

May 7, 2021

TO: NARD Board, NRD Managers and Conservation Partners
FROM: Dean E. Edson, NARD Executive Director
RE: May 7 NARD Update

Local Political Subdivision Redistricting Amendment Hearing Held

Delays with the 2020 census data will cause delays with redistricting for local political subdivisions to meet election deadlines. The NARD has been working with the Nebraska Secretary of State's office and the Legislative Research Division to address potential problems.

In general, current Nebraska law gives political subdivisions six months after receiving the census data to re-draw subdivisions. Because of the delay in receiving the information, it is possible that candidate filing deadlines could be missed.

As a result of consultation with the Secretary of State and other parties, Senator Brewer introduced AM 1133 to LB 285 to change the deadlines for this current year to December 30, 2021. A hearing for the amendment was held May 5, 2021, a summary of the hearing is included below.

For NRDs, the proposed language reads as follows:

Following the release of the 2020 Census of Population data by the United States Department of Commerce, Bureau of the Census, any board of directors requesting the adjustment of the boundaries of election districts shall provide to the election commissioner or county clerk (a) written notice of the need and necessity of his or her office to perform such adjustments and (b) a revised election district boundary map that has been approved by the board and subjected to all public review and challenge ordinances of the natural resources district by December 30, 2021.

LB 285 is on Select File and makes several changes to election laws. It provides for secure data-sharing with certain third parties by the Secretary of State to facilitate participation in the Electronic Registration Information Center and improve voter file accuracy. The bill also adjusts provisions relating to write-in candidates and modifies certain filing deadlines for candidates and certain political subdivisions. The bill is a Government Committee Priority Bill and was advanced to Select File by a 46-0 vote on March 15th.

Those involved in the discussion realize that most political subdivisions are going to have to hire consultants or companies to change boundaries on short notices. Thus, we are working with senators and others to add an appropriation to the bill to help offset costs for making the changes on a quick turn-around.

The Government Committee held a hearing on May 5th.

In his opening, Senator Brewer outlined how delay of the 2020 census data is going to create problems for the Legislature on redistricting and political subdivisions to redraw subdistricts. These delays could cause problems for office filing deadlines. He mentioned the Secretary of State's office will follow him to explain the correspondence and deadline changes.

Bob Evnen, Secretary of State, and Wayne Bena, Assistant Secretary of State, followed with more details. They outlined the collection of census data was delayed for four months due to the COVID-19 issue, causing a delay in reporting the information.

The Federal Government is going to delay delivery of the Census Data until September 30, 2021. Legacy Format Data is being provided to the State by August 16, 2021 which is a delay from the normal statutory deadline of March 31, 2021. To accommodate this delay in the release of data, AM 1133 is being proposed to LB 285. If the Legislature approves the amendment and the bill, the following timeline would be put into place.

By August 16, 2021: Legacy Format Data delivered to the State of Nebraska.

Aug-Sept. 2021: Special Session of the Legislature can be held.

October 2021: Counties draw precinct boundaries.

November 1, 2021: Deadline for County Election Officials to provide precinct maps to the political subdivisions within their jurisdictions.

December 17, 2021: Deadline for Public Power Districts to submit a charter amendment to the Power review board for conditional approval.

December 30, 2021: Deadline for political subdivisions to provide boundary lines to county election officials. As usual, political subdivisions cannot divide a voting precinct.

Deadline for the Power Review Board to provide conditional approval of all charter amendments filed by December 17, 2021.

January 5, 2022: Final Deadline for any boundary adjustments to be made to be in effect for the 2022 Primary Election.

Deadline for Political Subdivisions to certify their 2022 elections.

Start of the 2022 candidate filing period.

March 1, 2022: Deadline for the Power Review Board to notify the Secretary of State if any Public Power Districts did not have their boundary maps approved.

May 10, 2022: Nebraska Statewide Primary

NARD presented testimony at the hearing. The testimony outlined the following:

- In the past, the Nebraska Department of Natural Resources provided these services to the NRDs. We were informed by them a couple of years ago they will not be providing this service for the 2020 census requirements.
- With the delay in obtaining the census data, this is going to put us in a bind to get this done in a timely fashion and meet filing deadlines. This amendment provides us a little more room to finish the task at hand. Had the census information been provided in a timely fashion as in the past, this would not be such a problem.
- We have reached out to consulting groups that have GIS capabilities to assist the NRDs with the task. We have received a couple of bids to do all 23 NRDs and the prices range between \$154,000 to \$205,000. As of today, we have not engaged in any contracts.
- While some NRDs do have GIS staff and software that can re-draw the boundaries in house, most do not have that capacity and will have to contract to provide the service. We are working through this currently and will be discussing it again at our June meetings. I assume other political subdivisions will find themselves in a similar situation.

- Since this census information delay has been related to the COVID-19 issue, we would also ask that you consider directing some COVID-19 related funds to provide some financial assistance to those political subdivisions that do not have the capacity to do this internally.

Others testifying in support, included: Jon Cannon– NACO, Christy Abraham – League of Municipalities; David J. Shively - Lancaster County Election Commissioner; Colby Coash – Nebraska School Board Association; and Tracy Overstreet – Hall County Election Commissioner.

Testifying neutral was Danielle Conrad – ALCU.

Senator Brewer closed by reminding the committee that LB 285 cleans up other election laws prior to the filing deadlines and the amendment will help the local political subdivisions.

The amendment (AM 1133) has been filed to LB 285 and is pending adoption when the bill comes up for Select File debate.

Governor Action

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

Governor Ricketts signed LB 9 into law on May 5th. The bill will become law 90 days after the session ends. The Legislature gave final approval to LB 9 on April 29th by a 46-0-3 vote.

Previously, the Legislature advanced LB 9 to Select File on March 30th by a 42-0 vote after adopting AM 231 on a 38-0 vote. On Select File, senators advanced the bill to Final Reading on April 14th following a voice vote.

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 501 - Adopt the Uniform Easement Relocation Act. Flood. Speaker Priority.

Governor Ricketts signed LB 501 into law on May 5th. The bill will become law 90 days after the session ends. State senators gave final approval to LB 501 on April 29th by a 48-0-1 vote.

The Legislature advanced LB 501 to Final Reading on April 14th on a voice vote.

Previously, the Legislature advanced LB 501 to Select File on April 1st by a 40-0 vote after adopting AM 526, 671, and 794.

AM 671 adds public power and irrigation district, irrigation district, reclamation district, or canal company to the list of easements that may not be relocated.

The Judiciary Committee reported LB 501 to General File on March 10th with AM 526 following an 8-0 vote. The amendment (AM 526) incorporates provisions of four other bills, none of which are on the list of bills relating to natural resources districts.

The bill proposed a process to modify easement relocation.

Specifically, the bill modifies the rule requiring mutual consent of owners for easement relocation, allowing the owner of the burdened lot to obtain permission to relocate the easement from a court. The burdened

property owner must demonstrate to the court that the relocation would not materially reduce the usefulness of the easement, impose a burden on the easement holder, impair a purpose for which the easement was created, impair the safety of anyone using the easement, or reduce the value or condition of the easement holder's property.

The burdened property owner must provide advance notice of the relocation plan to parties owning an interest in the property served by the easement, and any of them may object to the relocation in court. Additionally, the burdened property owner may not disrupt the easement holder's access during relocation.

The bill does not apply to relocating a public-utility easement, conservation easement, or negative easement or to encroach on such.

The Judiciary Committee accepted testimony on LB 501 on February 4th.

In his opening, Sen. Flood noted that the Nebraska Law School contacted him about introducing the bill. It codifies what is already in the law and provides more guidance for the courts.

He provided an example for the committee. Sen. Flood owns a section of land between Sen. Lathrop's land and Sen. Lathrop has an easement to run a water pipe across Sen. Flood's land to irrigate his land. Now Sen. Flood decides he wants to develop his land and wants Sen. Lathrop to move his water pipe to the edge of the property. The law provides a process and structure for that to easily happen and guide landowners.

Flood noted that statute is silent on this issue and in 2006 the court of appeals dealt with this issue and constructed a process. Now the goal is to take that process and add it to statute, so instead of referencing the case law, you could just reference it in statute.

Proponents

Larry Ruth testified in support on behalf of the Uniform Law Commission. The Uniform Law Commission is a state agency created by statute and helps to codify court decisions. The purpose is to strengthen the federal system and judicial system. They find areas of uniformity that states can benefit from by making things uniform across the system.

Steve Willborn, UNL Law Professor and serves on the Uniform Law Commission, testified in support. This provides procedural structure and process, which ensure the easement holder is protected. This adds protections for easement holders and will help avoid nasty disputes after. This uniform bill was promulgated this summer and has been introduced in a few states, but not adopted yet anywhere.

Written testimony in support of the bill was submitted by the Nebraska State Irrigation Association.

Opposition

There was no opposition or neutral testimony and Senator Flood waived closing.

LB 507e - Prohibit the use of treated seed corn in the production of agricultural ethyl alcohol in certain circumstances. Bostelman. Natural Resources Committee Priority Bill.

Governor Ricketts signed LB 507e into law on May 5th. The bill includes the emergency law and becomes law immediately. State senators gave final approval to LB 507 on April 29th by a 48-0-1 vote.

The Legislature advanced LB 507, including provisions of LB 190 as amended into the bill via AM 256, to Final Reading on April 14th.

Previously, the Legislature advanced LB 507 to Select File on March 25th by a 43-0-4 vote after adopting AM 256, 567, & 365.

Provisions of LB 190 were incorporated into LB 507 with AM 256, which was adopted by a 42-0-5 vote.

LB 507, was reported to General File with the amendment AM 256 on February 23rd. LB 507 is a bill introduced by Natural Resources Committee Chair Bostelman that addresses contamination concerns at the AltEn ethanol plant near Mead by prohibiting the use of treated seed corn in the production of agricultural ethyl alcohol if the byproduct generated is deemed unsafe for livestock consumption or land application. The Natural Resources Committee declared the bill a priority bill for the session.

LB 190 - Change provisions relating to use of the Water Sustainability Fund. Hughes.

Provisions of LB 190 were amended into LB 507e with AM 256 and prohibit the Legislature from appropriating or transferring money from the Water Sustainability Fund for any purpose other than to further the goals of the Water Sustainability Fund except upon a finding that the goals of the fund are not being accomplished by the fund.

The Natural Resources Committee accepted testimony on LB 190 on January 27th.

Senator Hughes opened by noting the bill would prevent the legislature from sweeping the WSF fund when looking to balance future budget shortfalls, or when someone is looking for funds to achieve another purpose. During questioning, Senator Moser asked if sweeping of the WSF has happened before. Senator Hughes noted that it has been discussed that the opportunity to sweep the interest has been enticing for some during past budget shortfalls and that he felt that was an inappropriate use and would like to prevent that in the future. Senator Hughes addressed a concern about NeDNR accessing those funds, noting that as long as the use of funds is related to WSF he's okay with it, noting the intent is not to impact how NeDNR is using the funds for WSF at all.

Proponents

Scott Smathers testified in support on behalf of the Natural Resources Commission. Smathers distributed a handout showing the funding history of the fund. He provided examples of past attempts to pull dollars from the fund.

Written testimony in support was submitted by Nebraska State Irrigation Association. Position letters in support were submitted by NPPD, MUD and CNPPID.

Opponents

There was no opponent testimony.

Neutral

There was no neutral testimony. A neutral letter was submitted by NeDNR.

In closing, Senator Hughes noted there would be a minor technical amendment to address any confusion on language in the bill.

General File

LR 11 CA - Constitutional amendment to require enactment of a consumption tax and prohibit certain other forms of taxation. Erdman. Co-sponsored by Albrecht, Brewer, Briese, Clements, Halloran, Lowe, McDonnell and Murman. Erdman Priority Bill.

Senators debated LR 11 CA on General File on May 5th. After several hours of debate, the measure failed to advance following a 23-19 vote, two votes short of the number required to advance to the next round of debate. On a side note, a proposed constitutional amendment requires a three-fifths Final Reading vote of the

elected members (30) to place it on the general election ballot and a four-fifths vote (40) to place it on a primary or special election ballot. The proposal will not be debated further this session.

During debate, proponents outlined the need for a complete overhaul of Nebraska's dated taxing system. Proponents said the new system would be a tax benefit to everyone, would promote saving and investments, and would generate the same amount of revenue as the current tax system.

Opponents expressed concern over the impact the new tax would have on several Nebraska industries. Opponents also raised concern over how the measure could change taxpayer behavior and it was highlighted that a majority of Nebraskans would pay more in taxes under the proposed consumption tax system.

Sen. Blood introduced an amendment on the floor that would have replaced the proposal and required the state to fully fund the unfunded and underfunded mandates it has imposed on political subdivisions. The amendment failed on a vote of 4-30.

Previously, the Revenue Committee reported LR 11 CA to General File on March 31 following a 6-2 vote.

A proposed constitutional amendment, effective January 1, 2024, that prohibits the State of Nebraska and all political subdivisions of the state from imposing a tax on personal income, a tax on corporate income, a tax on personal property, a tax on real property, a tax on an inheritance from a deceased person, a tax on the estate of a deceased person, and a tax on the retail sale of goods and services.

It replaces such taxes with a consumption tax which shall apply to purchases of services and new goods, except for fuel. Such consumption tax shall begin no later than January 1, 2024 (See LB 133).

The proposal does include language to allow the Legislature to authorize political subdivisions of the state to enact their own consumption taxes upon such terms and conditions as the Legislature may provide. This portion is not included in LB 133.

The Revenue Committee accepted testimony on LR 11CA on February 3rd.

Prior to Senator Erdman opening on the bill, the committee raised the question of if comments from the previous hearing could simply be referenced, it was acknowledged by the Chair that could occur, however Erdman proceeded with opening on the CA.

During opening Senator Erdman commented that the problem is not just property tax, and that income tax and inheritance tax are also problems. He commented that legislation just continues to be a band-aid, only decreasing the increase. He stressed that consumption tax is catching fire and that there is a lot of support and that everyone would want to move to Nebraska because of all the tax savings.

There was no testimony provided as individuals/organizations had provided testimony on LB 133 and were allowed to address both measures at that time. There were 47 position letters submitted in support and 18 letters in opposition.

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

The bill was advanced to Select File on May 4th following a 37-0 vote.

Previously, the Agriculture Committee reported LB 90 to General File on February 11th 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 26th.

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 bill was advanced to Select File on May 4th on a 39-0 vote after adopting AM 389 by a 39-0 vote.

Previously, the Transportation Committee reported LB 166 to General File on March 2nd 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 23rd.

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.

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 include with the Sine Die update.

LR 117 - Interim study to examine surface water irrigation projects and infrastructure. Bostelman.

The purpose of this interim study is to examine the extent of surface water irrigation in the state, examine the condition of surface water irrigation projects and infrastructure, understand the status and projected costs of infrastructure rehabilitation projects, and evaluate the anticipated effects relating to completion or delay of those projects.

The study may also examine the economic, social, recreational, environmental, and other benefits of water supply infrastructure rehabilitation.

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

- (1) Identifying the location of current projects in irrigation districts, reclamation districts, public power districts, canal companies, and other surface water projects and the effect of such projects on local and statewide water resources;
- (2) Identifying the intentional and incidental acres served by surface water projects and the number of surface water irrigators served by such projects;
- (3) Computing the number of miles of canals, laterals, pipelines, and drains operated and maintained by the districts for purposes of operating and maintaining surface water irrigation;
- (4) Identifying the number, location, size, and purpose of dams, reservoirs, lakes, and other impoundments owned or operated by the districts;
- (5) Evaluating information about the age, condition, operation, and maintenance of all surface water facilities owned or operated by the districts;
- (6) Ascertaining amounts paid by the State of Nebraska and the federal government as a result of an operating agreement between those entities relating to the operation and maintenance of surface water projects identified by this study;
- (7) Ascertaining the source of funds paid by the State of Nebraska to the federal government as a result of an operating agreement between those entities relating to the operation and maintenance of surface water projects identified by this study;
- (8) Determining the benefits to agriculture, recreation, fish and wildlife management, municipalities, industry, the public water supply, and ground water recharge;
- (9) Identifying the location of aging surface water infrastructure in Nebraska and compiling an estimate of future funding needed to address such infrastructure; and
- (10) Reviewing potential sources for securing such funding, including, but not limited to, project owner financial inputs, local funding options, state funding options, federal funding options from project facility owners, and federal funding options from past development organizations.