the late 1800s.

Senator Cavanaugh asked several questions, including where the water to fill the reservoirs would come from. Winkler noted that existing streamflows and permits would have to be honored and it would only be excess flows captured, with no harm to downstream users.

Sen. Cavanaugh also inquired about the reason for the shift away from major dam projects. Winkler noted this has been a national trend and said there are multiple reasons but that it's often due to environmental concerns. Winkler stressed that these types of projects can be used to enhance natural environment for endangered species and can have an overall positive environmental impact.

Senator Bostelman commented that LB 1201 from last year does exactly what this bill is targeting, except that this bill is limiting the area to a few NRDs and not the entire state. He feels there needs to be an overall state look first. Winkler acknowledged the benefits of LB 1201 and the statewide effort, noting that this digs down into the specific lower Platte reach. Winkler testified that this would be a great compliment to LB 1201, because it'll provide unprecedented information to assist in providing resources for the LB 1201 effort.

Senator Gragert spoke to the need for a top to bottom watershed approach, and the benefits of projects such as the proposed Battle Creek reservoir were discussed.

Senator Bostelman highlighted efforts by LPNNRD to build 6 smaller dam structures and expressed that they are an example of why a comprehensive overview is needed. He also commented that the USACE failed us on the levee system in 2019.

Senator Wayne acknowledged efforts to protect the Water Sustainability Fund and questioned why they would not just apply for the funds. Winkler responded he doesn't think there's a problem with applying.

Senator Cavanaugh asked if the same objectives can be accomplished by smaller reservoirs? Winkler discussed that it's possible, but until you do this study you don't know. It was also asked who pays for the reservoirs? Winkler noted that it would be multiple funding sources, providing examples of how PMRNRD has utilized several private and public partnerships to fund past projects.

Opponents

Rick Grauerholz, mayor of Ashland, testified that the Ashland area needs better flood control. He said this idea of the Ashland dam surfaces every few years and discussion of a large-scale dam and water impoundment from past discussions would cause significant problems for the people in Ashland as some maps show parts of the community being inundated. Given these past studies he's concerned over some of the language in the bill. He stressed that 2019 was an extreme and not a good judgment of what the normal is. He requested the committee add language to protect the people of Ashland from being flooded by impoundment.

Shirley Niemeyer testified that she doesn't object to using dollars for repair of damages and for building of smaller dams, but she opposes recreation and economic opportunities targeted toward large population areas. She said this bill is focused too much on recreation. She testified that there's been no major dams constructed since 1970 because they are immensely detrimental to the environment.

Written testimony in opposition was provided by Scott Smathers of the Natural Resources Commission, Lee Orton, Helen Raikes, Al Davis of the Sierra Club, and Charles Neymeyer.

Neutral

Bradley Pfiefer, Ashland Chamber of commerce, testified in a neutral capacity. He raised concern over the impacts of the unknowns about what's going to happen to Ashland. He spoke to the development ongoing around Ashland. He said as a taxpayer, he doesn't understand why government would double up if 1201 already does the same thing. Written neutral testimony was provided by the Nebraska Airboat Association.