



Nebraska's Natural Resources Districts

www.nrdnet.org

601 S. 12th St. Suite 201
Lincoln, NE 68508

nard@nrdnet.org
(402) 471-7670

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April 17, 2014

TO: NARD Board of Directors, NRD Managers and Conservation Partners
FROM: Dean E. Edson, NARD Executive Director
RE: April 17 NARD Sine Die Update

The Nebraska Legislature adjourned Sine Die April 17, 2014 on day 60 of a 60-day session. The next regular session is scheduled to begin January 7, 2015. Regular sessions generally last 90 legislative days in odd-numbered years and 60 legislative days in even-numbered years. This document contains a summary of the outcome of all 2013-14 Legislative Bills of interest to natural resources districts.

The first section lists bills that were passed by the Legislature and approved by Governor Heineman (Pages 4-18). The second section lists bills that have been indefinitely postponed (pages 18-50). The third section lists Interim Study Resolutions that were introduced in 2014 (pages 50-51). An index of the page number for each bill can be found below. A spreadsheet is included in the back of the document for a quick reference to all bills of interest to natural resources districts.

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Section One – Bills Passed by the Legislature and Approved by Governor Heineman or veto overridden

Most bills passed and approved by the Governor become law three calendar months after the Legislature adjourns unless they have an emergency clause or a specified operative date. The emergency clause is a provision that allows a bill or a portion of a bill to take effect immediately after the Governor signs it or after the Legislature overrides a governor's veto.

LB 272 - Change provisions relating to chemigation permits and fees. Carlson. On February 7th, the Legislature gave final approval to LB 272 on a 43-0-6 vote. The Governor signed the bill on February 13, 2014. The bill will become law three calendar months after the Legislature adjourns on April 17th.

On General File senators approved the committee amendment (AM 433) on a 25-0 vote which became the bill. The intent of the bill is to increase fees for the chemigation program to off-set the cost of administering the program and costs of the annual inspection programs.

The fees for chemigation permits have not changed since the Nebraska Chemigation Act was put into effect in 1986. Current fees are \$30 for new and special permits (\$25 to the NRD and \$5 for NDEQ), \$10 for renewal (\$8 to the NRD and \$2 to NDEQ) and \$100 for an emergency permit (\$80 to the NRD and \$20 to NDEQ).

The original bill proposed to allow the Nebraska Environmental Quality Council to set the fees for Chemigation permits. The original copy proposed a cap of no more than \$250 for new, special, and renewal permits. The bill also outlines that no more than 20 percent of the fee shall go to the department. The fee for an emergency permit is proposed to be \$500, with \$100 going to the department.

The committee amendment (AM 433) replaced the entire original bill and allows each NRD to set the fees rather than the Nebraska Environmental Quality Council. This will allow some NRDs to keep the fees at the current level if they wish. The amendment includes a cap of no more than \$150 for new or special permits; \$100 for renewal of regular and special permits; and \$500 for emergency permits. The amount sent in to the Nebraska Department of Environmental Quality will remain the same as existing law.

The bill also clarifies that emergency permits must be approved within two working days rather than 48 hours. The change is to clarify that emergency permits cannot be issued on Saturday, Sunday or a federal or state holiday. A definition of working day is provided in the bill.

LB 364 - Permit government bodies to set limits on certain contracts. Avery. The Legislature gave final approval to LB 364 on April 9, 2014 by a 45-0-4 vote. The bill was signed by Governor Heineman on April 10, 2014. The bill will become law three calendar months after the Legislature adjourns on April 17th.

Senators adopted the Committee Amendment, AM 1360, while the bill was on General File. The bill will allow a government body to prohibit contracts over a specific dollar amount in which a public official or a public employee of such body may have an interest.

Current law covers public officials but does not cover public employees. Other current statutes also require that any contract over \$2,000 has to be approved by the public body. The change in law will allow a public body to set the limit lower.

The committee amendment (AM 1360) limits the scope of the original bill. With the amendment, only metropolitan, primary, and first class cities may prohibit contracts over a specific dollar amount where a public official or public employee of that city may have an interest.

LB 390 - Change provisions relating to unlawful possession of a firearm at a school and Emergency Management Act provisions. Christensen. The Legislature gave final approval to LB 390 on April 17, 2014 by a 44-0-2 vote. The bill awaits action by the Governor. Although this was not a bill that impacts natural resources, an amendment (AM 2633) that relates to natural resources was adopted to the bill before it was advanced to Select File. The bill amends the Emergency Management Act by removing the Governor's power to limit or suspend the sale, dispensing or transportation of firearms.

As introduced, the bill would have prohibited the state or anyone acting on behalf of the state or a political subdivision from:

- prohibiting or restricting the lawful possession, use, transfer or transportation of a firearm or ammunition;
- seizing or confiscating a lawfully possessed firearm or ammunition unless the firearm is seized to defend oneself or another, during the arrest of a person or as evidence in a crime; and
- requiring that firearms be registered during an emergency unless registration was required before the emergency declaration.

The Judiciary Committee amendment (AM 507), adopted 30-0, narrowed the scope of the bill and removes only the Governor's authority to suspend or limit the sale, dispensing or transportation of firearms during a state of emergency.

Senators also approved an amendment (AM 2633) brought by Hyannis Sen. Al Davis on a 36-0 vote which added provisions of LB 772. This allows the adjutant general to spend up to \$25,000 per event on aerial fire suppression or hazardous material response without a state of emergency proclamation issued by the Governor.

Senator Christensen selected LB 390 as his Priority Bill for the 2014 session.

LB 474e - Change provisions relating to occupation taxes. Krist. Senators gave final approval to LB 474e on March 20, 2014 by a 45-0-4 vote. The bill included the emergency clause and was approved by Governor Heineman on March 26, 2014. Since the bill included the emergency clause, it became effective immediately after the Governor signed the bill.

The Revenue Committee advanced LB 474 on March 19, 2013 with Committee Amendment AM 652. The hearing on the bill was held on March 13, 2013. The bill was Senator Krist's Priority Bill for 2013. He also

declared it as his Priority Bill for 2014. Several amendments were adopted to the bill to clarify the purposes and implementation.

The original bill proposed that funds collected from an occupation tax levied for municipal purposes may not be provided to another political subdivision, state government entity, or nonprofit entity unless the funds will be used for (a) a building that will become property of the municipality or (b) infrastructure or public utilities upgrades or public service support for the municipality.

The original bill also proposed that any occupation tax adopted on or after July 19, 2012 and prior to the operative date of the act shall terminate on January 1, 2015, unless the tax complies with the requirements of this section prior to January 1, 2015.

For occupation taxes on the activity of irrigation levied by NRDs, the original bill proposed to eliminate the term "occupation" and leaves it defined as a "tax". The bill makes no other changes to the use of the occupation tax by NRDs. A change in the definition of occupation tax could result in additional lawsuits on the constitutionality of the tax. When the tax was passed in 2007, the use of the tax was suspended when a lawsuit was filed in that fall. It took four years to get the final decision from the Nebraska Supreme Court that the tax was constitutional.

The Committee Amendment (AM 652) proposed to replace the entire bill and would have placed a moratorium on the imposition of new local option sales tax over the current one and one half percent rate. The Committee Amendment also proposed a moratorium on city occupation taxes. In both cases, the ending date for the moratorium is July 15, 2014. The amendment proposed to drop the language involving occupation taxes by NRDs.

However, the committee amendment was withdrawn after another compromise was reached. On General File, the AM 652 was withdrawn and replaced with AM 1815 offered by Senator Hadley. The amendment was adopted 33-0. The bill now requires after the effective date of the act, any occupation tax imposed by cities and villages would be required to make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax. The language prohibits occupation taxes on alcohol, tobacco and motor fuels. Senator Krist was successful with his amendment (FA203) to add the emergency clause. Also, Senator Harr was successful to add AM 2044 which prohibit the implementation of an occupation tax on food.

The bill as passed and approved does not include any changes to occupation taxes imposed by NRDs.

LB 513 - Change notice provisions under the Nebraska Ground Water Management and Protection Act. Carlson. On February 7th, the Legislature gave final approval to LB 513 on a 43-0-6 vote. The Governor signed the bill on February 13, 2014. The bill will become law three calendar months after the Legislature adjourns on April 17th.

The bill changes the notice requirement of a cease and desist order from ten days to three days to enforce any provision of the Nebraska Ground Water Management and Protection Act.

The bill allows a shortened time frame for violators of groundwater rules and regulations to provide corrective action. Several NRDs imposed new rules in areas of their district where severe declines have occurred the last couple of years. If there are water users that are operating illegal wells, under current law the well could run for ten days before corrective action would have to be taken. Shortening this to three days could save a significant amount of water.

LB 514 - Provide for new funding mechanisms under the Wastewater Treatment Facilities Construction Assistance Act. Carlson. On February 7th, the Legislature gave final approval to LB 514 on a 44-0-5 vote. The Governor signed the bill on February 13, 2014. The bill will become law three calendar months after the Legislature adjourns on April 17th.

The bill creates a Wastewater Treatment Facilities Construction Assistance Linked Deposit Program to promote loans by eligible financial institutions for the construction, rehabilitation, and enhancement of nonpoint source control systems for public or private owners.

When an eligible financial institution has executed a linked deposit agreement with the director, the director may deposit a portion of the Wastewater Treatment Facilities Construction Loan Fund with the eligible financial institution in low-yielding deposit accounts, certificates of deposit, or other authorized deposits as set forth in the linked deposit agreement between the director and the eligible financial institution. Such deposits shall not be subject to the requirements of the Public Funds Deposit Security Act.

In the linked deposit agreement, the eligible financial institution shall make loans available at an interest rate lower than the otherwise prevailing interest rate for construction, rehabilitation, and enhancement of nonpoint source control systems. An eligible financial institution is defined as a bank that agrees to participate in the linked deposit program and which is chartered to conduct banking in this state pursuant to the Nebraska Banking Act or any national bank authorized to do business in Nebraska.

Linked deposit program loans may be made to public or private owners by eligible financial institutions for the construction, rehabilitation, and enhancement of nonpoint source control systems including: (a) Onsite wastewater and private septic systems; (b) Local water protection projects, including best management practices for nutrient controls; and (c) Eligible nonpoint source activities under the Livestock Waste Management Act.

On General File, senators adopted committee amendment AM 412 on a 25-0 vote. The committee amendment (AM 412) adds to the definition of "eligible financial institution" to ensure that banks chartered in other states and authorized to do business in Nebraska are included.

LB 683 - Change a reference to federal rules and regulations relating to storm water management.

Scheer. The Legislature gave final approval to LB 683 on April 9, 2014 by a 46-0-3 vote. The bill was signed by Governor Heineman on April 10, 2014. The bill will become law three calendar months after the Legislature adjourns on April 17th. The bill updates references for storm water management requirements to the 2010 census. This will add Grand Island to the federal requirements.

LB 719 - Provide a report requirement for the adoption of rules and regulations. Crawford. The Legislature gave final approval to LB 719 on April 9, 2014 by a 46-0-3 vote. The bill was approved by the Governor on April 15, 2014. The bill will become law three calendar months after the Legislature adjourns on April 17th.

On General File, senators adopted the committee amendment (AM 1787) and AM 2066 which added provisions of LB 720. The bill proposes to add an additional requirement to the existing report filed by state agencies when they finalize their proposed rules. The additional reporting requirement would include a summary of the testimony offered at the public hearing which lists any specific issues or questions that were presented by individuals or organizations at the hearing or in written testimony.

The bill also requires the report to be submitted to the Executive Board of the Legislature. The committee amendment (AM 1787) provides that after the written report is submitted to the Executive Board, the chair or committee staff member of the executive board will refer each written report for review to the chair of the standing committee which has subject matter jurisdiction over the issue and if practicable, to the legislator who was the primary sponsor of the bill or amendment that granted the agency the rulemaking authority.

Senators also approved AM 2066 offered by Senator Crawford which incorporates the committee amendment to LB 720. The amendment expands the criteria which a member of the Legislature can file a complaint to the Executive Board about the expansion of the process to existing rules and regulations or their repeal. The additional criteria for filing a complaint include that the rule or regulation creates an undue burden,

circumstances have changed since the passage of the statute which a rule or regulations implements, or the rule or regulation overlaps, duplicates, or conflicts with other laws, rules or ordinances.

LB 736 - Change the service of notice provision in the One-Call Notification System Act. Dubas. The Legislature gave final approval to LB 736 on April 9, 2014 by a 48-0-1 vote. The bill was signed by Governor Heineman on April 10, 2014. The bill will become law three calendar months after the Legislature adjourns on April 17th. On General File, the committee amendment (AM 1811) was added to the bill. The bill changes the notice requirement for excavators that serve notice for excavation from calling the toll free number to submitting a location request to one call center. The intent is to allow other means of communication and technology to be used other than the phone.

The committee amendment (AM 1811) clarifies the notice requirement methods which relieve excavators of liability under the One-Call Notification System Act. The amendment specifies locate requests must be submitted using a method provided by the One-Call center. Current methods provided by the center include calling the toll free diggers hotline, 8-1-1, fax machine submissions, or online submissions. The amendment will allow for future innovations by the one-call center without need for statutory change.

LB 759 - Require annual reports from various defined benefit retirement plans. Mello. The Legislature gave final approval to LB 759 on April 3, 2014 by a 47-0-2 vote. Governor Heineman signed the bill into law on April 9, 2014. The bill will become law three calendar months after the Legislature adjourns on April 17th. The bill requires all governmental entities that offer a defined benefit retirement plan to file an additional report to the Nebraska Retirement Systems Committee if the plan: (1) The contributions do not equal the actuarial requirement for funding; or (2) the funded ratio is less than eighty percent.

On General File, the legislature adopted the committee amendment, AM 2140, which clarifies two items. First, only subdivisions that offer a defined benefit plan open to new members on January 1, 2004 are required to notify the Nebraska Retirement Systems Committee on or before November 1, 2014 that it offers such a plan. Second, it clarifies that all political subdivisions that offer such a plan must file a copy of the most recent actuarial valuation report with the Committee on or before November 15, 2014 and each November 15 thereafter.

The bill does not apply to the NARD 414(h) and 457 Employee Retirement Plans because they are defined contribution plans. If the plan is ever changed back to a defined benefit plan, the requirement would apply. The bill was the Retirement Systems Committee Priority Bill for the session.

LB 814 - Change the distribution of sales tax revenue to provide funding to the Game and Parks

Commission. Avery. The Legislature gave final approval to LB 814 on March 27, 2014 by a 43-1-5 vote. Governor Heineman signed LB 814 into law on April 2, 2014. The bill will become law three calendar months after the Legislature adjourns on April 17th. The bill was Senator Avery's Priority Bill for the session.

The bill creates the Game and Parks Commission Capital Maintenance Fund, funded by the proceeds of the sales and use taxes derived from the sale or lease of motorboats and personal watercraft. On General File, Amendment 1876 was adopted to add language that also includes tax from all-terrain and utility-type vehicles as part of the fund.

The bill also changes the point of collection for the sales tax on ATVs and UTVs. Currently the sales tax on ATVs and UTVs is collected and remitted at the retail level. However, there is no way for the county or the state to ensure the sales and use tax is collected and remitted on sales outside of Nebraska, when the ATVs or UTVs are brought into Nebraska for use. By changing the point of tax collection from the retailer to the county treasurer, Nebraska will be better able to collect sales and use taxes due. The change in the point of collection mirrors the same procedure as motor vehicles and motorboats.

Before advancing the bill to Final Reading, senators adopted AM 2248, which increases the minimum weight requirement for the definition of all-terrain vehicle from 900 to 1,200 pounds and eliminates the minimum weight requirement of 900 pounds for utility-type vehicles.

LB 844 - Extend the termination date of the Nebraska Litter Reduction and Recycling Act. Schilz. The Legislature gave final approval to LB 844 on March 24, 2014 by a 47-0-2 vote. Governor Heineman signed LB 844 into law on March 28, 2014. The bill will become law three calendar months after the Legislature adjourns on April 17th. The bill extends the termination date of the Nebraska Litter Reduction and Recycling Act from October 30, 2015 to October 30, 2020. The bill was a Natural Resources Committee Priority Bill for the session.

LB 905e - Provide for deficit appropriations. Adams, on behalf of the Governor. The Legislature overrode most of Governor Heineman's veto of the deficit appropriations bill on April 1st by a 37-11-1 vote. The Governor had vetoed approximately \$65 million in general, federal and cash funds from the budget bills.

Related to natural resources, the Governor vetoed \$7.4 million in cash reserve funds to the Nebraska Game and Parks Commission for state park deferred maintenance. Other main vetoes included:

- \$11.7 million in Nebraska capital construction funds for the first year of the State Capitol heating, ventilation and air conditioning system renovation project;
- \$10 million in general funds to the Job Training Cash Fund;
- \$7.4 million in general funds to the state Supreme Court for a juvenile services project contingency program; and
- \$2.5 million for the fountains at the State Capitol

All of these items and most others were reinstated with the veto override.

The Senators did not attempt to override Governor Heineman's following vetoes:

- \$2.4 million transfer of money from Medicaid to services for juvenile offenders;
- A \$500,000 appropriation for electronic health records;
- Funding to add an administrative assistant for the Public Service Commission; and
- Funding to change half-time positions to full-time positions in the governor's and lieutenant governor's offices.

The Legislature gave final approval to LB 905 on March 24, 2014 by a 40-8-1 vote. On General File the committee amendment (AM 2019) was adopted, which was the Appropriations Committee recommended changes to the two-year budget adopted last year. The Appropriations Committee proposed adjustments result in a net increase of General Fund appropriations of \$27,739 over the two year period.

The more significant net impact over the two years is \$71 million of transfers from the General Fund to other Funds. Of these transfers, \$36 million is anticipated to be on-going (\$25 million to Property Tax Credit and \$11 million to Water Sustainability Fund), and \$35 million as a one-time transfer (\$10 million Job Training, \$15 million to Game and Parks, and \$11 million to Water Sustainability Fund)

On General File there were several amendments filed to change the budget, but none were adopted. The most significant was by Senator Hadley who proposed to increase the property tax credit from \$140 million to \$160 million annually. The proposed amendment lost 20-18-11. Senator Dave Bloomfield offered and later withdrew an amendment that would have removed a \$60,000 appropriation to pay the state's Midwest Interstate Passenger Rail Compact dues.

On Select File several amendments were offered, but only one adopted. Senator Chambers' amendment failed which would have eliminated \$5 million for a contract with county jails to house state inmates on a temporary basis because of prison overcrowding. An amendment offered by Senator Mello was adopted to add funds to the University Medical Center.

Included in the bill is a \$14.5 million transfer from the Cash Reserve Fund to the Nebraska Capital Construction Fund for two State Capitol Building projects. The first is \$2,500,000 for installation of fountains to be located in each of the four Nebraska State Capitol courtyards consistent with the original design of the building. On General File, Senator Bill Kintner offered an amendment that would have removed \$2.5 million proposed for four fountains in the State Capitol courtyards. The amendment lost by a 5-27 vote.

The second is a seven-phase, 10-year project to renovate the existing heating and cooling system at the State Capitol. The amendment appropriates \$11.7 million from the Capital Construction Fund (NCCF) to cover the first three years of the project. The remaining years would be financed with General Fund appropriations.

The bill includes the creation of the Water Sustainability Fund in the Department of Natural Resources. The fund will be used in accordance with guidelines to be established by LB 1098, which was Senator Carlson's Priority bill to create the oversight committee for the funds.

The language included legislative intent that \$21 million General Funds be transferred to the Water Sustainability Fund in FY2014-15 and that \$11 million General Funds be transferred to the Water Sustainability Fund in each fiscal year beginning in FY2015-16.

The actual appropriation of monies from the Water Sustainability Fund is not contained in the committee proposal. While the transferred funds will be held in the Water Sustainability Fund, the actual appropriation that will allow the funds to be expended will be carried out via LB 1098A.

For the Game and Parks Commission, the bill combines the provisions of LB 873, LB 874 and LB 1033 by providing a \$15 million transfer from the Cash Reserve Fund (through the General Fund) and a \$2.5 million transfer from the State Recreation Road Fund to the Commission for deferred maintenance and improvement projects at state parks. This will accommodate twelve new replacement cabins and a new aquatic feature to replace the pool at Ponca State Park, deferred maintenance and improvements at Arbor Lodge State Historical Park that will facilitate a local partner assuming operation and maintenance responsibility, and making headway on the \$44 million worth of statewide deferred maintenance and ADA needs identified by the Commission.

Finally, the bill appropriates \$400,000 to the Attorney General for Interstate Water Litigation for FY 2014-15. This was a \$100,000 increase from the Governor's proposal, but still \$200,000 less than the appropriation level passed in last year's budget.

LB 906e - Transfer funds and creates and eliminates funds. Adams, on behalf of the Governor. The Legislature over-rode Governor Heineman's vetoes of the cash fund transfer bill on April 1st by a 39-9-1 vote. Governor Heineman vetoes included:

- \$12.5 million to a state Department of Motor Vehicles fund to replace a vehicle title and registration system; and
- \$1.1 million of a \$21 million transfer to the Water Sustainability Fund that is targeted for repairs combined sewer operation.

The Legislature gave final approval to LB 906 on March 24, 2014 by a 41-7-1 vote. On General File, senators adopted the committee amendment (AM 2175) which made several cash fund transfers and created several funds. Related to natural resources, the bill as amended does the following:

- Creates the Game and Parks State Park Improvement and Maintenance Fund. It will be used to build, repair, renovate, rehabilitate, restore, modify, or improve any infrastructure in the state park system.

- Requires the Treasurer, at the direction of the DAS Budget Administrator to transfer \$15 million from the General Fund to the Game and Parks State Park Improvement and Maintenance Fund on or before July 31, 2014.
- Requires the Treasurer, at the direction of the DAS Budget Administrator to transfer \$2.5 million from the State Recreation Road Fund to the Game and Parks State Park Improvement and Maintenance Fund on or before July 31, 2014.
- Creates the Water Sustainability Fund for the Department of Natural Resources. The fund will be used in accordance with LB 1098 and for costs directly related to the administration of the fund. Also included is intent language that \$21 million will be transferred from the General Fund to the Water Sustainability Fund in fiscal year 2014-15 and an additional \$11 million will be transferred each fiscal year beginning in fiscal year 2015-16.
- Directs the Treasurer to make the \$21 million transfer to the Water Sustainability Fund no later than July 15, 2014.
- Prohibits money in the Nebraska Resources Development Fund from being reallocated for utilization by the Department of Natural Resources, by any state office, agency, board, or commission, or by any political subdivision after the effective date of this Act.
- Prohibits applications being made to receive funds by grant or loan from the Nebraska Resource Development Fund after the effective date of this Act.

LB 930 - Require an operator's presence at an excavation under the One-Call Notification System Act.

Watermeier. Senators gave final approval to LB 930 on April 10, 2014 by a 48-0-1 vote; the Governor signed the bill on April 10, 2014. The bill will become law three calendar months after the Legislature adjourns on April 17th.

On General File, Senators adopted the Committee Amendment (AM 2039). The bill included that unless otherwise agreed by the operator and excavator in writing, no excavation shall be performed within twenty five feet of an underground natural gas transmission line or any underground facility designated a critical facility by an operator unless a representative of the operator of the underground natural gas transmission line or critical facility is present at the planned excavation area.

The Committee Amendment (AM2039) removed reference to "critical facilities", and clarified that this new section does not prohibit operators from voluntarily having a representative present during excavation or entering into a voluntary agreement with an excavator allowing the operator to be present during excavation.

The operator of the natural gas transmission lines will be required to stake, flag, paint or provide any other clearly identifiable marking or reference point for such facilities prior to excavation.

The bill also states that any excavator who fails to give notice of an excavation near, or who fails to comply and damages an underground facility by such excavation shall be strictly liable to the operator of the underground facility for the cost of all repairs to the underground facility.

LB 961 - Provide for a fire fighting compact, change workers' compensation provisions and require coverage for volunteer firefighters, change provisions of the Nebraska Hospital-Medical Liability Act, the Nebraska Construction Prompt Pay Act, and the Employment Security Law.

Cook. Senators gave final approval to LB 961 on April 10, 2014 by a 47-0-2 vote. The bill was approved by Governor Heineman on April 16, 2014. The bill will become law three calendar months after the Legislature adjourns on April 17th.

The original bill dealt with employer negligence, but was eliminated and three bills were included by the Business and Labor Committee Amendment AM 2626. The bill was the Business and Labor Committee Priority Bill for the session.

Of interest to natural resources, the bill included **LB 820** which authorizes the Governor to join the Great Plains Interstate Fire Compact for the prevention and control of forest fires. Currently, South Dakota, Colorado, and Wyoming are participating in the Great Plains Interstate Fire Compact. In 2007, Congress passed legislation which granted the consent and approval of Congress to the compact. The purpose of the compact is to facilitate assistance in prevention, pre-suppression, and control of fires and management of prescribed fires between the member agencies of the compact.

Another bill added was **LB 895** which ensures that the wages used for the calculation for workers' compensation indemnity benefits for volunteer fire or emergency service personnel is 1.5 times the maximum state average weekly wage (currently \$747) or wages from his/her regular employer, whichever is higher. The bill further ensures that an individual serving in an above referenced volunteer capacity will not lose his/her volunteer status if the city or village provides a nominal fee.

The third bill added was **LB 951** which deals with lump sum settlements, the Compensation Court and time frames for payments.

LB 1008 - Change duties of the Climate Assessment Response Committee. Haar. The Legislature gave final approval to LB 1008 on April 10, 2014 by a 44-1-4 vote. The bill was signed by Governor Heineman on April 10, 2014. The bill will become law three calendar months after the Legislature adjourns on April 17th. The bill changes the December 1, 2014 final report to the legislature from the Climate Assessment Response Committee. The original report required a report on cyclical climate change. Under the bill the final report could include other reports and recommendations submitted to the Climate Assessment Response Committee.

LB 1098e - Change membership and powers and duties of the Nebraska Natural Resources Commission. Carlson. The Legislature gave final approval to LB 1098e and LB 1098A on April 11, 2014 by 48-0-1 votes; the Governor signed the bill on April 16, 2014. Since the bill included the emergency clause, it became effective immediately after the Governor signed the bill. Under the bill, the revised commission will oversee \$11 million in funding for water programs annually as provided in LB 1098A starting in FY 2015-16. The "A" bill also includes an additional \$21 million for FY 2014-15 to pay off existing projects approved by the commission.

On April 9th, senators advanced the bill to Final Reading after adopting several amendments that included basin management planning and four other bills. The bill included the emergency clause, so it could become effective immediately once signed by the Governor.

On General File, Senators adopted the Natural Resources Committee Amendment (AM 2594) by a 31-1-13 vote. The committee amendment was a result of discussions with members of the Appropriations Committee and several other senators to assure that criteria will be developed to distribute the funds, including funds for Omaha levee projects and Omaha's combined sewer operation problem. Several other bills and issues were added to LB 1098 before final action was taken.

Basin Management Planning

On General File, Senator Carlson developed a compromise amendment with Senator Lathrop (AM 2753) to LB 1098 to require basin management planning that created quite a bit of discussion and attention. In short, here is what it proposed:

- The basin plan, and subsequent revised IMPs, would only allow groundwater use in excess of pre-development levels. Further, any use that resulted in a decline in the groundwater table would have to be stopped.
- The local NRD IMPs would have to be modified to meet the goals and objectives of the basin plan.
- Collaboration and consultation with irrigation districts would be required.

This prompted Governor Heineman and Attorney General Jon Bruning to get heavily involved to protect the agriculture economy and water use in Nebraska. There are probably only a couple areas of the state that has water levels that stay above predevelopment level at all times. Anytime a groundwater well is turned on, whether it is domestic, irrigation, livestock or manufacturing, a decline in the water table occurs immediately. Thus, these water uses would not be allowed under the proposed amendment. Thus, the amendment would have ended groundwater use in the Republican basin (about 1.1 million acres) and other river basins that are declared fully appropriated in the future.

Further, the amendment would have created major problems for the State of Nebraska in the *Kansas v. Nebraska Republican River Lawsuit*. The Special Master in the case had already ruled that the IMPs in place by the local Republican River NRDs and the Department of Natural Resources are adequate to keep Nebraska in compliance with the compact. However the case is not finalized and won't be until late 2014 or early 2015. By making the NRDs and DNR revise the IMPs under the proposal, Kansas could immediately argue that Nebraska is renegeing on the approved IMPs. Subsequently, additional damages could have been awarded to Kansas.

Thus, Senator Carlson's and Lathrop's compromise amendment was withdrawn, as were all other amendments filed by Senator Lathrop. However, he refiled all of the floor amendments for Select File. After the bill was advanced there was a meeting with DNR, the AG's office, The Governor's office, Farm Bureau, NARD, and Senators' Lathrop, Carlson, Schilz, and Christensen to discuss AM 2753. The result of the meeting was a new compromise to allow for basin management plans, but they would follow existing IMPs rather than forcing the IMPs to be revised. Also, all language related to predevelopment, declines, etc., were eliminated. Language from existing IMP statutes would be inserted that when developing a basin management plan it would require consideration of the economic viability of the basin.

The new compromise amendment was included in AM 2783 and adopted on Select File. It included the following requirements for Basin Management plans:

- Have clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, sub-basin, or reach can be achieved and maintained for both the near term and the long term;
- Ensure that compliance with any interstate compact or decree or other formal state contract or agreement or applicable state or federal law is maintained;
- Set forth a timeline to meet the goals and objectives but in no case shall a timeline exceed 30 years after the operative date of this section;
- Districts that have been or are required to develop an integrated management plan for all or substantially all (85 percent) of the district, such natural resources districts shall, jointly with the department and the natural resources districts within the same basin, develop and adopt a basin-wide plan for the areas of a basin, subbasin, or reach determined by the department to have hydrologically connected water supplies;
- Districts that have developed and implemented a basin-wide plan would be exempt from the new process;

- A basin-wide plan shall be developed using a consultation and collaboration process involving representatives from irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, ground water users, range livestock owners, the Game and Parks Commission, and municipalities that rely on water from within the affected area;
- If an agreement cannot be reached by all parties involved, the basin-wide plan shall be developed and adopted by the department and the affected natural resources districts or by the Interrelated Water Review Board pursuant;
- Within five years after the adoption of the basin wide plan, and every five years thereafter, the department and affected natural resources districts shall conduct a technical analysis of the actions taken in a river basin to determine the progress towards meeting the goals and objectives of the plan;
- The analysis shall include an examination of (i) available supplies, current uses, and changes in long-term water availability, (ii) the effects of conservation practices and natural causes, including, but not limited to, drought, and (iii) the effects of the plan in meeting the goal of sustaining a balance between water uses and water supplies. The analysis shall determine if changes or modifications to the basin-wide plan are needed to meet the goals and objectives;
- The department and affected natural resources districts shall present the results of the analysis and any recommended modifications to the plan at a public meeting and shall provide for at least a thirty-day public comment period before holding a public hearing on the recommended modifications;
- The department shall submit a electronic report to the Legislature of the results of this analysis and the progress made under the basin-wide plan;
- Any official participant or stakeholder may submit comments to the department and affected natural resources districts on the final basin-wide plan adopted by the department and affected natural resources districts, which shall be made a part of the report to the Legislature;
- Before adoption of a basin-wide plan, the department and affected natural resources districts shall schedule at least one public hearing to take testimony on the proposed plan;
- Within sixty days after the final hearing, the department and affected natural resources districts shall jointly determine whether to adopt the plan;

Other Legislative Bills Added

Senator Lathrop had 18 floor amendments filed for Select File debate, which were withdrawn after AM 2783 was adopted. Several other senators had amendments filed and later withdrawn, including repealing the mountain lion hunting and expanding health insurance coverage. However, there were four bills that were added to LB 1098 as follows:

- **AM 2580 – Christensen. Inserts the Nature Resources Committee amendments to LB 686 - Change a certification date relating to non-irrigated acres, Christensen, and LB 710 - Provide requirements for entering into certain ground water augmentation projects. Christensen.** The amendment changes the date to certify non-irrigated status from March 1 to June 1 for land subject to occupation taxes for the same calendar year, which was the committee amendment to LB 686. The amendment also included the committee amendment to LB 710 which would require that a NRD Board could not vote to enter into a groundwater augmentation project without conducting a public hearing following the 30-day public notice and three consecutive week advertising requirements.

- **AM 2657 – Christensen. Inserts the Revenue Committee amendment to LB 723 - Change property tax provisions relating to the valuation of irrigated cropland and comparable sales. Christensen.**

The original bill proposed to divide irrigated cropland into the following subclasses – groundwater irrigated, surface water irrigated, ground and surface water irrigated, and limited capacity irrigated. The bill then adds another guideline for what determines comparable sale for determining value as follows: Whether the difference in well capacity or in water availability due to federal, state, or local regulatory actions or limited source affected the sale of the property.

The Revenue Committee amendment removes the mandate to create subclasses of irrigated crop land for valuation purposes. It also clarifies statutory guidelines for valuation of such irrigated crop land. The amendment allows assessors to consider whether the difference in well capacity or in water availability due to federal, state, or local regulatory actions or limited source affected the sale price of the property. If data on current well capacity or current water availability is not available from a federal, state, or local government entity, it cannot be used to determine what constitutes a comparable sale.

- **AM 2693 – Davis. Inserts LB 391 - Change water law provisions relating to water storage. Davis.**

The bill proposes to modify the requirement of a reservoir and intentional underground water storage facilities when having to release water for direct irrigation or a reservoir facility holding a senior right. Current law does not designate where the facilities are located for the water to be released. The bill outlines that the irrigation ditch or reservoir holding a senior right receiving the water have to be downstream.

Back to LB 1098 and the Committee Amendment

The Committee Amendment (AM 2594) clarified several issues raised by members of the Appropriations Committee and other members of the Legislature about the new commission and additional funding. The bill expands the Nebraska Natural Resources Commission to twenty seven members as recommended by the Water Funding Task Force Report in December 2013. The bill maintains all sixteen current members and adds eleven members to be appointed by the Governor.

Appointments, Process, Basin Caucus and Terms

The eleven additional appointments would be for staggered four-year terms as determined by the Governor. There are currently three governor appointees representing groundwater users, surface water users and municipalities which would remain in place until the terms are served. Future appointments shall be for four-year terms. The Governor is required to appoint the initial members within thirty days of the effective date of the act, which occurred as soon as the Governor signed the bill..

Currently there are twelve members representing river basins and one additional member representing the metropolitan class elected by caucus of natural resources districts. Under the bill, the caucus process remains. The bill would require the commission to provide notice to the public by issuing press releases for publication in a newspaper of general circulation in each county that comprises the river basin for which a caucus election will be held.

The additional appointed membership on the commission is to include:

- agribusiness interests
- agricultural interests
- groundwater irrigators (current appointment)
- irrigation districts
- manufacturing interests
- metropolitan utilities districts

- municipal users of water from a city of the primary class
- municipal users of water from a city of the first or second class or a village; (current appointment)
- outdoor recreation users
- public power districts
- public power and irrigation districts
- range livestock owners
- surface water irrigators (current appointment)
- wildlife conservation interests

The initial appointments shall be for staggered four-year terms, as determined by the Governor, taking into account the terms remaining of the current members of the commission appointed under such subdivision.

Members whose terms have expired shall continue to serve until their successors have been appointed.

In appointing the members, the Governor shall: (i) Create a broad-based commission which has knowledge of, has experience with, and is representative of Nebraska's water use and economy; ii) Give recognition to the importance of both water quantity and water quality; and (iii) Appoint members who represent diverse geographic regions of the state, including urban and rural areas.

After all members have been appointed, the commission shall revise, adopt, and promulgate rules and regulations as necessary to ensure that the commission's funding process establishes and utilizes criteria upon which projects, programs, and activities will be ranked and prioritized according to the water sustainability goals established by the commission.

Finally, the commission is to be required to utilize the resources and expertise of the University of Nebraska, the Department of Environmental Quality, and the Game and Parks Commission relating to funding and planning for water projects, programs, or activities.

Goals, Eligibility, Ranking and Scoring Criteria

Under the bill, the goals of the Water Sustainability Fund are to:

- Provide financial assistance to programs, projects, or activities that increase aquifer recharge, reduce aquifer depletion, and increase streamflow;
- Remediate or mitigate threats to drinking water;
- Promote the goals and objectives of approved integrated management plans or ground water management plans;
- Contribute to multiple water supply management goals including flood control, reducing threats to property damage, agricultural uses, municipal and industrial uses, recreational benefits, wildlife habitat, conservation, and preservation of water resources;
- Assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project;
- Provide increased water productivity and enhance water quality;
- Use the most cost effective solutions available; and
- Comply with interstate compacts, decrees, other state contracts and agreements and federal law.

Legislative intent was added that the fund be equitably distributed statewide to the greatest extent possible for the long term. Also, intent language was added that distributions from the fund for sewer infrastructure facilities to reduce combined sewer overflow not exceed 10% of the total annual appropriation to the Water Sustainability Fund.

Legislative findings are added that the goals of the fund can be met by giving equal consideration to four categories of projects:

- (1) Research, data and modeling;
- (2) Rehabilitation or restoration of water supply infrastructure, new water supply infrastructure, or water supply infrastructure maintenance or flood prevention for protection of critical infrastructure;
- (3) Conjunctive management, storage, and integrated management of groundwater and surface water; and
- (4) Compliance with interstate compacts or agreements or other formal state contracts or agreements or federal law.

In order for a natural resources district to be eligible for funding from the Water Sustainability Fund, it must have adopted or be in the process of developing an integrated management plan. The bill also allows, with the approval of the commission, to acquire interest in water and related land resources projects in the name of the state utilizing the Water Sustainability Fund.

The criteria for ranking and scoring projects that was established by the Water Funding Task Force and printed in the LB 517 final report are added to the bill. One addition to the criteria was to ensure that the Omaha flood control levee projects required by FEMA can be considered for funding. Primarily these are to address the flood control needs for Offutt Air Force Base and the sewage treatment facility near Bellevue. The ranking/scoring includes the following criteria that demonstrate the extent to which a program, project, or activity:

- (1) Remediates or mitigates threats to drinking water;
- (2) Meets the goals and objectives of an approved integrated management plan or groundwater management plan;
- (3) Contributes to water sustainability goals by increasing aquifer recharge, reducing aquifer depletion, or increasing streamflow;
- (4) Contributes to multiple water supply management goals, including, but not limited to, flood control, agricultural use, municipal and industrial uses, recreational benefits, wildlife habitat, conservation of water resources, and preservation of water resources;
- (5) Maximizes the beneficial use of Nebraska's water resources for the benefit of the state's residents;
- (6) Is cost-effective;
- (7) Helps the state meet its obligations under interstate compacts, decrees, or other state contracts or agreements or federal law;
- (8) Reduces threats to property damage or protects critical infrastructure that consists of the physical assets, systems, and networks vital to the state or the United States such that their incapacitation would have a debilitating effect on public security or public health and safety;
- (9) Improves water quality;
- (10) Has utilized all available funding resources of the local jurisdiction to support the program, project, or activity;
- (11) Has a local jurisdiction with plans in place that support sustainable water use;
- (12) Addresses a statewide problem or issue;
- (13) Contributes to the state's ability to leverage state dollars with local or federal government partners or other partners to maximize the use of its resources;
- (14) Contributes to watershed health and function; and
- (15) Uses objectives described in the annual report and plan of work for the state water planning and review process issued by the department.

Loans & Other

A new section was added to the bill with AM 2783 to allow for the commission to provide loans from the fund at interest rates established by the commission. The repayment would have to commence no later than one full year after construction of the project or implementation of the program or activity is completed and that repayment shall be completed within the time period specified by the commission. The repayment period shall not exceed fifty years. Such agreement shall also provide for such assurances of and security for repayment of the loan.

The following other items were included in the bill:

- Requirement added that the commission utilize the resources and expertise of, and collaborate with the Department of Natural Resources, the University of Nebraska, the Department of Environmental Quality, the Environmental Trust, and the Game & Parks Commission.
- A new section is added to ensure that the Department of Natural Resources has the authority to review applications and provide recommendations. Similar language is in statute for the other funds administered by the commission.

LB 1098A – Funding

The accompanying “A” bill appropriates \$21 million from the Water Sustainability Fund for FY 2014-15 and \$11 million from the Water Sustainability Fund for FY 2015-16 to the Department of Natural Resources to aid in carrying out the provisions of LB 1098. Senators gave final approval to the “A” bill on April 10, 2014 by a 48-0-1 vote.

The bill limits total expenditures for permanent and temporary salaries and per diems from funds appropriated to not exceed \$90,613 for FY 2014-15 or \$90,613 for FY 2015-16.

The appropriation for aid under the program is limited to \$20,865,593 Cash Funds for FY 2014-15 and \$10,872,993 Cash Funds for FY 2015-16 for state aid, which shall only be used for such purpose. Included in this appropriation is \$1.1 million FY 2014-15 and \$1.1 million FY 2015-16 in Cash Funds to provide funding to municipalities to be used to replace and redevelop infrastructure facilities to reduce combined sewer overflow.

Finally, the “A” bill includes intent language that the Nebraska Natural Resources Commission, in conjunction with the Department of Natural Resources, shall consider the need for a funding cap to help insure both the prudent management of the Water Sustainability Fund and the timely cash flow of projects approved for funding under the Water Sustainability Fund. The bill requires the Department of Natural Resources to include the preliminary findings of the Nebraska Natural Resources Commission regarding this matter in its FY 2015-17 biennial budget submissions.

Section Two – Bills that have been Indefinitely Postponed

All bills not passed by the end of the session, including carry-over bills, were indefinitely postponed at the end of the 2014 Legislative Session. Some bills were indefinitely postponed before the session ended. Bills indefinitely postponed of interest to natural resources districts included the following:

LB 57 -- Change provisions relating to grants from the Nebraska Environmental Trust Fund. Larson.

The Legislature bracketed LB 57 until January 10, 2014 on June 3, 2013, there were eight amendments pending on the bill. The bill was not on the agenda during the 2014 session.

On April 3, 2013, the Legislature advanced LB 57 to Select File after eight hours of debate on the bill and adopting several amendments. After eight hours of debate, Senator Larson made a motion to invoke cloture, which requires 33 votes, to end debate and force a vote on the measure. The motion for cloture prevailed on a 34-9 vote. After amendments were adopted, the bill advanced to Select File on a 27-17 vote.

The original bill outlined that if a grant recipient uses funds received by the NETF to purchase real estate or requesting the use of the revolving funds from proceeds or a sale or transfer of ownership in real property, the NETF Board would have to approve of each subsequent purchase of real property. The issue that sparked the bill was land purchased by Ducks Unlimited with NETF funding and later transferring the land to the US Fish and Wildlife Service.

The original bill would have required NETF Board approval if a grantee ever sold property acquired by trust funds and later transfer the real property to a federal land management agency by any means, which resulted in the removal of the property from the tax rolls. If the NETF Board approved the transfer, it would be required to approve an amount of funds equal to the amount for which such real property was valued for purposes of taxation during the year immediately preceding the transfer into a trust fund to be established and administered by the county for any governmental purpose, including investments of the interest. The principal amount in the trust could not be spent.

The Committee Amendment, AM 676, proposed to replace all of the new language in the original bill. However, several other amendments were approved to the Committee Amendment, including AM 879 by Senator Haar, AM 844 and AM 871 by Senator Larson. The bill as advanced to Select File with amendments would do the following:

- Require that an applicant who proposes to use grant funds to purchase property that will at any time be sold or transferred to or exchanged with or encumbered by a federal land management agency that results in the removal of the property from its current county tax assessment, to provide in its contract with the trust board how it will provide for the replacement of the taxes to the county.
- Require in the contract between the NETF Board and a nonpublic grantee, that such grantee not sell, transfer, or exchange, unless approved in the original grant, any portion or all of the real property acquired by such grantee in whole or in part by trust funds without the prior written approval of the board.
- The approval would be granted if the sale, transfer, or exchange is consistent with the purposes of the original grant. The grantee would be required to provide the board in writing the details of any proposed sale, transfer, or exchange of the real property at least thirty days in advance of the next scheduled board meeting and obtain written approval of the board prior to executing any such transaction.
- If the board does not provide written approval of the sale, transfer, or exchange, such grantee may repay the value of the grant to the trust in order to be released from all further obligations.
- If the board provides written approval of a sale, transfer, or exchange, the real property shall be released from any further restrictions regarding its sale, transfer, or exchange.
- Require in the contract between the NETF Board and the grantee, in advance of the distribution of funds, written confirmation from any financial institution that would provide a portion of the funds for purchase of real property acknowledging that such grantee cannot sell, transfer or exchange any portion of the property without written approval of the board. This would have to be incorporated into the deed or other instrument conveying title.
- The NETF Board would have 45 days after the request to approve the transfer. If the NETF does not take action within the 45-day period, the request shall be deemed approved. The NETF Board would be authorized to participate in and vote on issues at a regular or special meeting by telephone conference call or videoconference as long as the chair or vice-chair conducts the meeting in a location where the public is allowed to attend.

During General File debate in 2013, motions by Senator Chambers to indefinitely postpone and to return to committee were defeated on 13-26 and 7-33 votes respectively. Senator Schilz had an amendment pending (AM 869) to clarify some of the amendments approved to the bill.

A few new amendments were filed to the bill leading into the 2014 session. First, Senator Haar filed AM 1250 to make the new requirements permissive by striking the words “shall” and replacing them with “may”.

Senator Schilz filed AM 1277 which would have clarified that the new process would not apply if the sale, transfer or exchange was proposed by the grantee in its grant application and was approved as part of the original grant. His amendment would also allow the board an additional time (up to 60 days) to consider the requests.

Senator Avery filed six amendments (AM's 1529-1533) that all would have made minor changes in the bill.

LB 63 -- Change distribution of certain sales and use tax revenue. Schilz. The Revenue Committee accepted testimony March 14, 2013. The committee reported no further action on the bill. The bill proposed that sales and use tax proceeds from the sale or lease of motorboats would be credited to the Nebraska Game and Parks to be used for motorboat access development and aquatic invasive species monitoring and control.

John Thorburn, Tri-Basin NRD Manager testified on behalf of the NARD in support of the bill. The testimony pointed out that the threat and spread of aquatic invasive species has been greatly increased by the ease of travel and history has multiple examples of such species being either intentionally or unintentionally being introduced to Nebraska. Thorburn supported the process of being pro-active rather than re-active citing the millions of dollars spent recently to address phragmites and salt cedar.

LB 152 -- Change eminent domain negotiations. Dubas. The Judiciary Committee accepted testimony on LB 152 on January 30, 2013. The committee reported no further action on the bill.

The intent of the bill was to ensure damages for condemned property are accurately assessed by courts considering the purpose that the property will be used for, that the purpose and scope of the project does not change after property is condemned and an award made by the court, and that property is not unnecessarily condemned for projects that may never come into existence.

The bill would have required that a condemner shall not attempt to negotiate with a condemnee unless the condemner has a present plan and a present public purpose. The condemner has a present plan and a present public purpose only after all agencies required to have approved the project have done so and all necessary permits have been granted. The condemner shall provide the condemnee copies of all granted and necessary permits upon request of the condemnee.

Under the proposal, a condemner found to be noncompliant with this act or found coercive or to be threatening the condemnee with condemnation shall entitle the condemnee to injunctive relief from the condemner, attorney's fees, and actual damages as prescribed by the court.

LB 160 - Provide for electronic signatures on recall, initiative, and referendum petitions. Schumacher. The Government Committee accepted testimony on LB 160 on January 31, 2013. The committee reported no further action on the bill.

The bill proposed to establish a process to use electronic signatures on petitions and electronic verification of signatures on petitions used in the recall, initiative, and referendum processes. The bill would have required the Nebraska Secretary of State to establish a secure website to and server to operate the new program.

A signer at the time of submitting the electronic signature would have to submit: (a) his or her name, address, county of residence, political party affiliation, and date of birth as shown on his or her voter registration record, (b) his or her assent to the petition document, and (c) a unique identifier which (i) can be verified against other state-qualified data associated with the signer or (ii) would be acceptable in commercial financial transactions involving the transfer of money between financial institutions such as credit card transactions;

The electronic signature would have to be correlated with the signer as evidenced by a reasonable match with voter registration records and voting records which correspond to at least one item of state-qualified data or by the execution of an electronic financial transaction initiated under the signer's name.

Once an electronic signature was obtained, the Secretary of State would also have to send out a postcard to the individual that electronically signed a petition, recall or referendum giving them 10 days to withdraw the signature on the ballot.

LB 185 -- Authorize state assistance for streamflow enhancement projects undertaken by natural resources districts. Christensen. The Appropriations Committee accepted testimony on LB 185 on February 1, 2013. The committee reported no further action on the bill.

Senator Christensen brought the bill forward to allow the N-CORPE project to move forward. The N-CORPE project is a four NRD project that will assist in the State of Nebraska maintaining compliance with the Republican River Compact and the requirements of the Platte River Recovery and Implementation Program.

The initial financing of the project was planned to be through the issuance of bonds with repayment being the proceeds of the occupation tax on irrigated lands collected by the Lower, Middle and Upper Republican and Twin Platte NRDs. The issuance of the bonds is being delayed as a result of the law suit filed by the Nebraska based Frenchman-Cambridge and Bostwick Irrigation Districts against the State of Nebraska, N-CORPE, Bureau of Reclamation and the Upper Republican NRD. Passage of the bill would result in a loan that would be repaid by the NRDs.

Testimony in support of the bill was provided by Senator Carlson, Senator Hansen, Jasper Fanning, Upper Republican NRD; Dan Smith, Middle Republican NRD; Mike Clements, Lower Republican NRD; Kent Miller, Twin Platte NRD and the McCook Public Power District. Ameritas provided an explanation to the committee on the bond process. Letters of support were provided by the Nebraska Farm Bureau Federation, Nebraska Water Resources Association and the Nebraska Cattlemen.

NARD President Joe Anderjaska also testified in support of the bill on behalf of the Association and stressed several key points; the appropriation would be a loan to be repaid with funds collected through the assessment of the occupation tax; the project is part of the Integrated Management Plans; the project will use no more water on average than the historic use of water from this site and the project is not the only action the NRDs have taken or will take to maintain compact compliance.

While there was no verbal testimony in opposition to the bill, Brad Edgerton of the Frenchman-Cambridge Irrigation District submitted a letter in opposition to the bill with the claim that a loan from the Cash Reserve would be unconstitutional. Mr. Edgerton also testified in support of Kansas in the recent litigation brought by Kansas against Nebraska. The Nebraska State Irrigation Association also sent a letter of opposition.

LB 284 - Change provisions of the Political Subdivisions Tort Claims Act relating to limits on actions and amounts recoverable. Conrad. The Judiciary Committee accepted testimony on LB 284 on February 13, 2013. The committee reported no further action on the bill. The bill proposed two changes to the Political Subdivisions Tort Claims Act. First the bill extends the time for a claim to be forever barred from one year to two years after such claim accrued. Second, the bill increases the maximum awards for claims arising after the act from \$1 million to \$3 million for a person for any number of claims arising out of a single occurrence and from \$5 million to \$12 million for all claims arising out of a single occurrence.

The Nebraska Trial Attorneys testified in support of the bill. Opponents included the League of Municipalities, Nebraska Association of County Officials and several other political subdivisions. Bob Hilske presented testimony against the bill on behalf of the Nebraska Association of Resources Districts. The primary reason for the NARD opposition was that increasing the claim limits dollar aggregate as proposed in the bill would make it cost prohibitive, or even impossible, for NRDs to obtain liability insurance to cover those amounts.

LB 294 - Change provisions relating to use of public resources by public officials and public employees.

Seiler. The Government Committee accepted testimony on LB 294 on February 22, 2013. The committee reported no further action on the bill.

In his introduction of the bill, Senator Seiler mentioned that the bill was a “work in progress” noting that amendments were being worked on between the parties, but agreements have not been reached.

The bill stemmed from an incident where the Nebraska Accountability and Disclosure Commission (NADC) fined two public power district employees for the placement of radio ads which were developed as part of an education program on wind energy and rates. The ads did not name a candidate, an election, or otherwise referred to the election process. However, there was a candidate for the public power district office that opposed the ads because of his position on wind energy use and filed a claim with NADC. The candidate did win the election.

The bill would have amended the accountability and disclosure statutes and prohibits a public official or public employee from using or authorizing the public resources for a campaign for or against a candidate or a ballot question to allow such an individual acting under the direction of the government body or public employee from communicating authorized information for the purpose of educating the public and to participate in a public forum concerning issues germane to the office.

An amendment was offered at the hearing that redefines campaigning and use of public resources. The amendment would have made it illegal to campaign against an individual running for public office or a ballot issues by using public resources. These definitions would include:

Campaign means to convey any communication which:

- (i) Offers support or opposition to a ballot question, refers to a candidate by name, nickname, photograph, or drawing appearing in the communication, or makes the identity of the candidate otherwise apparent through an unambiguous reference or through an unambiguous reference to the candidate’s status as a candidate in a manner that offers support of opposition to the candidate; and
- (ii) Is aired, broadcast, cablecast, printed, or otherwise disseminated through the facilities of a television station, newspaper, periodical, radio station, cable television system, web site, satellite system, or other electronic means within or directed at the district of the office sought by the candidate or within the general jurisdiction of the ballot question.

Public resources would be defined as personnel, property, resources, or funds under the official care and control of a public official or public employee.

Those testifying in favor of the bill included: Dave Jarecke, legal counsel for the public power district involved in the case, Tim Pextel, Executive Director for the Nebraska Power Review Board (but testifying only as an individual) and Nebraska Association of County Officials.

Frank Daily, NADC, spoke in opposition to the bill. He noted that actions by the employee(s) or public official(s) and their intent are what determine whether someone is campaigning or not.

LB 325 - Change provisions relating to approval of natural resources district boundary changes. Brasch.

The Natural Resources Committee accepted testimony on LB 325 on February 14, 2013. The committee reported no further action on the bill. The bill proposed to eliminate the language that requires board approval for district boundary changes, divisions or mergers. Under the proposal any changes, divisions and merger decisions will rely solely with the Natural Resources Commission. Landowners could petition out of the district and the impacted NRD would have no input on the process.

The bill was supported by the Papio Valley Preservation Association which wants to form its own natural resources district. The Papio Valley Preservation Association (PVPA) has a long-standing policy of opposing flood control and water quality projects that protect lives and property. Testimony provided by the PVPA claimed they have not received adequate representation on the PMRNRD Board and the rural counties are subsidizing the greater Omaha area. Nebraskans First also testified in support of the bill. When asked by committee members, the PVPA was unable to provide a list of projects they wanted funded or how a different or additional board member would help.

John Winkler, Papio Missouri River NRD Manager, testified on behalf of the Nebraska Association of Resources Districts. The testimony showed the NRD spends more in the northern four counties than were collected. For the last three year period, the PMRNRD expenditures in these four counties were nearly five times the tax revenue collected in those counties. Furthermore, the Papio NRD collects nearly 94 percent of its tax revenue from Douglas and Sarpy Counties. The tax information provided does not include the four Rural Water Districts operated by the Papio NRD, which serves the citizens of the four northern counties with a clean, safe and reliable water supply.

The Nebraska Association of Resources Districts provided testimony on the challenges that would be encountered by other districts if the bill was to be passed. Under the bill, landowners that did not like current water regulations could petition out of the NRD to avoid regulation and the NRD would have no say in the move. Letters of opposition were submitted behalf of the Central Platte, Middle Republican and Upper Elkhorn NRDs.

The City of South Sioux provided testimony in opposition to the bill citing that since merger in of the Middle Missouri NRD and the Papio NRD in 1989, service and projects have greatly improved in the area. The PMRNRD has built regional offices to serve customers and holds board meetings in South Sioux City. The additional tax dollars provided by the Omaha area has funded many conservation and water projects that would not be possible if they were a separate district. The City of Omaha also provided testimony on opposition to the bill.

No action was reported by the committee on the bill. However, Senator Brasch introduced LR 226, an interim study on the issues.

LB 353 - Restrict rule and regulation authority of natural resources districts. Christensen. The Natural Resources Committee accepted testimony on LB 353 on January 30, 2013. The committee reported no further action on the bill.

Senator Christensen introduced this bill in response to the Central Platte NRD current rules and regulations that require certified irrigated acres actually be irrigated two years in a ten year period. Testimony was provided by two proponents, one of which was a former Central Platte NRD board member. Concerns raised were the effort needed to flood irrigated pivot corners and also taking control of crop production out of the producer's hands. Ron Bishop, General Manager of the Central Platte NRD testified in opposition of the bill on behalf of the Central Platte NRD and NARD. Bishop explained the rules and regulation were established in an effort to bring the state into compliance with LB962 requirements and the State of Nebraska's obligations under the Platte River Recovery and Implementation Program.

LB 391 - Change water law provisions relating to water storage. Davis. Although the bill was indefinitely postponed at the end of the session, AM 2693 to LB 1098 (which was approved by Governor Heineman) included the provisions of LB 391. The bill modifies the requirement of a reservoir and intentional underground water storage facilities when having to release water for direct irrigation or a reservoir facility holding a senior right. Current law does not designate where the facilities are located for the water to be released. The bill outlines that the irrigation ditch or reservoir holding a senior right receiving the water have to be downstream.

According to the testimony at the hearing February 22nd 2013, the issue stems from a call on the Niobrara River last year where water in Merritt and Box Butte Reservoirs was ordered to be released to meet NPPD call on the river downstream. The water was released from the reservoirs because there were not subordination agreements with five land owners upstream of Box Butte Reservoir. The total amount of water needed to meet the upstream use was 9.0 cfs while the releases were greater than 200 cfs. The Nebraska Public Power District supported the bill citing that the bill may not be necessary if subordination agreements are signed by the upstream landowners.

Other proponents of the bill were the Ainsworth Irrigation District and the State Irrigation Association spoke in favor of the bill. Central Nebraska Public Power and Irrigation District presented testimony in a neutral capacity explaining that Central believe the DNR has mis-administered the appropriation on the Niobrara River and feared a similar action could be taken on the Platte system.

LB 449 - Redefine high elective office for restrictions on multiple office holding. Avery. The Government Committee advanced LB 449 to General File on April 2, 2013 by a 5-2-1 vote. The bill did not advance any further. The bill proposed to add the airport authority, metropolitan utilities district, natural resources district, and public power district to the list of higher offices. Those elected to these positions would be prohibited from holding a second public office. Those holding more than one higher office would be able to serve out their terms.

Current law provides that no person serving in high elective office shall simultaneously serve in any other high elective office. Therefore, under this bill, members of the boards listed above would have not been allowed to serve in any other high elective office simultaneously.

Other high elective offices include: members of the legislature, governor, lieutenant governor, secretary of state, auditor of public accounts, state treasurer, attorney general, public service commission, state board of education, University of Nebraska board of regents, county, city, learning community, community college area, or school district elective office.

The bill also proposed that anyone serving in more than one high elective office on the effective date of this act would be allowed to complete the remainder of all terms for which he or she was elected or appointed.

The bill was brought to the committee by the Papio Valley Preservation Association, which was also the only supporter of the bill. The organization has a long-standing position in opposition to flood control structures that protect lives and property.

Fred Conley, Chairman of the Papio-Missouri River NRD, testified on behalf of the NARD and PMRNRD against the bill. Other opponents included the Nebraska Rural Electric Association, Nebraska Water Resources Association, the Little Blue NRD, the Lower Elkhorn NRD, and several individuals.

LB 482 - Prohibit the state and political subdivisions from adopting certain policy recommendations. Kitner. The Judiciary Committee accepted testimony on LB 482 on February 13, 2013. The Committee reported no further action on the bill. The bill proposed to prohibit the State of Nebraska and all political subdivisions from adopting or implementing any policy that deliberately or inadvertently infringe or restrict private property rights without due process, as may be required by policy recommendations originating in or traceable to Agenda 21, adopted by the United Nations in 1992 at its Conference on Environment and Development, or may be required by any other international law or ancillary plan of action that contravenes the Constitution of the United States or the Constitution of the State of Nebraska.

The bill would have also prohibited the State of Nebraska and all political subdivisions from entering into any agreement, expending any sum of money, receiving funds, contracting for services, or giving financial aid to or receiving financial aid from nongovernmental and intergovernmental organizations as defined in Agenda 21.

Prior to the hearing an amendment was floated out to some proponents of the bill that would have prohibited affiliation with the Agenda 21 organizations, but also would have placed restrictions on conservation easements. The amendment was not offered to the bill at the hearing, but created quite a bit of testimony on the bill. Jim Bendfeldt, Secretary/Treasurer for the Nebraska Association of Resources Districts, submitted a letter of support for the bill outlining that the NRDs want to make it clear that the natural resources districts have no intention of taking property without due process. The NRDs are very cautious when dealing with property rights and want to make sure private land and landowners are protected.

Bendfeldt also pointed out that the amendment to the bill that changes the focus to limitations on conservation easements was not a part of the discussion for the voting delegates. The conservation easements have been used by the NRDs for a variety of projects. In particular, they are very useful in the Platte and Republican River Basins when landowners voluntarily give up water rights for a payment provided by the local NRD. This allows the districts to meet the state goals of reducing irrigation in the basins, increase flows in the rivers and most importantly to keep Nebraska in compliance with water compacts and agreements. On other easements from conservation groups, the NRDs have not discussed this in detail so Bendfeldt could not provide an official position from the Nebraska Association of Resources Districts. However, the NARD offered to work with interested parties to resolve any issues with the amendments to LB 482.

LB 488 - Change provisions relating to municipal occupation taxes. Revenue Committee. The Revenue Committee accepted testimony on LB 488 on March 13, 2013. The committee reported no further action on the bill. The bill proposed to change the procedures for cities on applying occupation taxes. First, the bill would have required that cities implementing an occupation tax make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax. Second, the bill provided a list of items that would exempt from occupation taxes. These would have included beer, wine, alcohol, motor fuels and tobacco products.

The bill was in response to the City of Omaha imposing an occupation tax to provide to the UNL Cancer Center. The bill would have not changed anything with the occupation taxes imposed by NRDs (See LB 474 – Krist).

LB 492 - Appropriate funds to carry out the Nebraska Youth Conservation Program. Cook. The Appropriation Committee accepted testimony LB 492 on March 13, 2013. The committee reported no further action on the bill. The bill proposed to appropriate \$820,000 for FY2013-14 from the General Fund to the Nebraska Youth Conservation Program Fund. The Nebraska Youth Conservation Program is administered and maintained by the Nebraska Game and Parks Commission (NGPC). The program employs Nebraska's at-risk youth on projects which contribute to conserving or developing natural resources under the jurisdiction of the Game and Parks Commission. The program combines academic, environmental and job skills training with personal growth opportunities for the participants.

The committee reported no action on the bill. However, in the mainline appropriations bill (LB 195) the Appropriations Committee re-appropriated any unspent funds from LB 549A in 2011 so they can be combined with donations or federal funds, if they become available, to continue the program one more year.

LB 494 - Change number of districts and members of Game and Parks Commission. Davis. The Natural Resources Committee advanced LB 494 to General File on an 8-0 vote. The bill did not advance any further. The bill proposed to add a district to the NGPC. The new district would have included the counties of Box Butte, Cherry, Dawes, Sheridan, and Sioux. Currently there are eight NGPC districts.

LB 516 - Adopt the Nebraska Water Legacy Act. Carlson. The Revenue Committee accepted testimony on LB 516 on March 15, 2013. The committee reported no further action on the bill. The bill proposed to create the Nebraska Water Legacy Commission. The bill was part of the recommendations from the LB 229 Water Funding Study completed in December 2012.

The proposed purpose of the commission was to identify water resources programs, projects, and activities that will achieve the goals of water sustainability, increasing water use productivity, and otherwise maximizing the beneficial use of Nebraska's water resources for the benefit of its citizens. The commission was to be required to evaluate every project, rank them, and determine if they were eligible for funding.

The bill also proposed to create the Nebraska Water Legacy Fund and would have consisted of one-quarter of one percent of the current sales tax, other funds appropriated by the Legislature, and money paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, and donated as gifts, bequests, or other contributions to such fund from public or private entities. The bill also proposed that funds made available by any department or agency of the United States may also be credited to this fund if so directed by such department or agency.

Senator Carlson mentioned at his opening that the bill was not ready for advancement. Another bill (LB 517) would be worked on this session to finish a study on water funding needs and come back next session with a priority list of projects and possibly a different oversight committee.

The bill was supported by W. Don Nelson. Nelson mentioned at the hearing that the idea behind the bill was developed by himself and a select group of his friends. Other supporters of the bill included the Audubon Society, Nebraska Corn Growers Association, Central Nebraska Public Power and Irrigation District, Ducks Unlimited, and the Nebraska Farm Bureau.

John Boellstorff, former University Professor, testified against the bill.

Jim Bendfeldt, Central Platte NRD Board Member and NARD Secretary-Treasurer submitted a letter in a neutral capacity on behalf of the NARD. Bendfeldt thanked Senator Carlson for working on changes to LB 517 to get more people involved in evaluating the water funding needs. The process that Senator Carlson has set out with LB 517 provides an opportunity to come back to the Legislature next session with a prioritized water project list and a suggested oversight board utilizing the Natural Resources Commission.

LB 521 -- Require cities and villages and other public bodies that maintain web sites to publish ordinances and other information as prescribed. Christensen. The Government Committee accepted testimony on LB 521 on February 6, 2013. The committee reported no further action on the bill.

The bill was to require that if any public body maintains an official web site, each meeting notice and agenda would have to be published on the web site. Also, the bill proposed that on and after January 1, 2014, any city of any class and any village that maintains an official web site shall publish on the web site all of its ordinances. New or amended ordinances shall be published on the web site within seven days after passage.

The American Civil Liberties Union testified in support of the bill and provided three cases in small communities in the past year that did not provide ordinances' to citizens for different reasons. The ACLU recognized that some of the bill requirements may need to be modified to be workable but it was a "good hearted bill".

The League of Municipalities testified against the bill noting that only 180 cities and villages have websites. The requirement might become so burdensome that dropping the website might be a default remedy. The City of Omaha also testified against the bill noting that over 40,000 ordinances have been adopted since Omaha became a city in 1857.

LB 522 - Provide state financial assistance to irrigation districts to compensate water appropriators. Christensen. Senators advanced LB 522 to Select File on April 23, 2013 by a 27-0 vote after adopting an amendment by Senator Christensen. His amendment, AM 1071, took all of the funds for the Platte River Recovery Program (\$3.3 million annually) and added \$1.7 million annually to provide \$5 million dollars to the

Frenchman Cambridge Irrigation District annually for the next two years. The amendment was adopted 25-0. The bill never advanced from Select File.

It also appeared that under the amendment that the \$3.3 million annual grant from the Nebraska Environmental Trust would have had to be turned back as providing compensation to irrigators in the Republican River Basin which was not the purpose of the grant. The Department of Natural Resources was using the \$3.3 million annual appropriation as a match for the grant which was also matched by the NRDs in the Platte Basin. The net result was taking away \$6.6 million annually that would have been going to the Platte River Recovery Program.

The bill as amended would have required the Department of Natural Resources to provide financial assistance to affected irrigation districts if the Department of Natural Resources adopts a rule or regulation prohibiting surface water appropriators from storing or diverting instream flows for irrigation to comply with an interstate compact or decree. The irrigation districts would be required to use the financial assistance to compensate surface water appropriators who have had to forgo the use of water. Individual surface water appropriators and irrigation companies would not have been eligible for compensation.

Under the proposed bill were the Department of Natural Resources to issue closing notices prohibiting surface water appropriators from storing or diverting natural or instream flows for irrigation to comply with an interstate compact or decree, then the department shall provide reasonable compensation based on the acre-feet of water not stored or diverted for affected water users through the affected irrigation districts. The irrigation districts shall use such compensation to reasonably compensate surface water users who have had to forgo the use of water.

Senator Christensen introduced the bill on behalf of Frenchman-Cambridge Irrigation in response to the compact call on the Republican River for 2013 by the Nebraska Department of Natural Resources. The manager for the Frenchman-Cambridge Irrigation District sided with Kansas in the recent *Kansas v. Nebraska* lawsuit on the Republican River Compact.

The Frenchman-Cambridge Irrigation District is also the entity that is suing the state of Nebraska, N-COPRE, Bureau of Reclamation and the Upper Republican NRD to stop augmentation projects that would keep Nebraska in compliance with the compact. Senator Christensen's bill to provide a \$40 million loan (LB 185) to finish the augmentation project would not be necessary if the lawsuit was not filed. Final action by the courts is still pending in both matters.

The amendment further defined reasonable compensation as the equivalent to the current compensation for dry-year leases used by natural resources districts (or the districts' average if the irrigation district is in more than one district), where the irrigation district is located, for the conversion of irrigated acres to dry-land acres for a one-year period. The payments would come from the General Fund.

A long-standing US Supreme Court Case, *Hinderlider v. La Plata Co.*, 304 U.S. 92 (1938), provides some guidance in the issue of compensation in water compacts. The case involved a water compact between Colorado and New Mexico. In essence, New Mexico claimed that Colorado was using more than their share of the water and wanted more water released downstream. Further, Colorado had provided more water rights to their users than the state was entitled to. The court ruled that if the downstream state was allowed the water under the compact, the upstream state had no authority to grant the water right to its users. Since Colorado had no authority to grant the water right for its users, no compensation for cancelling the right was required.

Another long standing case, *Badgley v. City of New York*, 606 F.2d 358, 365-67 (2d Cir. 1979), dealt with a similar compact issue where water in the upstream state had to be released under the compact for use in the downstream state. The upstream state demanded payment to their users for the loss of water. The Court ruled that a state cannot grant to private parties any privately owned property interest in riparian rights greater than the state's own property interest in them under the compact. In this case the upstream state tried to place a price on

the water right and force a payment when the compact called for water to be released. The Court ruled that no right existed because of the compact and no compensation was required.

Further, the permits granted in 1947 for the Frenchmen projects outline that use of the water may be denied during times of scarcity. The permits do not require compensation, even in times of scarcity. As most recall, Nebraska suffered the worst drought on record in 2012, which resulted in the water short year for the Republican Basin for 2013.

The bill was Senator Christensen's Priority Bill for the 2013 session and was not prioritized in 2014.

LB 551 -- Change recreational liability provisions. Schilz. The Judiciary Committee reported LB 551 as Indefinitely Postponed on February 24, 2014. The bill proposed to create the Recreation and Tourism Promotion Act. The bill was designed to encourage landowners to grant access to their farm and ranch land for recreation and tourism activities by reducing the risk of liability. The bill proposed to revise existing recreation liability law and provides protection from liability for landowners allowing persons on their land for recreation and tourism activities, such as hunting, fishing, birding, hiking, water sports and archeological work. It allows landowners to charge a fee for such activities, but requires notice be given of inherent risks on the land, in order for the landowner to be protected from liability.

The bill proposed to protect landowners from liability arising from injuries and damages caused by inherent risks of the land. It does not change ordinary standards of care the landowner has for not notifying the participant of known hazards, not maintaining equipment, or not properly training employees. The bill would have not relieved the landowner or liability for acts that are grossly negligent, willfully in disregard for the safety of others, or intentional.

The bill would have amended the recreational liability limitations by expanding the limits from just land to premises and other definition changes. Premises were defined in the proposal to include realty, land, roads, pathways, trails, water, watercourses, private ways, and buildings and structures attached to the realty.

Recreation and tourism activities were defined in the bill to include, but not limited to, any one or any combination of the following: hunting, fishing, swimming, boating, canoeing, kayaking, tubing, water sports, camping, picnicking, hiking, backpacking, bicycling, horseback riding, pleasure driving, nature study, birding, farm, ranch and vineyard tours and activities, waterskiing, snow-shoeing and cross country skiing, and visiting and viewing historical, archaeological, scenic or scientific sites, and similar activities.

The Nebraska Association of Resources Districts submitted a letter of support for the bill outlining it would expand tourism and recreational opportunities in the State of Nebraska. The bill was supported by several other individuals and groups. The bill was opposed by the Nebraska Trial Attorneys.

LB 574 - Provide that certain assessments are levied and collected as special assessments. Harr. The Revenue Committee advanced LB 574 on March 21, 2013 with Committee Amendment AM 446. The bill was a Speaker Priority Bill. Senator Chambers' motion to bracket the bill until June 5, 2013 was unanimously approved on May 30, 2013. The bill did not advance any further.

The bill proposed to clarify that certain assessments levied by a natural resources district, sanitary drainage district, sanitary and improvement district, special improvement district, county, city, or village would be levied and collected as special assessments. For NRDs, this would have included special assessments under the Improvement Project Area.

The League of Municipalities was seeking the change because of a court case that treats the city assessments differently for tax lien purposes. Prior to the hearing, an agreement was reached with the proponents of the bill to remove the changes for natural resources districts.

The amendment (AM 446) deleted references to four sections including: NRD special assessments; special improvements areas assessments; joint solid waste agencies assessments and charges; cities of the metropolitan class sewage special assessments; and assessments by a county for usage fees charged by the county government under the County Industrial Sewer Construction Act.

LB 580 -- Change certain condemnation procedures. Johnson. The Judiciary Committee accepted testimony on LB 580 on March 15, 2013. The committee did not report any further action on the bill. The bill proposed changes to condemnation procedures for the state and any governmental or political subdivision.

The intent of LB 580 was to amend the law regarding claims based on inverse condemnation. Specifically, the bill would have amended the process for inverse condemnation by (1) requiring inverse condemnation petitions to be filed in district court for a simultaneous determination of whether a taking or damage has occurred and determination of just compensation for the damages; (2) creating a statute of limitations of 3 years for inverse condemnation actions and (3) allowing for offers of judgment at trial on condemnation and inverse condemnation petitions.

The bill was introduced in response to the Nebraska Court of Appeals case of *Henderson v. City of Columbus*, No. A-11-060 (April 3, 2012). *Henderson v. City of Columbus* was currently on appeal to the Nebraska Supreme Court and oral arguments were heard on November 8, 2012 but, as of the bill introduction, a decision had not been rendered.

The lower court decision expands the scope and application of inverse condemnation by applying inverse condemnation actions to damages caused by the operation of public utilities or public improvements that have failed to function. If the Nebraska Supreme Court affirms the Court of Appeals, LB 580 seeks to allow cities and other condemners the ability to better prepare for and process the expected increase in inverse condemnation claims.

However, on the date of the hearing (March 15th) the Nebraska Supreme Court issued their decision and remanded the case to the Court of Appeals with directions to affirm the district court's order in which it rejected the entirety of the Hendersons' claims. Thus, with the decision, the bill was no longer needed. Senator Johnson brought the bill to discuss at the committee level to raise awareness of the case. With the court's decision on March 15th, Senator Johnson asked that the bill be indefinitely postponed after the hearing.

LB 601 -- Require notice for natural resources district subcommittee meetings. Bloomfield.

The Natural Resources Committee accepted testimony on LB 601 on March 7, 2013. The committee did not report any further action on the bill. The bill would have required that any meeting of a subcommittee created by a NRD board shall be open to the public and notice shall be public noticed.

Scott Japp of the Papio Valley Preservation Association testified in support of the bill and explained that the Papio Missouri River NRD does follow the open meeting laws appropriately but none of the other NRDs do.

Other proponents included landowners impacted by the Maple Creek Recreation area project that was recently completed by the Lower Elkhorn NRD. Claims were made by Myron and Kent Franzen that secret meetings were held by sub-committees that bind board decisions on dam projects. However, no evidence of the binding action was provided or demonstrated. Nebraska Farmer Union also testified in support of the bill.

The Nebraska Association of Resources Districts testified against the bill. The testimony acknowledged that most of time the NRDs do public notice sub-committee meetings and make them open to the public. However, there are some instances where sub-committees meetings are not be open to the public. Examples would be; 1) meeting with legal counsel and NRD staff to address legal issues related to district operations or programs; 2) meet with individual to discuss their compliance issues and 3) meeting with state agencies and legal counsel to receive advice on water management plans. Under the bill, all of these meetings would have to be open to the

public. The NRDs need discretion to determine when meetings are open to the public and when the meeting should be closed to protect individuals and attorney/client privileges.

Glenn Johnson, Lower Platte South NRD also testified in opposition to the bill on behalf of the LPSNRD and the Nebraska Water Coalition pointing out that the bill singles out NRDs and does not include other public bodies who operate with sub-committees.

The Papio-Missouri River NRD testified in a neutral capacity explaining the bill as drafted is overly broad and does not define a meeting of a sub-committee and may result in districts spending tax funds on public notice and other requirements such as legal counsel unnecessarily.

LB 635 -- Provide powers and duties regarding hydraulic fracturing to the Nebraska Oil and Gas Conservation Commission. Wallman. The Natural Resources Committee accepted testimony on LB 635 on February 28, 2013. The committee did not report any further action on the bill. The bill proposed to provide the Nebraska Oil and Gas Conservation Commission with authority to adopt, promulgate and enforce rules and regulations relating to hydraulic fracturing or other chemical stimulations to complete an oil or gas well.

The bill also proposed to set out requirements and documentation for the operator, location, transporter, water and chemicals used in the hydraulic fracturing process. New and existing wells which will be stimulated by hydraulic fracturing would have had to demonstrate suitable and safe mechanical configuration for the stimulation treatment proposed. Within sixty days after the hydraulic fracturing stimulation is performed, the operator shall post all the elements specified in the commission's rules and regulations, including the amount and source of water used for the stimulation and the amount of fracturing fluid recovered. The posting would be required to be on a web site designated by the commission's rules and regulations.

Those testifying in support of the bill included the Nebraska Sierra Club and the Nebraska Wildlife Federation. The arguments used in favor of the bill was that fracking causes contamination and pumping oil out of the ground creates a imbalance of fluid underground creating threat of earthquakes. The groups also argued for full disclosure of all chemicals used in the process.

William Sydow from the Nebraska Oil and Gas Commission testified in opposition to the bill. His testimony pointed out that current laws in place already cover many of the issues requested in the bill. In addition, the commission had almost completed rules and regulations on the issue, but the process was suspended after the bill was introduced to see what other items needed to be included. Mr. Sydow's testimony also pointed out that some of the products approved for use by state and federal agencies in the fracking process have patent protections and the chemical composition cannot be released. Over a dozen other testifiers from the industry spoke in opposition to the bill.

LB 637 -- Require an economic analysis of rules and regulation proposed by the Department of Environmental Quality. Wallman. The Government Committee advanced the bill to General File with a 7-1 vote. Senators began General File debate on LB 637 the first week of April 2013 but did not get to a vote on the bill and it remained on General File.

Senator Wallman introduced LB 637 on behalf of the Association on Nebraska Ethanol Producers in order to provide addition economic analysis of the impacts rules and regulations have on industry. The bill proposed to require additional information, outreach and economic analysis when the NDEQ proposed rules and regulations that are different than those proposed by federal regulations.

Also under the proposed bill, the Governor's Policy Research Office would have to review a proposed rule or regulation from the NDEQ that will have a total estimated economic impact greater than five hundred thousand dollars on all regulated persons or entities. After conducting a review, the office may suggest alternatives to reduce any regulatory burden that the proposed rule or regulation imposes on regulated persons or entities. The department shall respond in writing to the office concerning the comments or suggested alternatives before

adopting the proposed rule or regulation. Senator Chambers filed FA 52 to the bill which proposed to strike this section.

At the hearing, NDEQ Director Mike Linder testified in opposition to the bill explaining to the committee that any rules and regulations proposed by the department must be done so in accordance with the Administrative Procedures Act and also has a public hearing in front of the Nebraska Environmental Quality Council. Director Linder also explained that situations do arise where a one size fits all regulation established on the federal level may not work in Nebraska or may be in conflict with existing regulations.

Senator Sullivan withdrew her name as a co-sponsor of the bill on April 3, 2013.

LB 686 - Change a certification date relating to non-irrigated acres. Christensen. The Natural Resources Committee advanced the bill to General File with Committee Amendment AM 2280 on an 8-0 vote. The bill remained on General File.

However, the contents of the committee amendment were incorporated into LB 1098 with AM 2580 (LB 1098 was approved by Governor Heineman). The bill changes the date to certify non-irrigated status from March 1 to June 1 for land subject to occupation taxes. The committee amendment 2280 clarified that certification of nonirrigated status when completed by June 1st of a calendar year, means that the owner certifies that the acres will remain nonirrigated for that entire calendar year.

- **LB 1098 AM 2580 – Christensen.** Inserts the Nature Resources Committee amendments to **LB 686 - Change a certification date relating to non-irrigated acres, Christensen, and LB 710 - Provide requirements for entering into certain ground water augmentation projects. Christensen.** The amendment changes the date to certify non-irrigated status from March 1 to June 1 for land subject to occupation taxes for the same calendar year, which was the committee amendment to LB 686. The amendment also included the committee amendment to LB 710 (see below) which would require that a NRD Board could not vote to enter into a groundwater augmentation project without conducting a public hearing following the 30-day public notice and three consecutive week advertising requirements.

LB 710 - Provide requirements for entering into certain ground water augmentation projects. Christensen. The Natural Resources Committee advanced the bill to General File on March 7, 2014, with a committee amendment (AM 2281) by an 8-0 vote. The bill remained on General File.

However, the contents of the committee amendment were included in AM 2580 to LB 1098. The bill proposed that an NRD cannot enter into a groundwater augmentation project outside the district boundaries unless there was a public hearing and notices as required under the Nebraska Ground Water Management and Protection Act (46-743) and the project receives two-thirds majority support. The committee amendment (AM 2281) removes the requirement that the augmentation project be located outside of the district's geographical boundaries, and expands the bill to include augmentation projects within a district's boundaries. The amendment also proposed to strike the language that would have required a two-thirds approval by the board.

LB 718 - Change procedures for adoption of rules and regulations and require publication of certain information. Crawford. The Government Committee advanced LB 718 to General File on February 4, 2014 with committee amendment AM 1724. The bill did not advance any further.

The bill would require each state agency to prepare a semiannual agenda for rules and regulations under development or review or planned development or review. The agencies would have to file these with the Secretary of State within thirty days following the end of each regulation legislative session and by October 15th.

The Secretary of State would be required to keep a permanent file of all the agendas, and any amended agendas, and be open to public inspection during regular business hours. At a minimum, the agenda would have to include a brief summary of the action, the relevant legal authority, any appropriate deadlines, and the name, telephone number, and means of electronic communication with a knowledgeable agency official.

The bill also adds a requirement to the agency's public notice requirements for rules and regulations to include the identification of the specific authorizing statute and the specific statute interpreted or implemented by the rule and regulation.

Further, the fiscal impact statement for the proposed rule would have to be available on the Secretary of State's web site.

Finally, the Secretary of State would be required to establish and maintain a list of subscribers who wish to receive notice of the filing of an agenda for rules and regulations under development or review and of public hearing on proposed rules and regulations.

The committee amendment, AM 1724, adds language clarifying that a declaration of emergency must be made by the Governor or the President of the United States. Secondly, the amendment adds loss of state funds, in addition to loss of federal funds, as a reason to adopt a rule or regulation that has not appeared on an agenda.

Bill

LB 720 - Provide and change complaint procedures for rules and regulations. Crawford. The Executive Committee advanced the bill on February 20, 2014 with committee amendment AM 1874. The bill did not advance further, but the committee amendment was added to LB719 with AM 2066 which was later approved by Governor Heineman.

The committee amendment strikes the original sections, but retains the provisions regarding the additional criteria under which a complaint may be filed and the expansion of the process to existing rules and regulations or their repeal. However, only a member of the Legislature can file a complaint, as current law provides. Addition criteria for filing a complaint include that the rule or regulation creates an undue burden, circumstances have changed since the passage of the statute which a rule or regulations implements, or the rule or regulation overlaps, duplicates, or conflicts with other laws, rules or ordinances.

The bill creates an avenue for individuals and a governmental body of any political subdivision to file a complaint with the Chair of the Executive Board of the Legislature over rules and regulations of a state agency. Currently, this complaint process can only be used by a member of the Legislature.

The bill also expands the matters of the complaint petition to the Executive Board can contain. For a member of the Legislature and political subdivisions, the complaint would have to outline how the rule or regulation or the adoption, amendment, or repeal is (1) in excess of the statutory authority or jurisdiction of the agency, is unconstitutional, is inconsistent with the legislative intent of the authorizing statute, or creates an undue burden in a manner that significantly outweighs its benefit to the public, (2) circumstances have changed since the passage of the statute which the rule or regulation implements, or (3) the rule or regulation or the amendment or repeal overlaps, duplicates, or conflicts with federal, state, or local laws, rules, regulations, or ordinances, the member or governing body can file a complaint with the Executive Board.

For a member of the public to file a complaint with the Executive Board of the Legislature, they would need to have a petition signed by one hundred registered voters and include one of the same matters listed above.

LB 723 - Change property tax provisions relating to the valuation of irrigated cropland and comparable sales. Christensen. The Revenue Committee advanced the bill to General File with a committee amendment (AM 2270) by a 6-2 vote. The bill remained on General File. However, the contents of the committee amendment were included in AM 2657 to LB 1098 which was later approved by Governor Heineman.

The original bill proposed to divide irrigated cropland into the following subclasses – groundwater irrigated, surface water irrigated, ground and surface water irrigated, and limited capacity irrigated. The bill then adds another guideline for what determines comparable sale for determining value as follows: Whether the difference in well capacity or in water availability due to federal, state, or local regulatory actions or limited source affected the sale of the property.

The committee amendment removes the mandate to create subclasses of irrigated crop land for valuation purposes. It also clarifies statutory guidelines for valuation of such irrigated crop land. The amendment allows assessors to consider whether the difference in well capacity or in water availability due to federal, state, or local regulatory actions or limited source affected the sale price of the property. If data on current well capacity or current water availability is not available from a federal, state, or local government entity, it cannot be used to determine what constitutes a comparable sale.

- **LB 1098 AM 2657 – Christensen. Inserts the Revenue Committee amendment to LB 723 - Change property tax provisions relating to the valuation of irrigated cropland and comparable sales. Christensen.** The original bill proposed to divide irrigated cropland into the following subclasses – groundwater irrigated, surface water irrigated, ground and surface water irrigated, and limited capacity irrigated. The bill then adds another guideline for what determines comparable sale for determining value as follows: Whether the difference in well capacity or in water availability due to federal, state, or local regulatory actions or limited source affected the sale of the property.

LB 743 - Provide definition of one-half of an elected term of office. Murante. The Government Committee advanced the bill to General File by a 7-1 vote. The bill remained on General File. The bill proposed to define when a term starts for an elected official as the day of the meeting of the body at which the members are regularly sworn into office. It also proposed to define the second half of the term as the day of the meeting of a body at which members are regularly sworn in to office in the second calendar year after the term begins.

LB 756 - Redefine bicycle and motor vehicle. Smith. The Transportation Committee advanced LB 756 to General File on a 6-0-2 vote. The bill remained on General File. The bill would have included in the definition of bicycle a device with two or three wheels, fully operative pedals for propulsion by human power, and an electric motor with a capacity not exceeding seven hundred fifty watts which produces no more than one brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than twenty miles per hour on level ground.

The definition follows federal definitions and clarifies that such bicycles would not be required to be licensed and would also allow their use on local trails.

There were several individuals that testified in support of the measure, including a letter of support from the Nemaha NRD. The only opposition was from the Police Chiefs Association which submitted a letter.

LB 760 - Adopt the Combined Sewer Overflow Infrastructure Assistance Act and the Unfunded Federal Mandate Infrastructure Assistance Act. Mello. The Revenue Committee reported no action on the bill. However, there was \$1 million appropriated in LB 1098A for combined sewers which was approved by Governor Heineman.

The bill proposed to create the Combined Sewer Overflow Infrastructure Act and the Unfunded Federal Mandate Infrastructure Assistance Act to assist municipalities to construct, upgrade, redevelop, and replace sewer infrastructure facilities to reduce combined sewer overflow.

As proposed by the bill, a state fund would be created from the state sales tax on monthly sewer fees. The Combined Sewer Overflow Infrastructure Assistance Act would get ninety percent of the state sales tax revenue collected by municipalities on the increase in monthly sewer use fees on and after July 1, 2013. The Unfunded Federal Mandate Infrastructure Assistance Act would get the remaining ten percent of the sales tax on sewer use fees. Municipalities would not be eligible for both funds.

For the Combined Sewer program, the municipality would apply for assistance to a state board created under the act consisting of the Director of Environmental Quality, the chief executive officer of the Department of Health and Human Services, and the State Fire Marshal.

To be eligible, the municipality would have to acquire, constructed, improved, or equipped facilities or have approved a general obligation bond issue or revenue bond issue to do such. The state assistance shall only be used (1) to repay the debt borrowed through one or more issues of bonds to be expended by the municipality to acquire, construct, improve, and equip eligible facilities until repayment in full of the amounts expended or borrowed by the municipality, including the principal of and interest on bonds, for eligible facilities and (2) to pay amounts to be expended by the municipality without the issuance of bonds to acquire, construct, improve, and equip eligible facilities.

The municipality would also have to be applying the local option sales tax on the sewer project to be eligible.

Any municipality that has applied for and received state assistance under the Unfunded Federal Mandate Infrastructure Assistance Act may not receive state assistance under the Combined Sewer Overflow Infrastructure Assistance Act.

For the Unfunded Federal Mandate Infrastructure Assistance Act a federally mandated project would be defined as a sewer or water project undertaken by a municipality as a result of an unfunded federal mandate. The fund would be administered by the Department of Environmental Quality and used as grants for federally mandated projects.

Any grant of assistance shall be matched at least ten percent from local sources. To receive a grant of assistance, the project for which the grant is requested shall be owned and operated by the municipality that applies for the grant or a metropolitan utilities district.

LB 762 - Change provisions relating to integrated management plans. Christensen. The Natural Resources Committee accepted testimony on January 23, 2014. The committee reported no further action on the bill. As proposed, the bill would impose new conditions on the development and requirements of all integrated water management plans (local and basin). First, it would have required the Department of Natural Resources to represent the interest of surface water appropriators or designate an individual to do so. The bill does not change the role of the department as the regulating entity of surface water users. Second, the bill would have required the plan to provide allocations of water to surface water appropriators and ground water users equal to the average of delivered allocations to surface water appropriators from calendar years 2009 to 2011.

Senator Christensen introduced the bill on behalf of Frenchman-Cambridge Irrigation in response to the compact call on the Republican River for 2013 by the Nebraska Department of Natural Resources. The manager for the

Frenchman-Cambridge Irrigation District sided with Kansas in the recent *Kansas v. Nebraska* lawsuit on the Republican River Compact. The Frenchman-Cambridge Irrigation District is also the entity that sued the state of Nebraska, N-COPRE, Bureau of Reclamation and the Upper Republican NRD to stop augmentation projects that would keep Nebraska in compliance with the compact. Final action by the US Supreme Court on the *Kansas v. Nebraska* case is still pending. The NCORPE lawsuit was dismissed by the court.

Frenchman Cambridge Irrigation District and Nebraska Bostwick Irrigation District testified in support of the bill pleading that they wanted compensated for loss of surface water for Republican River Compact compliance.

However, the State of Nebraska is not required to provide compensation to junior water users in times of shortage. The document approved by the State of Nebraska in 1946 for the water right states such. Further, in a water compact, the state cannot divert water within the state that belongs to a downstream state. In this case the State of Kansas has a senior right to the water in the stream and it must be released to them.

A long-standing US Supreme Court Case, *Hinderlider v. La Plata Co.*, 304 U.S. 92 (1938), provides some guidance in the issue of compensation in water compacts. The case involved a water compact between Colorado and New Mexico. In essence, New Mexico claimed that Colorado was using more than their share of the water and wanted more water released downstream. Further, Colorado had provided more water rights to their users than the state was entitled to. The court ruled that if the downstream state was allowed the water under the compact, the upstream state had no authority to grant the water right to its users. Since Colorado had no authority to grant the water right for its users, no compensation for cancelling the right was required.

Another long standing case, *Badgley v. City of New York*, 606 F.2d 358, 365-67 (2d Cir. 1979), dealt with a similar compact issue where water in the upstream state had to be released under the compact for use in the downstream state. The upstream state demanded payment to their users for the loss of water. The Court ruled that a state cannot grant to private parties any privately owned property interest in riparian rights greater than the state's own property interest in them under the compact. In this case the upstream state and tried to place a price on the water right and force a payment when the compact called for water to be released. The Court ruled that no right existed because of the compact and no compensation was required.

Further, the permits granted in 1946 for the Frenchmen projects outline that use of the water may be denied during times of scarcity. The permits do not require compensation, even in times of scarcity. As most recall, Nebraska suffered the worst drought on record in 2012, which resulted in the water short year for the Republican Basin for 2013.

Opponents of the bill included Tri-Basin NRD, Upper Elkhorn NRD, Upper Niobrara White NRD, Upper Republican NRD, Lower Niobrara NRD, North Platte NRD, Nebraska Farm Bureau and several individuals.

Neutral testimony was provided by NARD, Central Nebraska Public Power and Irrigation District, Nebraska Public Power District and the Nebraska State Irrigation Association. The common theme in the testimony from public power and irrigation was that they did not want to place surface water rights on the correlative rights doctrine as proposed with the allocations. Further the allocations could result in a reduction of water diversions.

The NARD testimony was presented at the request of Senator Carlson. The testimony reviewed the different types of agreements between surface water canals and the NRDs. There are six different agreements in place between canal companies and three NRDs. These agreements are all different, but provide compensation and assistance to the surface water canals. In addition, there are numerous agreements on the Platte River with NRDs and canal companies to divert surface water in times of excess flows. In essence, all of the existing statutory language is in place to reach agreements between surface water canals and the NRDs.

LB 767 - Change provisions relating to operator training for underground storage tanks and provide funding. Schilz. Following a hearing on February 5, 2014, the committee reported no further action on the bill. The bill proposed to allow funds in the Petroleum Release Remedial Action Cash Fund to be used for

reimbursement to a responsible person or his or her qualified trainer for the cost of compliance with the operator training requirements of the federal Energy Policy Act of 2005. The bill proposed to authorize the State Fire Marshal to establish training and experience requirements for trainers.

LB 772 - Increase expenditure amount for Adjutant General for aerial fire suppression or hazardous material response. Davis. The Government Committee advanced LB 772 by a 7-0-1 vote. The bill remained on General File. However, the contents of the bill were included in AM 2663 to LB 390 which was approved by the Legislature on a 44-0-2 vote.

The bill proposed to increase the Adjutant General's spending authority out of the Governors Emergency Program Fund from ten to twenty five thousand without the state of emergency proclamation from the Governor if aerial fire suppression or hazardous material response is immediately required.

Proponents included the Nebraska Volunteer Firemen, the Nebraska State Forester and the Upper Niobrara White NRD. There were no opponents.

- **LB 390 AM 2663 – Davis. Increase expenditure amount for Adjutant General for aerial fire suppression or hazardous material response. Davis. LB 390 - Change provisions relating to unlawful possession of a firearm at a school and Emergency Management Act provisions. Christensen.** Although this was not a bill that impacts natural resources, an amendment that relates to natural resources was adopted to the bill before it was advanced to Select File. The bill would amend the Emergency Management Act by removing the Governor's power to limit or suspend the sale, dispensing or transportation of firearms.

As introduced, the bill would have prohibited the state or anyone acting on behalf of the state or a political subdivision from:

- prohibiting or restricting the lawful possession, use, transfer or transportation of a firearm or ammunition;
- seizing or confiscating a lawfully possessed firearm or ammunition unless the firearm is seized to defend oneself or another, during the arrest of a person or as evidence in a crime; and
- requiring that firearms be registered during an emergency unless registration was required before the emergency declaration.

The Judiciary Committee amendment, adopted 30-0, narrowed the scope of the bill and would remove only the Governor's authority to suspend or limit the sale, dispensing or transportation of firearms during a state of emergency.

Senators also approved AM 2663 brought by Hyannis Sen. Al Davis on a 36-0 vote which added provisions of LB 772. This allows the adjutant general to spend up to \$25,000 per event on aerial fire suppression or hazardous material response without a state of emergency proclamation issued by the Governor.

LB 778 - Require certain entities to comply with provisions on open meetings, public records, and conflicts of interest. Chambers. Following a hearing on January 30, 2014 the Government Committee reported no further action on the bill. The bill as proposed would have required a joint entity formed between a political subdivision and another entity to follow the Open Meetings Act. In addition, the documents and records would have to be made available except for trade secrets and other proprietary or commercial information owned by the entity that would give advantage to business competitors and serve no public purpose.

LB 820 - Authorize the Governor to execute a compact for prevention and control of forest fires and provide employment status for certain volunteer firefighters. Davis. Following a hearing on January 27, 2014, the Business and Labor Committee reported no further action. However, the contents of the bill were

included in AM 2626 to LB 961, which was later passed and approved by Governor Heineman. The bill authorizes the Governor of Nebraska to execute a compact on behalf of the state with any one or more states for fire control services. The purpose would be to promote effective prevention and control of forest fires in the great plains region of the United States by the maintenance of adequate forest fire fighting services by the member states, and by providing for reciprocal aid in fighting forest fires among the compacting states of the region, including South Dakota, North Dakota, Wyoming, Colorado, and any adjoining state of a current member state.

The compact would allow individuals to cross state lines with equipment to assist in firefighting, including volunteer firefighters. Each state would have to assure that workers' compensation benefits are in conformity with the minimum legal requirements of the state and are available to all employees and contract firefighters sent to a requesting state pursuant to this compact. For Nebraska volunteer firefighters engaged in activities under the compact would be deemed to be an employee of the University of Nebraska solely for purposes of the Nebraska Workers' Compensation Act.

- **LB 961 AM 2626 – Davis. Authorize the Governor to execute a compact for prevention and control of forest fires and provide employment status for certain volunteer firefighters. Davis.**

LB 840 - Require rules and regulations for mandatory water well permits in management areas. Haar.

The Natural Resources Committee accepted testimony on LB 840 on February 19, 2014. There was no further action reported by the committee. The intent of the bill was to allow a district, but not mandate such, to require permits for all wells in a management area and not exempt small capacity wells. Senator Haar introduced the bill for some constituents to bring the issue to the attention to the legislature about the high number of acreages around Lincoln and the associated individual wells required for water sources. In particular, there is a development near Malcom that does not have adequate water supplies for each home. Now the area is working with the LPSNRD and others to hook up to a rural water system to address the problem.

LB 841 - Change sales and use tax provisions relating to all-terrain vehicles, utility-type vehicles, and distribution of revenue. Hadley.

Following a hearing on January 29, 2014 the Revenue Committee reported no further action on the bill. However, the contents of the bill were included in AM 1876 to LB 814. The bill proposed to create the Game and Parks Commission Capital Maintenance Fund and dedicate the proceeds of the sales and use taxes derived from the sale or lease of all-terrain vehicles be credited to the newly created fund.

- **LB 814 AM 1876 – Hadley. Change sales and use tax provisions relating to all-terrain vehicles, utility-type vehicles, and distribution of revenue. Hadley.**

LB 856 - Require water well metering relating to hydraulic fracturing. Wallman.

The Natural Resources Committee accepted testimony on LB 856 on February 7, 2014. No further action was reported by the committee. The bill would have required a person issued a permit to withdraw ground water for hydraulic fracturing stimulation to also install a water meter or meters approved by the department to measure the amount of water used. An annual report would also have been required.

The Nebraska Sierra Club and Nebraska Farmers Union supported the bill. There were no other testifiers on the bill. However, a letter was submitted by Black Hills Energy against the bill.

LB 873 - Create a fund and appropriate and transfer funds for the Game and Parks Commission. Larson.

The bill proposed to create the Game and Parks State Park Improvement and Maintenance Fund. The bill then proposed to transfer \$15 million from the Cash Reserve Fund to the newly created maintenance fund. The Appropriation Committee reported no action on the bill, though contents of the bill were included in LB 905 & 906.

LB 874 - Appropriate funds to the Game and Parks Commission. Larson. The bill proposed to appropriate \$2.5 Million from the General Fund in FY 2014-15 to the Game and Parks Commission for projects at Ponca

State Park. Of the appropriation, \$1.5 Million shall be used to replace the existing swimming pool with a new aquatic feature that will include a splash pad and a restroom/shower facility and \$1 million shall be used to develop twelve two-bedroom camper cabins. The improvements would have to meet all current federal Americans with Disabilities Act standards. The Appropriation Committee reported no action on the bill, though contents of the bill were included in LB 905 & 906.

LB 882 - Change duties of the Climate Assessment Response Committee. Haar. Following a hearing on February 4, 2014, the Agriculture Committee reported no further action on the bill. The bill proposed to eliminate the report requirements passed last year on the impacts of cyclical climate change in Nebraska. The bill proposed to allow reports and communication to the Governor, Legislature and other interested persons with information and research on the impacts of cyclical climate change in Nebraska which shall include all climate forcings considered relevant by scientists, including human influence, and response strategies.

LB 890 - Change provisions relating to procedures for acquiring private property for public use. Dubas. The Judiciary Committee accepted testimony on LB 890 on February 20, 2014. The committee reported no further action on the bill. There were no proponents to the proposal and several political subdivisions and agencies testified against the bill. The bill proposed several changes to the eminent domain laws. First the bill would have required the Attorney General to develop and make available, in printed or electronic format, a pamphlet describing a private property owner's rights relating to an agency proposing to acquire private property for a public purpose in the State of Nebraska. The pamphlet would have had to be used by all agencies and provided to agencies acquiring private property on and after January 1, 2015, the notice shall also include; 1) The pamphlet described above; 2) make it clear that the notice is for negotiations for acquisition of the property; 3) the compensation to be paid by the agency for such acquisition, and 4) that eminent domain will not be an issue unless good faith negotiations fail. The bill also would have eliminated the term “offer of damages which will be sustained” and replaces it with “compensation to be given for” the proposed acquisition.

The common theme in the testimony against the bill was to the changes in the language about damages and compensation. The testimony outlined the courts have consistently relied on this language for eminent domain cases. The language now would set new standards, which will result in court cases.

LB 892 - Change enforcement provisions of the One-Call Notification System Act. Smith. The Transportation Committee advanced the bill to General File on February 26, 2014 on an 8-0 vote. The bill remained on General File with no further action. The bill proposed to add a provision to the One-Call statutes that authorizes the operator of an underground facility to institute a civil suit for injunctive relief to restrain an excavator if it appears that an excavator has repeatedly violated, or is violating or threatening to violate any provision of the One-Call Notification Act.

LB 896 - Change provisions of the Erosion and Sediment Control Act. Carlson. The Natural Resources Committee advanced LB 896 on March 7, 2014 on an 8-0 vote with a committee amendment (AM 2133). The bill remained on General File with no further action. The bill proposed to update the Erosion and Sediment Control Act to address: 1) sheet and rill erosion and 2) ephemeral gully erosion. The intent of the bill was to address excess erosion in excess of the applicable soil-loss tolerance level which causes or contributes to an accumulation of sediment upon the lands of any other person to the detriment or damage of such other person.

The bill would have better defined excess erosion, the soil loss tolerance levels, and the measures which determine if soil loss from a field exceeds soil loss standards. Presently the Act ties soil loss to limits established by NRCS which are typically a reflection of soil's agricultural productivity and not it's potential for causing downstream sedimentation problems. The changes proposed in LB 896 would allow NRDs more flexibility to establish tolerance levels that meet the intent of the original Act and better protect downstream landowners.

Current legislation only allows for calculations of sheet and rill erosion in determining a field's soil losses, while the more intensive ephemeral gully and gully erosion, are not included. This bill proposed including ephemeral gully erosion in calculations of soil loss.

The bill would have also given the NRDs the ability to petition the district court for assistance when immediate discontinuance of an activity is necessary to reduce or eliminate damage to neighboring property. Such action is only permitted for non-tillage, seeding or cultivation activities. This could include poorly planned construction activities or failure to use accepted temporary sediment control practices. Under the bill, the cease and desist order would be lifted when proper erosion prevention measures are in place. The committee amendment (AM 2133) clarifies that the cease and desist orders only apply to the Erosion and Sediment Control Act.

The bill would have further eliminated a problematic clause in statutes that states that a violator of the Act is not required to comply with measures to reduce or eliminate documented erosion problems on their property unless 90% cost share was available. That provision in current law rewards a violator for being uncooperative and resistant to conservation implementation regardless of the damage his actions or practices might be causing downstream property owners. There have even been cases where violators encourage neighbors to file complaints so they can take advantage of the 90% cost share requirement.

Cost-share could still be provided under the proposed legislation but at the rate established by the NRD which typically ranges from 50% to 75%. The lack of available cost share would not, however, offset the requirement that the violator comply with a plan of compliance or an administrative order for resolution of the problem.

LB 940 - Create the Water Sustainability Fund and transfer cash reserve funds. Schilz. Following a hearing on February 18, 2014 the Appropriations Committee reported no further action on the bill. However, a smaller appropriation was included in LB 905, 906 and 1098A, which were approved by Governor Heineman. The bill proposed to transfer \$50 million from the Cash Reserve to the newly created fund. The fund could only be used to fund existing programs, projects, and activities identified by the Water Funding Task Force in its final report.

LB 945 - Provide procedures for aid to political subdivisions from the Governor's Emergency Program. Davis. Following a hearing on February 12, 2014 the Government Committee reported no further action on the bill. The bill proposed time limits for repayments to political subdivisions for services provided under emergency programs. As proposed, once the political subdivision submits documentation for aid under the program, the Adjutant General or his or her representative shall acknowledge receipt of such and within 30 days provide the political subdivision of any additional documentation required. After all documentation has been provided, aid shall be remitted to the political subdivision within 60 days.

LB 955 - Adopt the Paid Family Medical Leave Act. Dubas. Following a hearing on February 24, 2014 the Business and Labor Committee reported no further action on the bill. The bill proposed to create the Paid Family Medical Leave Act. The bill would have required that an employee who is entitled to leave under the federal Family and Medical Leave Act of 1993, the employer would be required to provide that leave as paid leave.

Paid family medical leave is defined as paid leave taken by an employee from work to (a) participate in providing care for a family member made necessary by a serious health condition of the family member or (b) be with a child during the first twelve months after the child's birth, if the employee is a biological parent of the child or the first twelve months after a placement for adoption.

An employee may take up to six consecutive work weeks or up to forty-two days on an intermittent basis of paid family medical leave per year if eligible for such leave under the Paid Family Medical Leave Act. Paid family medical leave taken for a family member who has a serious health condition may be taken intermittently, when medically necessary, if the total time within which the leave is taken does not exceed twelve months.

The bill proposed that the wages paid during such leave shall be the average wage of the employee over the last calendar quarter, or portion thereof, while employed by his or her current employer.

An employee, who is entitled to leave under the federal Family and Medical Leave Act of 1993, shall take any paid family medical leave under the Paid Family Medical Leave Act concurrently with leave taken pursuant to the federal Family and Medical Leave Act of 1993.

LB 959 - Provide a permit application exemption for certain water storage reservoirs. Carlson. The Natural Resources Committee accepted testimony on LB 959 on February 19, 2014; the committee reported no further action on the bill. The bill proposed to exempt any reservoir with a maximum water storage capacity of fifty acre-feet and constructed prior to 1973 from NDNR permitting requirements if such reservoir is maintained in accordance with department safety guidelines, not altered to increase its storage capacity, and not utilized for irrigation purposes. The bill would have also exempted such reservoirs from calls by the department to release water.

John Thorburn, manager of the Tri-Basin NRD, testified in support of the bill noting that many landowners in his area received notices that they had to release water in dams over 15 acre feet under the compact call in 2013. Many of these are older structures and were only used for livestock watering. Thorburn pointed out that the district wanted to work with the landowners to correct the problems.

The Nebraska Department of Natural Resources submitted a letter in opposition which outlined that the settlement agreement in the Republican River Basin required dams over 15 acre-feet of storage had to release water under the call. There were also irrigators that had older rights that had to release storage water for a period of time as well in 2013 under the call.

LB 985 - Provide standing to natural resources districts and provide requirements for water appropriations. Davis. The Natural Resources Committee accepted testimony on LB 985 on February 20, 2014. The committee reported no further action on the bill. An interim study on the issue was introduced in LR 491.

The bill proposed to grant natural resources districts the power and authority to bring, defend, or intervene in judicial and quasi-judicial actions to protect and conserve the quantity or quality of groundwater and surface water resources within the district.

In addition, the bill also proposed that before granting any application to appropriate surface water for non-municipal purposes, the Department of Natural Resources would be required to consult with each natural resources district through which the stream from which water will be appropriated flows.

Each natural resources district would then be required to make a written determination as to whether granting the appropriation is contrary to the public interest. If a natural resources district finds that granting the appropriation is contrary to the public interest, the department shall not grant the appropriation without first allowing the natural resources district a hearing unless the natural resources district waives such hearing.

Don Blankenau, a water law attorney from Lincoln who provides legal services to several NRDs, testified in support of the bill on behalf of NARD. Mike Murphy, Middle Niobrara NRD, also testified in support of the measure. Letters of support were also received from the North Platte NRD and the North Platte Valley Water Association.

Blankenau outlined that the need for this bill became apparent last year when the Middle Niobrara NRD, Lower Niobrara NRD and some landowners filed an objection with DNR to an application to appropriate water from the Niobrara River. The requested amount of the appropriation was for over 400 cubic feet per second - year around. That volume of water is significant (enough to irrigate about 30,000 acres), and the objectors feared that granting the appropriation would not only make less water available for other uses, but would propel the

basin into a fully appropriated status. On that basis, the NRDs attempted to participate in the proceeding to present evidence as to why granting the appropriation would not be in the public interest. DNR however concluded that none of the objectors had a sufficient interest in the matter to have standing to participate and dismissed them. The parties appealed to the Nebraska Supreme Court which, in a 4-3 decision, affirmed the decision of DNR. This decision was a new direction for standing before DNR because for decades, NRDs had been allowed to participate.

Blankenau also pointed out that Nebraska's constitution, at Art. XV, §6 states that, "[t]he right to divert unappropriated waters of every natural stream for beneficial use shall never be denied **except when such denial is demanded by the public interest.**" (Emphasis Added). LB 985 is very limited and allows NRDs to offer written comments as to whether an appropriation is in the public interest. No NRD is required to provide that information but if particular appropriations are contrary to the public interests of the local body responsible for managing hydrologically connected waters, the NRD would have the ability to voice their point of view. Since NRD Boards are regulators elected by all citizens within each NRD, we believe they are most qualified to voice an opinion as to what is in the public interest. Without their participation, only the applicant or DNR itself will offer evidence on this issue. Obviously, no applicant will provide evidence that their application should not be granted and DNR, housed in Lincoln, is unlikely to know the local views. And to be clear, merely participating in this process does not guarantee a particular result – DNR will still retain full discretion to decide whether to grant the appropriation.

The bill was opposed by Central Nebraska Public Power and Irrigation District and Nebraska Public Power District. The argument was that they wanted the same standing.

The NARD has and is willing to work with irrigation districts, and public power and irrigation districts to resolve any concerns they may have about the bill. The NARD does not object to others holding a similar opportunity offered by LB 985.

LB 996 - Require state agencies to respond to legislative requests for information. McGill. The Executive Board advanced LB 996 with AM 1881 to General File on February 20, 2014 on an 8-0-1 vote. The bill remained on General File with no further action. The bill proposed that all state agencies would have four days to provide information upon written request for information by a member of the Legislature or by an employee of the Legislature working for a member of the Legislature or working in the office of the Legislative Fiscal Analyst or the office of Legislative Research.

State agency was defined in the bill as any state entity which receives appropriations from the Legislature and included the Legislature, legislative committees, executive agencies, courts, and probation officials but does not include political subdivisions.

LB 1003 - Provide for natural resources districts to issue general obligation bonds. Kolowski. The Natural Resources Committee accepted testimony on LB 1003 on February 21, 2014. The committee reported no further action on the bill. The bill proposed to authorize general bonding authority to each natural resources district for the purpose of financing all or part of the cost of non-revenue-producing water projects authorized by law. Issuance of such bonds shall be approved by two-thirds of the members of the board of directors of the district, and such bonds shall be retired using the district's ad valorem tax revenue and other funds available to the district not pledged for another purpose.

The bill was supported by the Nebraska Association of Resources Districts, Omaha Chamber of Commerce, City of Omaha, City of Papillion, City of Bellevue, Lower Platte South NRD, North Platte NRD, Pappio-Missouri River NRD. Opponents included the Pappio Valley Preservation Association and the Nebraska Farm Bureau Federation.

In his opening statement, Senator Kolowski pointed out the following key points about the bill:

- The NRDs do not have the capacity to generate the dollars it takes to pay for a project in one year. Bonding will help spread the cost out over time.
- Waiting until a NRD has saved up enough money to pay for a project could take a long time. This will only add to the total cost of the project as inflation will make the project cost more.
- Bonding allows the districts to take on the projects with the lowest possible tax rate.
- Without bonding, the tax rates have to be much higher and cause unnecessary delays with the project.
- If the project is for flood control, local residents are at risk of property damage and loss of life until the project is completed. Without bonding, the projects are delayed and property and lives are at risk.
- Although not related to this bill, the ability for the Republican River Basin NRDs to use the occupation tax for bonding allowed them to move on a project that became available and convert it to an augmentation project for the Republican River Basin for compact compliance. N-CORPE in Lincoln County, provides an opportunity to provide additional water in compact call and water-short years and avoid additional regulation. Almost 16,000 acres were retired from irrigation by the Lower Republican, Middle Republican, Upper Republican and Twin Platte NRDs with the December 2012 purchase of the farm for the N-CORPE project. The project is very similar to the Rock Creek Augmentation Project but significantly larger and will be operational in 2014 to help prevent an irrigation shutdown on 100,000 or more irrigated acres in the Basin during compact call and water short years. In the future, water will also be piped into the Platte River to help return a portion of that Basin to 1997 levels. In less than two years, the project will be operational and will keep Nebraska in compliance with the compact. The total project cost is \$120 million. Without bonding, the project never would have been started and Nebraska would be at risk for compact compliance, face additional water shortages and be subject to fines from the courts.

John Winkler, Papio-Missouri River NRD Manager, testified on behalf of the PMRNRD and NARD. He also pointed out the cost savings from bonding. The PMRNRD is the only district that has General Obligation bond authority from property taxes and it is limited to 1 cent of the 4.5 cent levy authority. Winkler pointed out that the PMRNRD has three projects expected to cost \$120 million. Because of the current ability to bond, we project a cost of only \$80 million. Instead of a construction span of 25 years, we expect those projects to be completed in 10 years. Funding projects with bonds at today's lower interest rates, allows districts to complete projects at much lower cost. Doing projects in a piecemeal fashion drives up costs and extends the time of construction of projects. Clear Creek/Western Sarpy Levee project had original cost of \$13 million and now, because of the pay-as-you-go nature of that project, the cost is \$42 million and rising.

In his closing statement, Senator Kolowski pointed out the problems that California is having now. A recent news story on their situation pointed out that they waited too long to address their needs and now find themselves out of water. There is no water for irrigation in many areas and domestic supplies are rationed. The California legislature is now looking at billions of dollars to fix the problem, but it is too late to meet their water needs for the short term. Nebraska does not want to be in that situation ever.

LB 1005 - Create the Surface Water and Ground Water Review Board and provide powers and duties.

Avery. The Natural Resources Committee accepted testimony on LB 1005 on February 26, 2014. The committee reported no further action on the bill. The bill proposed to eliminate the Inter-related Water Review Board, which was created by LB 962 in 2004 to resolve water disputes when developing integrated management plans and replaces it with a new entity called the Surface Water and Ground Water Review Board. The Inter-related Water Management Review Committee has never been requested to convene to resolve a dispute since its creation in 2004.

As proposed in the bill the 10-member board created would review and approve groundwater and surface water usage and conservation in all water basins. The board would establish the water usage for each basin and require the local natural resources districts and the Department of Natural Resources to enforce the regulations required by the new board. If the districts did not impose the regulations, the duties would be assigned to another entity.

As proposed the board makeup would be as follows: The Director of Natural Resources or his or her designee, the chairperson of the Game and Parks Commission or his or her designee, and the following members appointed by the Governor; A member of the Nebraska Environmental Trust Board, one representative from each of municipalities, natural resources districts, and irrigators, and a certified hydrologist. The Governor shall appoint three additional members of his or her choosing who shall have a minimum of seven years water-related experience, one from each congressional district.

The bill was supported by several surface water users from the Frenchman Cambridge Irrigation District. No other groups or organizations supported the measure.

Opponents of the bill included: Upper Big Blue NRD, Upper Niobrara White NRD, Nebraska Association of Resources Districts, Nebraska Water Coalition, Nebraska Water Resources Association, Lower Platte South NRD, Upper Republican NRD, Nebraska Public Power District, Nebraska Farmers Union, Central Platte NRD, North Platte NRD, Nebraska Farm Bureau Federation, Nebraska Cattlemen, and the North Platte Water Users.

A common theme in the testimony against the bill was that centralized, top-down water management as proposed in the bill has failed drastically in other states. In Kansas, for example, water management is mostly centralized within state government. The state has the ability to set stricter water use regulations than now exist and in most cases are much less stringent than regulations in Nebraska. However, the state has not imposed stricter regulations. Further, local water management groups have been hesitant to ask the state for stricter regulations and the state has been hesitant to pursue them in large part because of the political pressures. The result has been groundwater declines in Kansas, way beyond what Nebraskans would tolerate. It was considered a major development when a small part of western Kansas recently enacted allocations. Water-use allocations, of course, have been in place in Nebraska for decades. The allocations in Kansas are more than double of the allocations in Nebraska.

From the perspective of water management, Nebraska has taken extraordinary measures to protect water and ensure it will be available for future generations. As proof of those efforts, you need only refer to the US Geological Survey information that shows Nebraska is managing groundwater in a much more responsible manner than surrounding states. According to the USGS, groundwater levels in the High Plains Aquifer in Nebraska are virtually unchanged from pre-development levels to the present. By contrast, they have declined by over 23 feet in Kansas. This feat is all the more impressive when you consider that less than 10% of the irrigated land is watered with surface water while the rest is from groundwater.

Nebraska's success is the product of local water management by the natural resources districts and the coordination with the state agencies. The groundwater management plans and integrated management plans are constantly evolving and changing as new information becomes available. These plans are approved by both the local NRD and the DNR after review and public input. If the plans are not adequate or need to be changed, either the DNR or NRD can request such.

The reason for the inaction of centralized water management is described by environmentalist Mary Kelly. Kelly is a former senior attorney for the Environmental Trust Fund. In 2011, she presented a study exploring water management in Nebraska compared to other states and concluded Nebraska's system of local control was preferable. An excerpt from Kelly's study:

"These broad and flexible powers give Nebraska NRDs distinct advantages over similar districts in other states that rely on local control. Texas, for example, also relies on local districts as the preferred approach to groundwater management, but Groundwater Control Districts (GCDs) is only established upon local or legislative initiative. With the exception of the vast Edwards Aquifer Authority, most districts have been created on county jurisdictional lines, not on aquifer or river basin boundaries. Even with distinct surface water and ground water regimes, some states centralize management in a state resource agency, as opposed to locally-based regulation. In theory, there are potential benefits to this approach assuming state decision-makers are

more insulated from local political pressures, but it is certainly no guarantee of sustainable management. And, in some cases, local interests may be more aggressive than state policy makers in protecting their resources”.

The local interests implemented via Nebraska’s NRD system are more aggressive in protecting their resources for a pretty simple reason: Local people have a vested interest in preserving water for their children and grandchildren in the area in which they live. The implementation of LB962 in 2005 helped ensure there was also state involvement in local water policy decisions when necessary to help balance the interests of competing water users. Now, local residents work hand in hand with the state when needed to craft water policy that fits both state and local needs.

LB 1033 - Appropriate funds to the Game and Parks Commission and state intent relating to operation and maintenance of Arbor Lodge State Historical Park. Watermeier. A hearing was held by the Appropriations Committee on February 4, 2014. The committee reported no further action on the bill. However, the contents of the bill were included in LB 905 and later approved by Governor Heineman. The bill proposed to appropriate \$2,107,000 from the General Fund for FY2014-15 to the Game and Parks Commission for projects at Arbor Lodge State Historical Park. As proposed the appropriation shall be used for deferred repairs and maintenance improvements at the mansion, carriage house, and grounds and to comply with the requirements of the federal Americans with Disabilities Act standards.

The bill also outlined that it is the intent of the Legislature that the Game and Parks Commission negotiate a contractual agreement that will transfer the responsibility for annual operations and maintenance at Arbor Lodge State Historical Park to a local partner. Up to \$317,000 of the funds appropriated in the proposal may be expended until such time as such contractual agreement is in place.

LB 1037 - Authorize Auditor of Public Accounts to examine certain entities formed under the Interlocal Cooperation Act. McGill. The Government, Military and Veterans Affairs Committee advanced the bill to General File on February 12, 2014 on a 6-2 vote. The bill remained on General File with no further action. The bill proposed that any entity formed under the Interlocal Cooperation Act consisting of more than one natural resources district could be audited at the expense of the political subdivision by the Auditor of Public Accounts.

LB 1045 - Redefine the term underground facility for purposes of the One-Call Notification System Act. Harr. A hearing was held by the Transportation Committee on February 18, 2014. The committee reported no further action on the bill. The bill was to require that underground facilities subject to the one-call notification system be buried or placed below ground at a depth of at least twelve inches.

LB 1046 - Create the Water Sustainability Fund and transfer General Funds. Carlson. A hearing was held by the Appropriations Committee on February 18, 2014. The committee reported no further action on the bill. However Senator Carlson worked with the Appropriations Committee and content from the bill is included in LB 905, 906 and 1098A which were later approved by Governor Heineman. The bill was to create the Water Sustainability Fund to be administered by the Natural Resources Commission. The fund was to be used for water sustainability projects throughout the state. The bill would have required that on October 1, 2015, the State Treasurer shall transfer fifty million dollars from the General Fund to the Water Sustainability Fund. This would then become an annual appropriation.

LB 1047 - Appropriate funds to the Department of Natural Resources. Carlson. The Appropriations Committee accepted testimony on LB 1047 on February 19, 2014 which proposed to appropriate \$843,701 from the General Fund for FY 2013-14 to the Department of Natural Resources for grants from the Nebraska Resources Development Fund. The amount equals an amount that was refunded to the program in FY 2012-13. An agreement had been reached prior to the hearing to refund a portion of the funds to the program from the unused portion of the Water Funding Task Force. The amount would be slightly over \$500,000 and was incorporated into the deficit appropriation bill and later approved by Governor Heineman. With the agreement, there was no testimony for or against the bill.

LB 1053 - Provide state aid to municipalities, counties, and natural resources districts. Karpisek. The Revenue Committee accepted testimony on February 20, 2014. The committee reported no further action on the bill. The bill proposed to reinstate state aid formulas to municipalities, counties and natural resources districts that were repealed in 2011. For NRDs, the formula is based upon the proportion of property taxes levied by each district to the total amount. The bill does not provide state aid amounts.

LB 1065 - Eliminate secret ballot provisions under the Open Meetings Act. Lautenbaugh. The Government Committee accepted testimony on February 20, 2014. The committee reported no further action on the bill. The bill proposed to eliminate the ability for public bodies to elect leadership within the public body by secret ballot. Current law allows for such but requires the votes to be recorded in the minutes.

LB 1074 - Change provisions relating to the regulation of ground water. Lathrop. The Natural Resources Committee accepted testimony on LB 1074 on March 17, 2014. Several attempts to reach an agreement were made between Senator Lathrop and Committee members, though the bill never advanced out of the Committee. As a compromise, basin planning for fully appropriated basins was included as amendments to LB 1098 and later approved by Governor Heineman.

The bill proposed provides that any river basin in Nebraska could be determined to be over-appropriated and provides for annual evaluations of each river basin. Currently, basins that were determined to be over-appropriated had to be declared such by July 16, 2004. Under the proposal, the only way for a basin to get back to fully appropriated would be either to have water use in the basin down to zero impact to the streams or have no objections from a surface water appropriator. This would apply to the current over-appropriated portion of the Platte Basin. If a basin was ever returned to fully appropriated, the bill would allow a fully appropriated basin to be re-evaluated as over-appropriated at least two more times.

Proponents included the Frenchman Cambridge Irrigation District (who sided with Kansas in the Kansas V. Nebraska lawsuit), Bostwick Irrigation District, Central Nebraska Public Power & Irrigation District, Nature Conservancy, Ann Bleed, Ron Wolf from Twin Loups Irrigation District, and several individuals from the Republican River Basin. All argued that groundwater irrigation needs to be shut down to benefit surface water irrigation. Proponents also argued for the need to continue shutting down groundwater irrigation until all surface appropriators are made whole. A letter of support was also submitted by the City of Lincoln.

Senator Lathrop closed on the bill by stating that he would not support any funding for water projects unless this bill is passed first. He also claimed that this needs to be done now because this is his last session due to term limits.

Opponents of the bill included Nebraska Farm Bureau Federation, NARD, Upper Republican NRD, Middle Niobrara NRD, Upper Niobrara White NRD and Twin Platte NRD.

Don Blankenau, who provides legal counsel to several NRDs on water issues, presented testimony for NARD against the bill. He pointed out that the bill is designed to eliminate large amounts of ground water irrigation in an effort to create more surface water that can be consumed by surface water irrigators. This shift in water use would likely face legal challenges and will most certainly threaten the economic wellbeing of large parts of rural Nebraska. Many areas of Nebraska are dependent upon the value of irrigated land and the revenue that comes from it. If the bill is implemented the loss to individuals from the devaluation of irrigated land, the loss of income from production, and the loss of tax revenue for schools and local government could well tally several billion dollars.

Blankenau and Jasper Fanning, Upper Republican NRD Manager, also pointed out several other key points for the committee to consider.

- Nebraska has taken extraordinary measures in the last decade to protect water and ensure it will be available for future generations. As proof of those efforts, you need only refer to the US Geological

Survey for information that shows Nebraska is managing ground water in a much more responsible manner than surrounding states. According to the USGS, ground water levels in the High Plains Aquifer in Nebraska are virtually unchanged from pre-development levels to the present. By contrast, they have declined by over 23 feet in Kansas. This feat is all the more impressive when you consider that less than 10% of the irrigated land is watered with surface water while the rest is from ground water.

- The bill threatens to undo the years of work that went into the creation of LB962 and the IMPs. The legislation would force thousands of land owners to retire their irrigated lands for the benefit surface water users who are dissatisfied with the IMPs. Setting aside the legality of this forced change, as a matter of hydrology, it would take decades if ever, to increase streamflows in the manner they desire. Moreover, in the Republican Basin, the obvious target of this legislation, it would most likely not alter their ability to use water anyway.
- The Republican Basin was determined to be fully appropriated shortly after LB962 was passed in 2004. That determination was made with an eye toward compliance with the Republican River Compact. That interstate agreement places a hard cap on how much surface water can be consumed in any single year. The hard cap is determined using the unique accounting of the Republican River Compact Administration (RRCA) which was the subject of recent litigation with Kansas. The fully appropriated trigger that the NRDs and DNR used and manage to is directly tied to the RRCA accounting. The NRD regulations and conservation efforts have kept the State in a position that it can comply with the compact again in 2014 (as we have done since 2006). The occupation tax authorized by this body, has allowed the NRDs to implement projects that provide real water, in volumes significant enough to prevent large scale groundwater well shutdowns and reduce the need for regulation of surface water users. While surface water users will still suffer from water shortages during extended droughts, the ability of augmentation projects to provide approximately 50,000 acre-feet of water credit per year for Nebraska without any administration of surface water will unquestionably benefit surface water irrigation operations. LB1074 would likely undermine those projects.
- It is critical to understand, that if Nebraska stopped using all groundwater within the Republican River Basin today, the resulting increase in streamflow would only provide enough water to irrigate less than 5,000 acres in a normal year. The implications should be clear: the loss of revenue derived from prohibiting groundwater irrigation on 1,274,000 acres would devastate communities, local governments, and public schools, while providing only minimal increases in stream baseflows which, in a Compact call year, wouldn't even be available to irrigation districts anyway.
- In the end, LB 1074 would harm many more people than it would help. If assistance is what the surface water users want, it can be provided under current law if they are willing to work with the local NRDs and the State of Nebraska. Six irrigation districts voluntarily have done this with three different NRDs. All projects added water to the river, rehabilitated canals, and maintained the irrigated tax base.
- Kansas had sought a permanent irrigation shutdown of 300,000 acres in Nebraska and damages of \$80 million. A Special Master appointed by the U.S. Supreme Court recently rejected Kansas' request for a shutdown because Nebraska's compact compliance plans are adequate and concluded damages should be \$5.5 million. The outcomes reflect the hard work of the State, and the efforts of the NRDs and irrigators to implement common sense measures that achieve and assure compact compliance while helping preserve natural resources for generations to come.
- In addition to denying Kansas' request for future restrictions on water use, Special Master William J. Kayatta, acknowledged Nebraska's accounting concerns, which are huge victories compared to the smaller damage award to Kansas. Among Special Master Kayatta's recommendations were the following:

- Republican River Compact Administration (RRCA) Accounting Procedures should be corrected for accounting years after 2006 so that Nebraska is not charged with the consumption of Imported Water Supply as if it were Virgin Water Supply.
 - 100% of the evaporation from Harlan County Lake during 2006 as calculated under the RRCA Accounting Procedures should be charged to Kansas.
 - Kansas' request that Nebraska be found in contempt should be denied.
 - All remaining requests for relief, including Kansas' requests for injunctive relief, sanctions, and appointment of a River Master, should be denied.
- The Republican River Basin Natural Resources Districts (NRDs) have been working hard to protect Nebraska's most valuable natural resource in the basin: our water. The approximately 1.1 million irrigated acres in Nebraska's portion of the Republican Basin represent what is believed to be the largest area of regulated groundwater use not only in Nebraska, but the eight-state region that overlies the Ogallala Aquifer. In addition to regulating water, the NRDs have begun projects that will help assure compliance with the Republican River Compact while maintaining the viability of our vital agriculture economic sector.
 - On the heels of Special Master Kayatta's recommendations, arbitrator Jeffrey Fereday recently issued a non-binding arbitration order approving Nebraska's Rock Creek Augmentation Plan and Alternative Water-Short Year Administration Plan. Fereday rejected Kansas' multi-pronged challenge to the augmentation project in Dundy County and concluded that it complied with terms of a settlement between Kansas, Colorado and Nebraska reached in 2003. The Upper Republican NRD began operating the project in 2013. It takes water that otherwise would have been used to irrigate crops in the sand hills north of Parks, Neb. and deposits it into Rock Creek, a tributary of the Republican River.
 - A second project, the NCORPE in Lincoln County, provides an opportunity to provide additional water in compact call and water-short years and avoid additional regulation. Almost 16,000 acres were retired from irrigation by the Lower Republican, Middle Republican, Upper Republican and Twin Platte NRDs with the purchase of the farm for the NCORPE project. The project is very similar to the Rock Creek Augmentation Project but significantly larger and will be operational in 2014 to help prevent an irrigation shutdown on 100,000 or more irrigated acres in the Basin during compact call and water short years. In the future, water will also be piped into the Platte River to help return a portion of that Basin to 1997 levels.

LB 1075 - Prohibit employment of certain persons leaving public positions. Harr. The Government Committee held a hearing on February 20, 2014. The committee reported no further action on the bill. The bill would have required a person elected or appointed to a position to wait two years after leaving the position to be employed by the entity.

LB 1084 - Change provisions governing the filling of certain vacancies. Garrett. The Government Committee advanced LB 1084 on February 25, 2014 with a Committee Amendment (AM 1843). The bill remained on General File with no further action.

The bill proposed to add the office of city council to the list of offices in which there is 45 days to fill the vacancy after the vacancy occurs. The bill also proposed to eliminate language that allows for a delay in the appointment if good cause to be shown for all political subdivisions. An example of good cause would be that no applicant had filed to be appointed in the 45-day period.

The Committee Amendment (AM 1843) reinstated the language allowing for exemption to the 45-day requirement for good cause shown.

LB 1111 - Provide duties relating to integrated management plans. Christensen. The Natural Resources Committee accepted testimony on LB 1111 on February 20, 2014. The committee reported no further action on

the bill. The bill as proposed would have required that natural resources districts that have developed an integrated management plan and utilize the occupation tax would have to amend such integrated management plan to provide procedures to implement and achieve district-wide and basin-wide water sustainability by January 1, 2025. The bill would have also allowed the United States Geological Survey to determine the maximum annual amount of water per irrigated acre to be used as a base allocation for each NRD and also define sustainability. This allocation would have had to be the same for surface water and groundwater users. The bill also provided a very vague definition of sustainability.

There were no proponents to the bill. There were eleven organization and/or individuals that testified against the bill or submitted letters of opposition including: The Nebraska Association of Resources Districts, Central Nebraska Public Power and Irrigation District, Nebraska Public Power District, Upper Republican NRD, North Platte NRD, Nebraska Water Coalition and five individuals from Senator Christensen's district.

Terry Martin, NARD Vice President and retired water resources engineer, testified against the bill for NARD. Martin pointed out that the bill is completely silent on the subject of preserving our economies. Our agriculture society has evolved to the point where water and our economy cannot be separated. Both must survive as we move toward a stable and lasting water supply. One cannot be regulated without considering the other. Martin also stressed the following concerns with the bill:

- The timeline in the bill is rigid and arbitrary. Each NRD has specific and unique problems to solve. They need maximum flexibility to manage their unique challenges. The NRD system as it now exists gives us the flexibility to be far more successful than rigid legislation. The NRDs are willing to do the work and have demonstrated the ability to be successful.
- The bill assumes one size fits all when it comes to using and preserving a water source. Mother Nature wrote most of the laws that we must follow, and her rules cannot be superseded by civil law. The Bill addresses "base allocations" and "sustainability". Our Integrated Management Plans have addressed these two issues for as long as the IMP's have existed. Each IMP was written specific to each NRD's variability, while keeping in mind the challenges facing each basin. We're back to needing flexibility with things like allocations, banked water, and sustainability. Sustainability will always be a variable because that's how Mother Nature works. I prefer to call our ultimate goal "stability" of our water supply and accept the fact a water supply can fluctuate according to Mother Nature's laws while still being a stable water source.
- The quantitative definition of "sustainability" seems vague and narrow, or to be missing completely. In fact the bill gives the USGS the responsibility of determining what a sustainable usage might be. Sustainability has been discussed, defined, and re-defined by many over the recent years and yet I (as a board member) do not know how the USGS will define the term. But, no matter how this point in the Bill is resolved, I fear the vague and exclusionary definition of "sustainability" that is suggested in this Bill is the monster flaw that will literally destroy a very large portion of irrigated agriculture in Nebraska. My Board's ability to manage (even micro-manage) both the water resource, and the regional economy will be gone. If this is the way the Legislature wants to go, who will ultimately be willing to accept responsibility for the upcoming catastrophe.

The testimony from the irrigation districts was that they did not want to be limited in allocations for surface water as proposed under the bill.

LB 1112 - Change provisions relating to an occupation tax on irrigated land. Christensen. The Natural Resources Committee accepted testimony on LB 1112 on February 27, 2014. The committee reported no further action on the bill. The bill proposed to change the method in which the occupation tax is calculated. Until January 1, 2015, the tax could be imposed under current law which allows for a tax up to \$10/irrigated acre. After that, the bill would have required the tax to be calculated and imposed as follows:

- Step 1: The district shall determine the amount of revenue needed to be raised from the tax for the project for the applicable fiscal year. This amount shall not exceed an average of ten dollars per certified irrigated acre.
- Step 2: The district shall determine the total acre-feet of groundwater irrigation usage in the district during the current calendar year and obtain the total acre-feet of surface water irrigation usage in the district during the current calendar year from the department to calculate the total acre-feet irrigation usage in the district.
- Step 3: The district shall determine the acre-foot revenue needed by dividing the amount determined in Step 1 by the amount determined in Step 2.
- Step 4: The district shall calculate the tax for each record owner of irrigated agricultural land based upon each record owner's acre-feet usage of surface water and groundwater irrigation during the current calendar year by multiplying such usage by the per acre-foot revenue needed.

The bill would have required each irrigation district and direct surface water irrigator to report surface water irrigation usage within a natural resources district levying an occupation tax to the department, and the department shall report such surface water irrigation usage within the natural resources district as necessary to carry out the district's powers and duties.

The bill had no proponents. Opposition included the Nebraska Public Power District, Twin Platte NRD, North Platte NRD and the North Platte Water Users.

In the testimony from Brian Barel of the Nebraska Public Power District, he outlined the underlying problem with the bill – no meters exist on field deliveries for surface water irrigation. Rather, the measurement is taken at the main diversion point and deliveries are made to individual fields after that. Similar problems exist in areas where meters on groundwater irrigation is not necessary. Other testimony outlined the massive reporting requirements and pointed out that if a parcel is not irrigated, there is a process to exempt it from the occupation tax.

LB 1113 - Provide powers and duties relating to surface water appropriations. Christensen. The Natural Resources Committee accepted testimony on the bill on February 27, 2014. The committee reported no further action on the bill. The proposed bill would have required an irrigation district, reclamation district, public power and irrigation district, or mutual irrigation company or canal company to allocate, in any irrigation year, the volume of water to the owner of a water right based upon such owner's acreage of water right as a percentage of the total acreage of water right which is owned, controlled, and distributed to the total ownership of the allocated volume of water of such district or company.

Under the proposed bill, the owner would have been allowed to distribute the water to any portion or all acreage for which such owner holds an appropriation. The bill also would have allowed the Department of Natural Resources to limit the amount of land upon which such water may be distributed by the owner.

LR 397 CA - Constitutional amendment to require public recording and preservation of votes of public officials. Lautenbaugh. The Executive Board of the Legislature reported LR 397 CA as Indefinitely Postponed LR 397 CA on February 11th. The constitutional amendment proposed that every vote by an elected official in the conduct of public duties was to be recorded in a public meeting and preserved for public inspection. The amendment would have been offered at the November 2014 General Election.

LR 416 CA - Constitutional amendment to authorize casino gaming, provide for a local vote, and provide for distribution of tax proceeds. Karpisek. The General Affairs Committee accepted testimony February 10 on LR 416 CA. The committee reported no further action on the bill. The bill would have authorized local-option casino gaming in Nebraska. Under the proposed constitutional amendment, if a casino is proposed to be

located in a city or village, the governing body of the city or village shall submit the issue of whether to approve or disapprove the casino location in the city or village to the registered voters of the city or village. If a casino is proposed to be located outside of a city or village, the county board shall submit the issue of whether to approve or disapprove the casino location in the county to the registered voters of the county.

Dave Nicholson, a retired investigator with the Nebraska State Patrol testified in support of the measure. Nicholson provided results from a two-year study that 38 percent of the vehicles at Council Bluffs were Nebraska vehicles. Several others testified in support of the measure. A letter of support was provided to Senator Karpicek from the Nebraska Association of Resources Districts in support of the constitutional amendment.

The bill was opposed by Pat Loontjer, Gambling for the Good Life, and Loretta Fairchild, a retired economics professor, testified against the measure.

The proceeds of taxation of casino gaming shall be appropriated by the Legislature for the costs of regulating casino gaming. After payment of regulatory costs, the funds would be appropriated by the Legislature as follows:

- Fifty percent of the money for property tax relief.
- Twenty-five percent of the money for elementary and secondary education.
- Twelve percent of the money shall be transferred to the Game and Parks Commission.
- Twelve percent of the money shall be transferred to the Department of Natural Resources for water funding.
- One percent of the money shall be transferred to the Compulsive Gamblers Assistance Fund.

The proposed constitutional amendment included language for directing funding to the Department of Natural Resources but not the other programs. For NDNR the water funds could include, but not be limited to, (A) research and data gathering; (B) further integrating the management of Nebraska's water supplies; (C) improving the state's aging and antiquated water supply infrastructure; (D) building new water supply infrastructure; (E) promoting coordination and collaboration among all water users; and (F) providing information to policymakers to justify a stable source of project funds.

Section Three – Interim Study Resolutions Introduced in 2014

The following are the list of Interim Study Resolutions introduced in 2014 that are of interest to natural resources districts. These are sorted by issue. A complete list can be found at: <http://www.nebraskalegislature.gov/session/interim.php>.

Agriculture Committee

- LR 531 -- Interim study to examine Department of Agriculture regulation of nonprofit nursery stock distributors under the Plant Protection and Plant Pest Act. Bloomfield.

Appropriations Committee

- LR 544 -- Interim study to examine the fiscal impacts of unfunded mandates. Mello.
- LR 549 -- Interim study to examine issues relating to Game and Parks Commission funding. Bloomfield.

Judiciary Committee

- LR 584 -- Interim study to examine issues relating to changing recreational liability provisions. Schilz.

Natural Resources Committee

- LR 491 -- Interim study to examine the need to clarify and expand application of LB 985 (2014), which provided standing to natural resources districts and requirements for water appropriations. Davis.
- LR 589 -- Interim study to evaluate the local and statewide health impacts of burning coal. Haar.
- LR 590 -- Interim study to examine the organizational structure of public power. Haar.
- LR 597 -- Interim study to examine methods by which to find balance between water resources and water uses in areas under interstate compacts, cooperative agreements, or decrees. Christensen.
- LR 628 -- Interim study to examine the role of Nebraska state government in establishing and implementing standards of performance for existing carbon dioxide emissions from public power plants within the state. Natural Resources Committee.