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TO: NARD Board, NRD Managers and Conservation Partners  
FROM: Dean E. Edson, NARD Executive Director  
RE: May 13 NARD Update

### Session Entering Final Weeks

It was announced this week by Speaker Hilgers his intent is for the Legislature to adjourn Sine Die on Thursday, May 27<sup>th</sup>. This would be on day 86 of the scheduled 90-day session. Speaker Hilgers noted the early sine die adjournment will allow senators sufficient time over the interim to study and explore big legislative initiatives in preparation for next year's session. It was also noted that senators will convene for a special session later this year to address redistricting following the release of updated census data.

### Select File

#### ***LB 26 - Provide a sales tax exemption for residential water service. Wayne. Pahls Priority Bill.***

The Legislature advanced LB 26 to Final Reading on May 12<sup>th</sup> by a voice vote.

Previously, state senators advanced LB 26 to Select File on a 38-3 vote. The Revenue Committee reported LB 26 to General File on March 10<sup>th</sup> following a 8-0 vote. Senator Pahls declared LB 26 a personal priority bill for the session.

The bill proposes to exempt the sale, lease, or rental of and the storage, use, or other consumption in this state of residential water service from state sales and use tax.

#### *The Revenue Committee accepted testimony on LB 26 on February 24<sup>th</sup>.*

Opening on the bill, Senator Wayne noted that Nebraska does not impose sales tax on bottled water but taxes tap water and residential service. He commented that people cannot survive without water and it should not be taxed.

#### *Proponents*

Doug Kagan testified in support on behalf of Nebraska Taxpayers for Freedom. He claimed that the exemptions and savings are offered to businesses and noted that it is only fair if residential water service is not taxed.

#### *Opponents*

Jack Cheloha testified in opposition on behalf of the city of Omaha. He noted that the city would lose between \$1.6 million and \$2 million per year in sales tax revenue if the bill were passed. Cheloha further commented that the loss in state revenue would be greater than \$8 million.

Lash Chaffin testified in opposition on behalf of the League of Nebraska Municipalities. He noted that the bill would cut revenue for more than 200 Nebraska cities that impose a local option sales tax. He told the committee the bill would result in increased water rates or in local property taxes to offset the lost revenue.

### Neutral

There was no neutral testimony. Five letters in support of the bill and two in opposition were submitted for the record.

During closing, Sen. Wayne commented that this bill is for the people, arguing residents should not be taxed for water, while exempting bottled water from the tax when purchased at a store.

### ***LB 90 - Change fee provisions under the Pesticide Act and the Nebraska Commercial Fertilizer and Soil Conditioner Act. Halloran.***

Senators advanced LB 90 to Final Reading on May 12<sup>th</sup> on a voice vote.

Previously, the bill was advanced to Select File on May 4<sup>th</sup> following a 37-0 vote. The Agriculture Committee reported LB 90 to General File on February 11<sup>th</sup> following an 8-0 vote.

The bill makes changes to the pesticide registration fee. Current law sets a minimum base of \$160 per product with a maximum of \$210 per product, which does not change.

The fees are distributed as follows:

- (a) \$30 to the Noxious Weed Cash Fund.
- (b) \$60 to the Buffer Strip Incentive Fund
- (c) \$55 to the Natural Resources Water Quality Fund; and
- (d) The remainder of such fee to the Pesticide Administrative Cash Fund.

The bill proposes to lower the amount going to the Buffer Strip Incentive fund from \$60 to \$50.

The Agriculture Committee accepted testimony on LB 90 on January 26<sup>th</sup>.

In his opening, Senator Steve Halloran, noted this was a request of the Nebraska Department of Agriculture to help them manage their agency.

Steve Wellman, Nebraska Department of Agriculture testified in support. He noted there is needs in the Pesticide administration fund for more funds and less demand on the buffer strip program. The change would help manage the programs internally.

There is also a provision to include flexibility to manage the Fertilizer Inspection Fee internally, by allowing them to go up to a maximum 15 cents/ per ton, so they could increase the amount when needed, and reduce it when they do not.

### Proponents

Scott Merritt, Executive Director of the Nebraska Agribusiness Association, testified in support. He noted that under the current Commercial Fertilizer and Soil Conditioner Act, the Nebraska Department of Agriculture (NDA) collects an inspection fee of \$0.10 a ton to administer the Department's fertilizer inspection program. Funds collected from ag retailers are used to test quality and nutrient levels of the fertilizer being sold in the state.

Their organization supports the flexibility on the annual fertilizer inspection fee to meet the program's budget, not to exceed \$0.15 per ton. The revenue generated could not be more than 107% of the cash fund's annual appropriation. Additionally, language would limit the allowable rate when year-end cash funds are greater than 107% of annual program expenditures.

### Opponents

The Nebraska Wildlife Federation submitted a letter of opposition.

### ***LB 166 - Provide for Josh the Otter-Be Safe Around Water Plates, create a fund, and provide powers and duties for Game and Parks. Geist.***

The Legislature advanced LB 166 to Final Reading on May 10<sup>th</sup> on a voice vote.

Previously, the bill was advanced to Select File on May 4<sup>th</sup> on a 39-0 vote after adopting AM 389 by a 39-0 vote.

The Transportation Committee reported LB 166 to General File on March 2<sup>nd</sup> with AM 389 following an 8-0 vote. The amendment (AM 389) specifies that if specified criteria is met the DMV may cease to issue the plate after the license plate issuance cycle beginning in 2023. The amendment also adds language to allow the DMV to charge a postage and handling fee for delivery of plates.

The bill proposes to create the Josh the Otter-Be Safe Around Water Cash Fund under the control of the Nebraska Game and Parks Commission for the purpose of providing financial support for the education of persons about water safety in general and specifically for the education of children about staying away from water unless accompanied by an adult.

The commission shall use the Josh the Otter-Be Safe Around Water Cash Fund to award grants to nonprofit organizations that are dedicated to educating children about water safety. The grants shall be used by the recipient organization to support educating persons about water safety in general and specifically for the education of children about water safety.

The program would be funded by Josh the Otter-Be Safe Around Water Plates for motor vehicles.

In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of alphanumeric Josh the Otter-Be Safe Around Water Plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit such fees to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Josh the Otter-Be Safe Around Water Cash Fund.

In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Josh the Otter-Be Safe Around Water Plates shall be accompanied by a fee of forty dollars. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Josh the Otter-Be Safe Around Water Cash Fund.

The fund may also receive gifts, bequests, grants, or other contributions or donations from public or private entities.

*The Transportation Committee accepted testimony on LB 166 on February 23<sup>rd</sup>.*

Senator Geist opened by noting that drowning is the leading cause of accidental death for children ages 1-4 and that the bill would raise awareness to that issue. She noted the fees raised would go to NGPC to create grant opportunities for non-profits to teach water safety.

### Proponents

Blake Collingsworth testified in support of the bill. Collingsworth founded the Josh the Otter program following the accidental drowning death of his son Joshua in 2008. He noted that drowning is the second leading cause of accidental death in children through age 14. This effort is focused on creating awareness and educating children, parents, and caregivers about water safety. He highlighted that the Josh the Otter program introduces the topic in a fun and non-scary way.

Kathy Collingsworth, also a founder of the Josh the Otter Foundation, said they are trying to target and educate children. She told the committee that 18 lives were lost last year to drowning in the state of Nebraska. She provided several examples of the projects funded by the foundation.

There were no opponents and no neutral testers.

Written testimony in support of the bill was submitted by NGPC and Nebraska Children's Hospital. The Nebraska DMV submitted a letter in a neutral capacity.

During closing, Sen. Geist addressed the letter from DMV and told the committee it recommends a minor change to harmonize language in the bill. She expressed that there are close to 250 people already interested in the license plate.

### ***LB 209 - Change provisions relating to treatment of deferred compensation by certain political subdivisions, state agencies, and the Public Employees Retirement Board. McDonnell.***

The Legislature advanced LB 209 to Final Reading on May 10<sup>th</sup> on a voice vote.

Previously, state senators advanced LB 209 to Select File on a 42-0-7 vote after adopting the committee amendment (AM 880) on a 39-0-10 vote.

The Retirement Systems Committee reported LB 209 to General File on April 8<sup>th</sup> with AM 880 by a 6-0 vote. The amendment (AM 880) strikes the original provisions and becomes the bill.

The amendment clarifies that a plan of deferred compensation offered by a county, municipality, or other political subdivision may provide for the deferral on either a pretax basis or an after-tax Roth contribution basis under a qualified Roth contribution program pursuant to section 402A of the Internal Revenue Code. The bill clarifies that Roth IRA contribution amounts, as part of a deferred compensation package, are to be included in the computation of federal or state taxes withheld on behalf of public employees.

The Retirement Committee accepted testimony on LB 209 on March 3<sup>rd</sup>.

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

The Legislature advanced LB 406 to Final Reading on May 12<sup>th</sup> on a voice vote after adopting AM 1424 on a 35-0 vote and AM 1386 on a 34-0 vote.

AM 1386 adds language that the special committee shall terminate on December 31, 2022. AM 1424 adds that contracts for the study be based on competitive bids.

Previously, state senators advanced LB 406 to Select File on a 42-2-5 vote after adopting the committee amendment (AM 1092) and a floor amendment (FA 38). The floor amendment (FA 38) changes the name of the special committee to The Statewide Tourism and Recreational Water Access and Resource Sustainability STAR WARS Committee of the Legislature.

The Natural Resources Committee held a hearing on a proposed amendment (AM 848) to LB 406 on Tuesday, April 20<sup>th</sup>. After the hearing, the committee advanced AM 1092 which replaces the bill.

The amendment (AM 1092) proposes to create the Statewide Tourism and Recreational Water Access and Resource Sustainability Special Committee of the Legislature. It was adopted on a 43-2-4 vote. The floor amendment adopted on a 40-2-7 vote incorporates the acronym “STAR WARS” for the “Statewide Tourism and Recreational Water Access and Resource Sustainability” committee.

The committee shall consist of the Speaker of the Legislature, who shall serve as chairperson. Other members would include the chairperson of the Natural Resources Committee, one member of the Appropriations Committee, and at least four other members of the Legislature appointed by the executive board. The appointed members of the special legislative committee shall be members who represent legislative districts comprising portions of the areas under study or who otherwise have knowledge of such areas.

The Executive Board of the Legislative Council shall provide staff as required by the committee from existing legislative staff. In addition, the committee may hire additional staff, make expenditures for travel, and enter into contracts for consulting, engineering, and development studies.

It is the intent of the Legislature to appropriate two million dollars for fiscal year 2021-22 to carry out the purposes of the committee.

Studies shall be conducted on:

- The need to protect public and private property, enhance economic development, and promote private investment and the creation of jobs along the Platte River and its tributaries from Columbus, Nebraska, to Plattsmouth, Nebraska. The study of the Lower Platte River shall not include a study of any dam on a Platte River channel but may include infrastructure options that maintain the integrity of the main channel of the Platte River. The committee may study dams relating to tributaries of the Platte River and levees in such area.
- The need to provide for public safety, public infrastructure, land-use planning, and economic development in the Lake McConaughy region of Keith County, Nebraska.
- The socioeconomic conditions, recreational and tourism opportunities, and public investment necessary to enhance economic development and to catalyze private investment in the region in Knox County, Nebraska, that lies north of State Highway 12 and extends to the South Dakota border and includes Lewis and Clark Lake and Niobrara State Park.
- The studies for Lake McConaughy in Keith County and Lewis and Clark Lake and Niobrara State Park in Knox County shall evaluate the outcomes and the economic benefits of proposed development and improvements to residents, the local region, and state tourism.

The committee shall hold hearings and request and receive reports from state, county, and city agencies regarding matters pertaining to its studies. The committee may hold one or more closed sessions for the

receipt of confidential information if at least one-half of the members of the committee vote in open session to hold a closed session. The committee may appoint a subcommittee for the purpose of receiving public input as it relates to protection from flooding along the Platte River from Columbus, Nebraska, to Plattsmouth, Nebraska.

The special legislative committee shall endeavor to complete each study on or before December 31, 2021, but such studies shall be completed no later than December 31, 2022.

*The Natural Resources Committee accepted testimony on the Amendment 848 to LB 406 on April 20<sup>th</sup>.*

Opening on the amendment to the bill, Senator McDonnell provided the committee with an overview of the negotiations and discussions that led to a compromise amendment to the issue. He noted the language in the bill specifically outlines the study of the Lower Platte River shall not include a study of any dam on a Platte River channel but may include infrastructure options that maintain the integrity of the main channel of the Platte River. The committee may study dams relating to tributaries of the Platte River and levees in such area. The potential for a dam on the mainstream of the Platte River was the center-point of opposition to the original bill and that has now been alleviated.

*Proponents*

John Winkler, General Manager of the Papio-Missouri River NRD, testified on behalf of NARD.

Winkler offered the NRDs assistance to formulate proactive options to mitigate the devastating impacts of flooding and drought, create recreational opportunities, foster economic and community development, create jobs and investment, as well as improve the natural environment. The historic flood of 2019 was all about the uncontrolled tributaries of the state like the Platte, Elkhorn, and Loup Rivers. Preliminary analysis illustrates that if a significant reservoir or several reservoirs were in place in the Lower Platte Basin during the March 2019 flood event the certified levee systems south of the mouth of the Platte and Missouri River in Iowa, Nebraska, Kansas, and Missouri would have been within their design capacities and potentially would not have been overtopped or failed.

At a minimum over two and a half billion dollars in damages to critical public and private infrastructure and property could have been prevented. This figure does not include damages to agricultural land, homes, businesses, lost income, entire communities destroyed and the future productivity of thousands of acres of farm ground compromised; all from one single event.

In stark contrast to the impacts of flooding, it is estimated that the duration and intensity of droughts will increase, flash droughts like the one in 2021 may become more frequent. Throughout the state's history there has always been stresses on our drinkable and irrigated water supplies that test their resiliency and sustainability. Several significant reservoirs that could provide enough surface water augmentation on demand and enhance aquifer recharge all year round would be a tremendous boost to the resiliency of the lower Platte corridor where nearly 70% of the state's population resides.

In fact, the most recent statewide groundwater report published by the University of Nebraska at Lincoln's School of Natural Resources highlighted that groundwater wells near reservoirs and canals continue to show increases as they benefit from seepage or groundwater recharge. Groundwater levels have risen as much as 60 feet near Lake McConaughy due to recharge from the lake. In south-central, central, and western Nebraska, groundwater has risen by more than 100 feet due to the influence of canals and reservoirs. This type of sustainable water supply would be especially beneficial to the City of Lincoln who relies solely on the Platte River Basin for its water needs.

Winkler noted that reservoirs would add a tremendous number of recreational benefits both land and water based to the Omaha/Lincoln metropolitan area. It is consistently reported that the urban areas of our state and

country lack sufficient outdoor recreational opportunities. With addition acres of flat-water recreation, that would also provide flood control benefits, it is reasonable to conservatively expect several hundred million dollars in economic impact to the state's economy.

Others testifying in support had a common theme of flood control, recreation, and economic development. Testifiers in support included: Speaker Mike Hilgers; Mark Simpson, Knox County; Deb Schilz, Keith County Visitors Committee; Kelly Hanvey, Knox County Development Agency; Jessop Adams, Keith County Planning and Zoning; Corey Crandall, Keith County Commissioner; Lane Anderson, Keith County Commissioner; Karla Scott, Keith County Chamber; Jeff Davis, BNSF Railway; Patrick Liska, Knox County Supervisor; Kevin Barta, Knox County Road Department; Kristal Stoner, Audubon Society.

Written testimony in support was submitted by Angela Janda-Craig, Nebraska Game and Parks;

Written testimony in a neutral capacity included: Jeff Buettner, Central Nebraska Public Power and Irrigation District; and Jay Ferris, Nebraska Farm Bureau.

### **General File**

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

The Legislature advanced LB 54 to Select File on May 11<sup>th</sup> on a 25-13 vote after adopting AM 1268 by a 33-1 vote.

The Judiciary Committee reported the bill to General File on May 10<sup>th</sup> with committee amendment AM 1268. The amendment (AM 1268) narrows the scope of the proposed exception in LB 54 by replacing the original proposed language with new language that allows claims for intentional torts where the political subdivision (or state agency) failed to use reasonable care to control someone under their charge or protect a person in their care or custody from intentional torts by non-employees.

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.

#### ***The Judiciary Committee accepted testimony on LB 54 and LB 71 at a joint hearing on February 18<sup>th</sup>.***

Senator Lathrop opened on LB 54 by providing a background on a recent court case in Nebraska. The case involved two inmates that were placed in a cell together. The inmates got into a dispute and one strangled the other. The court concluded there was no liability as there was no intentional action by the state that caused the death. Senator Lathrop believes the prison personnel and the state should be responsible as they should have suspected the inmates did not get along.

The effect of the decision goes over to all others - example in schools where they don't do anything to stop bullying; nursing homes that have a worker that abuses patients. He reiterated the provisions in the bill would make government responsible for injury between two parties under their control.

In his opening on LB 71, Senator Wayne cited a situation where Omaha Police failed to arrest and jail an individual that was a threat to his girlfriend. The police did not have a cause of action to arrest but should have incarcerated him anyway, so he did not cause harm. The police detained and questioned him but later released him. The individual later went to his girlfriend's house and shot her.

He noted the difference between his and Lathrop's approach is his bill provides a five-year look-back.

### Proponents

Lorrie Woods testified as an individual. Her special needs daughter was sexually assaulted at school. The class was under-staffed, and four students were left alone. Another special needs student sexually assaulted her daughter. The court ruled the school was not responsible.

Eric Brown, Injury and Workers Comp Lawyer. He had a similar case that ended up being an negotiated settlement. He expressed the need for a law change to protect individuals from being placed in similar situations.

### Opponents

Ryan Wiesen testified in opposition on both bills on behalf of the city of Omaha, City of Lincoln and the League of Municipalities. He noted the intent of sovereign immunity is to protect taxpayers from criminal acts of people they have no control over.

Wiesen noted there needs to be protection for police officers. Law enforcement officers cannot arrest and incarcerate individuals that have not committed a crime. Nor can police officers read the minds of individuals that may later commit a crime.

James Smith testified in opposition of both LB 54 and LB 71 on behalf of the Nebraska Attorney General's Office. He noted there is no cap on monetary damages for state tort claims and spoke about the adverse impact on Nebraska taxpayers. He claimed the bill would make taxpayers responsible for crimes committed by criminals. He noted that duty of care is not defined and claimed the bill should precisely define duty of care.

### Neutral

No Neutral testimony was provided. Numerous letters in opposition of the bills were submitted for the record and for the hearing.

During closing Sen. Lathrop claimed that state and local government need to be responsible for individuals they have under their control. He also noted he only introduced the bill to be a part of the conversation. He claimed that while everybody in the state was represented, not one person came in and said there has been a claim, noting not one testifier could even reference a letter or threat from a lawyer. He commented that Government should only be involved when there is a problem. He closed by noting if this is an insurance issue, then maybe supporters should be at the banking committee.

Sen. Wayne closed on LB 71 by admitting there is a case that he is involved in that the bill may be involved in and under the rules, he does not have to file a conflict unless the bill reaches the floor. He mentioned that he was going after any bill the Attorney General has.

### ***LB 139 - Adopt the COVID-19 Liability Protection Act. Briese. Slama Priority Bill.***

The Legislature advanced LB 139 to Select File on May 11<sup>th</sup> on a 39-3 vote after adopting both AM's 1293 and 1375 by 36-0 votes.

Previously, the Judiciary Committee reported LB 139 to General File on May 10<sup>th</sup> with committee amendment AM 1293.

The committee amendment (AM 1293) replaced the bill and provides new definitions for Covid-19, Federal public health guidance and person that includes various types of business organizations, the State and

political subdivisions, and schools and universities. Person also includes officers and employees as well as agents and volunteers of the covered organizations.

The amendment narrows the safe harbor protections proposed in the original bill to prohibit civil actions, as long as protected individuals or organizations were acting in compliance with federal public health guidelines.

The amendment maintains the provisions of the original proposal that provide that the Act does not create or recognize a cause of action, affect worker's compensation actions, change common law immunities or limitations of liability, or constitute a waiver of sovereign immunity.

AM 1293 also includes an amended version of LB 53 that establishes the Health Care Crisis Protocol Act. The committee amendment requires the Department of Health and Human Services to establish a health care crisis protocol. The amendment also creates an advisory committee under the Department of Health and Human Services to advise and make recommendations on the protocol.

Under the bill as amended, a person may not bring or maintain a civil action seeking recovery for any injuries or damages sustained from exposure or potential exposure to COVID-19 on or after the effective date of this act if the act or omission alleged to violate a duty of care was in substantial compliance with any federal public health guidance that was applicable to the person, place, or activity at issue at the time of the alleged exposure or potential exposure.

Under the proposal, Federal public health guidance means and includes written or oral guidance related to COVID-19 issued by any of the following:

- (a) The Centers for Disease Control and Prevention of the United States Department of Health and Human Services;
- (b) The Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services; or
- (c) The federal Occupational Safety and Health Administration;

Under the proposal, person is defined as:

- (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.

Person includes an employee, director, governing board, officer, agent, independent contractor, or volunteer of a person listed above.

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. (5) Constitute a waiver of the sovereign immunity of the State of 21 Nebraska or any political subdivision of the state.

*The Judiciary Committee accepted testimony on LB 139 and LB 52 jointly on February 18<sup>th</sup>.*

Senator Briese opened on LB 139 by outlining the need to implement protections and provide confidence for businesses and schools to aid in reopening. He stressed that the bill provides protections only for those that

are trying to follow guidance on protections under the pandemic. Those that do not follow guidance would not have protection under the bill.

The bill provides that a plaintiff must prove gross negligence or willful misconduct. He stressed the need to raise the bar to provide protection for businesses, education and healthcare providers. Over 20 states have implemented similar legislation and that similar legislation has been proposed on the federal level. He noted that the bill does not apply retroactively. He stressed the bill will encourage adherence to public health guidance and that it contains a sunset provision.

During questioning committee members asked what would be considered gross negligence? Sen. Breise noted that would be a question of fact and left for the fact finder to determine what constitutes gross negligence.

Senator Lathrop introduced LB 52 by noting it is a simple bill that offers immunity, and that it was brought solely to allow for conversation about the topic. He noted that he is not aware of any lawsuits or threat of claims. He expressed that he does not see a need for the bill but noted that if there is a problem that needs addressed, he would rather introduce immunity than pass legislation that enacts the elements of LB 139.

Question about retroactivity of bill? Sen. Lathrop noted that past decisions from the Supreme Court have priority and the legislature cannot retroactively negate an individual's right for action.

### Proponents

Mark Schorr testified on behalf of the Nebraska Chamber, Greater Omaha Chamber, Lincoln Chamber, League Municipalities, American Property Causality Insurance, Hy-Vee, Nebraska Insurance Association, and more than 60 other statewide organizations in support of LB 139.

Schorr noted the economic burden is placed on business and organizations as they cannot get insurance coverage for this. The insurance companies are placing exclusions in policies now. Further, there has been advertisements in national media outlets to encourage individuals to contact a law firm if they wanted to file action for getting COVID-19.

He noted this is a middle ground approach that allows economy to get moving again. He noted the bill is largely based on Iowa law, but incorporates components of laws passed in several other states. He also reiterated that the bill does not jeopardize worker protections. Schorr stressed that the bill not only provides protections for businesses, but also applies to non-profits, religious organizations, and governmental subdivisions.

Emily Bottorf testified in support of LB 139 on behalf of the Nebraska Defense Council Association. Her testimony noted that the current body of negligence law is not a good fit for these types of lawsuits. Even if burden of proof is hard to overcome, the cost of litigation would be expensive. Bottorf noted that while we're not seeing the claims in Nebraska now, they are occurring in other areas.

Mark Whitehead testified in support on behalf of the Nebraska Petroleum Association and the Nebraska Grocers Association. He noted their industries did not have the luxury of shutting down. He claimed they are doing the best job they can to follow guidelines and continue providing services that customers need and this bill would provide added protection.

Jerry Stilmock testified in support for the Nebraska Federation of Independent Businesses. He claimed small businesses are doing everything they can to stay open, and without the protection from litigation, the cost of litigating claims would be a difficult burden.

Andy Hale testified on behalf of the Nebraska Hospital Association in support of both bills. He noted that while hospitals have provided high quality care despite ongoing challenges, they need to be able to operate with the peace of mind and sense of calm without the worry of being sued.

Heath Boddy testified in support of LB 139 on behalf of the Nebraska Healthcare Association. His testimony outlined the issues healthcare providers are facing regarding liability insurance and the perceived risk of COVID suits driving costs higher.

Colby Coash testified in support of LB 139 on behalf of the Nebraska Association of School Boards, the Nebraska Council of School Administrators, and the Rural Schools Association. He noted the bill would provide targeted liability protection that would help keep schools open. He spoke about the issue of reinsurance companies not providing coverage for COVID claims and noted that it is adding a barrier to keeping schools open.

Dallas Jones testified in support on behalf of LIBA. He noted this is a critical function in providing protection for small businesses. He claimed the cost of just a threat of a suit can be too much for business and could lead to some businesses permanently closing.

### Opponents

Johnathon Urbom testified in opposition of LB 52 and LB 139 on behalf of the Nebraska Association of Trial Attorneys. He noted Nebraska has had 26 COVID complaints filed as follows: Ten civil action cases for group gatherings; Six-labor related cases; five contract dispute cases; and one miscellaneous case. He told the committee that nationally COVID exposure litigation is not widespread. He spoke about concern of injecting foreign terms into negligence law that are not there now. He also expressed concern about the minimum injury standard not being seen anywhere else in Nebraska law.

Felicia Hilton testified in opposition on behalf of the Nebraska Labor Unity Council. Her testimony focused on concerns about changing standard of proof. She noted they feel current law does protect businesses from these types of suits and the standard of proof should not have to change.

Todd Stubbendick testified in opposition of LB 139 on behalf of AARP Nebraska. He noted they are opposed to expanded immunity and liability protections for nursing homes and residential care centers.

Shayla Reed, an Attorney for Victims of Nursing Home Neglect testified in opposition on behalf of the Nebraska Association of Trial Attorneys. Her testimony focused on the lack of evidence showing the need for either bill. She noted the bill is especially dangerous for nursing home residents.

### Neutral

No Neutral testimony was submitted.

More than 20 letters in support of the legislation were submitted by organizations including letters from NACO, Nebraska Bankers Association, League of Municipalities, DHHS, Pharmacists Association, Community College Association, Enterprise-Rent-A-Car, Relators Association, Pinnacle Bank, Nebraska Credit Union, and University of Nebraska.

A few letters in opposition were submitted including from IBEW and Building Trades, Professional Firefighters Association and NASCA.

Closing on LB 139 Sen. Briese addressed concerns from opponents. He reiterated the bill would not decrease the precautions being taken by organizations. He noted that this is not tort reform and reminded the committee that the bill will sunset.

## **Interim Studies**

The following interim study resolution was introduced this week. A summary of all interim studies introduced this session related to Natural Resources will be included with the Sine Die update.

**LR147 - Interim study to examine the transfer of state-owned property to local political subdivisions.  
J. Cavanaugh.**

The purpose of this interim study is to examine the transfer of state-owned property to local political subdivisions. The Transportation and Telecommunications Committee shall conduct the study and report findings to the Legislative Council or Legislature.

The issues addressed by this interim study shall include, but not be limited to:

- (1) A review of the applicable laws, regulations, and policies regarding the sale or transfer of a state-owned right-of-way to a local political subdivision;
- (2) A review of policies and exceptions regarding the sale or transfer of real property purchased by the state using federal funds;
- (3) An examination of whether a transfer of real property from the state to a local political subdivision at a price below the market value would contribute to economic development and transportation system design; and
- (4) Input from stakeholders, including, but not limited to, the Department of Transportation, economic development organizations, and local political subdivisions.