

2010

LEGISLATIVE BILL SUMMARIES

# **NATURAL RESOURCES COMMITTEE**

NEBRASKA LEGISLATURE

ONE HUNDRED FIRST LEGISLATURE  
SECOND SESSION

## ***NATURAL RESOURCES COMMITTEE MEMBERS***

Senator Chris Langemeier, Chairman  
Senator Annette Dubas, Vice-Chairwoman  
Senator Tom Carlson  
Senator Tanya Cook  
Senator Deb Fischer  
Senator Ken Haar  
Senator Beau McCoy  
Senator Ken Schilz

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**COMMITTEE STAFF**

Laurie Lage, Legal Counsel  
Barb Koehlmoos, Committee Clerk

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**Natural Resources Committee 2010**  
**101<sup>st</sup> Legislature**

**BILL INDEX**

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- LB 696 (Pahls) Change provisions relating to disposal fees under the Integrated Solid Waste Management Act. *Signed by Governor 4/12* (p. 10)
- LB 743 (Fischer) Authorize conveyance of certain real property by the Game and Parks Commission. *Signed by Governor 3/3* (p. 11)
- LB 747 (Louden) Permit killing mountain lions and other predatory animals. *Amended into LB 836, Signed by Governor 4/5* (p. 27)
- LB 755 (Dierks) Provide requirements and fees for certain oil or natural gas companies. *Held in Committee, Indefinitely Postponed at end of session* (p. 29)
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- LB 871 (Fischer) Change provisions relating to persons accompanying apprentice hunters. *Signed by Governor 3/3* (p. 17)
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- LB 960 (Stuthman) Change provisions relating to net metering. *Held in Committee, Indefinitely Postponed at end of session* (p. 31)
- LB 964 (Christensen) Prohibit the leasing of land in a county road right-of-way for oil and gas exploration and development. *Held in Committee, Indefinitely Postponed at end of session* (p. 31)
- LB 993 (Carlson) Change permissible uses of the Water Resources Cash Fund. *Signed by Governor 4/12* (p. 18)
- LB 1010 (Pankonin) Provide procedures and limitations on the use of eminent domain by natural resources districts for recreational trails. *Signed by Governor 4/13* (p. 19)
- LB 1011 (Pankonin) Limit the eminent domain power of natural resources districts to exclude certain recreational trails. *Held in Committee, Indefinitely Postponed at end of session* (p. 32)
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LB 1054 (Carlson) Adopt the correlative rights doctrine relating to the use of ground water as prescribed. *Held in Committee, Indefinitely Postponed at end of session* (p. 34)

LB 1056 (Carlson) Provide for measurement of aquifer depletion and limitations on irrigation as prescribed. *Held in Committee, Indefinitely Postponed at end of session* (p. 35)

LB 1057 (Carlson) Create the Republican River Basin Water Sustainability Task Force. *Signed by Governor 4/5* (p. 25)

LB 1076 (Schilz) Change provisions relating to evaluation of river basins, subbasins, and reaches. *Held in Committee, Indefinitely Postponed at end of session* (p. 36)

**2010 NATURAL RESOURCES COMMITTEE BILLS**  
**Bills by Hearing Date**

Hearing	Bill	Introducer	One-Liner	Status
<i><b>BILLS BY HEARING DATE</b></i>				
<b>WED.</b> <b>1-20-10</b>	797	Langemeier	Change duties of the Nebraska Power Review Board	<b>Signed 3-3</b>
	798	Langemeier	Extend the termination date of the Nebraska Litter Reduction and Recycling Act	<b>Signed 3-3</b>
	911	Langemeier	Change a date relating to development of a statewide biotechnology strategic plan	<b>Signed 3-3</b>
<b>THURS.</b> <b>1-21-10</b>	743	Fischer	Authorize conveyance of certain real property by the Game and Parks Commission	<b>Signed 3-3</b>
	871	Fischer	Change provisions relating to persons accompanying apprentice hunters	<b>Signed 3-3</b>
<b>FRI.</b> <b>1-22-10</b>	832	Fischer	Eliminate a private insurance requirement relating to petroleum release remedial action	<b>Signed 3-3</b>
<b>WED.</b> <b>1-27-10</b>	747	Louden	Permit killing mountain lions and other predatory animals-AMENDED INTO LB 836	<b>GF w/AM</b>
	836	Lautenbaugh	Change deer hunting provisions, provide for mandatory deer depredation seasons, and provide a tax credit for allowing deer hunting	<b>Signed 4-5</b>
<b>THURS.</b> <b>1-28-10</b>	895	Janssen	Change procedures for filling vacancies on a natural resources district board	<b>GF</b>
	696	Pahls	Change provisions relating to disposal fees under the Integrated Solid Waste Management Act	<b>Signed 4-12</b>
	885	Nordquist	Transfer the responsibilities of the Nebraska Oil and Gas Conservation Commission and the State Energy Office to the newly created Nebraska Energy Commission	<b>IPP</b>
<b>FRI.</b> <b>1-29-10</b>	689	Langemeier	Change Water Resources Cash Fund, Ethanol Production Incentive Cash Fund, and ethanol excise tax provisions	<b>Signed 3-17</b>
	845	Howard	Require energy conservation by state agencies	<b>In Comm.</b>
	960	Stuthman	Change provisions relating to net metering	<b>In Comm.</b>
<b>WED.</b> <b>2-3-10</b>	764	Fischer	Change provisions relating to integrated management plans under the Nebraska Ground Water Management and Protection Act	<b>Signed 3-17</b>

	862	Christensen	Change provisions relating to issuance and repayment of river-flow enhancement bonds	<b>Signed 4-14</b>
	932	Christensen	Change provisions relating to repayment of financial assistance by natural resources districts	<b>In Comm.</b>
<b>THURS. 2-4-10</b>			Wind Briefing	
<b>FRI. 2-5-10</b>	1057	Carlson	Create the Republican River Basin Water Sustainability Task Force	<b>Signed 4-5</b>
	1076	Schilz	Change provisions relating to evaluation of river basins, subbasins, and reaches	<b>In Comm.</b>
<b>WED. 2-10-10</b>	993	Carlson	Change permissible uses of the Water Resources Cash Fund	<b>Signed 4-12</b>
	1054	Carlson	Adopt the correlative rights doctrine relating to the use of ground water as prescribed	<b>In Comm.</b>
	1056	Carlson	Provide for measurement of aquifer depletion and limitations on irrigation as prescribed	<b>In Comm.</b>
<b>THURS. 2-11-10</b>	1019	Haar	Provide for trails dispute boards to decide disputes between county boards and natural resources districts concerning recreational trails	<b>In Comm.</b>
	1010	Pankonin	Provide procedures and limitations on the use of eminent domain by natural resources districts for recreational trails	<b>Signed 4-13</b>
	1011	Pankonin	Limit the eminent domain power of natural resources districts to exclude certain recreational trails	<b>In Comm.</b>
<b>WED. 2-17-10</b>	755	Dierks	Provide requirements and fees for certain oil or natural gas companies	<b>In Comm.</b>
	964	Christensen	Prohibit the leasing of land in a county road right-of-way for oil and gas exploration and development	<b>In Comm.</b>
<b>THURS. 2-18-10</b>	785	Carlson	Provide an exception to required approval for certain water transfers-AMENDED INTO LB 862	<b>GF</b>
	1025	Avery	Change provisions relating to stays on new water appropriations	<b>IPP</b>
	1016	Christensen	Adopt the Nebraska Statewide Water Planning Commission Act	<b>In Comm.</b>
<b>FRI. 2-19-10</b>			Wind Briefing	
<b>WED. 2-24-10</b>	1048	Nat.Res.Com.	Provide for approval and taxation of certain power generating facilities using wind as a fuel source	<b>Signed 4-12</b>



**Natural Resources Committee  
2009 Carry-Over Bills**

<b>Natural Resources Committee 2009 Carry-Over Bills</b>				
1-22-09	LB 14	White	Provide energy conservation standards for certain state buildings	In Comm.
1-21-09	LB 42	Flood	Change provisions relating to rural water districts	GF
1-21-09	LB 43	Flood	Eliminate the Department of Natural Resources Interstate Water Rights Cash Fund	GF
3-4-09	LB 388	Langemeier	Change public power district officials compensation provisions	GF
2-18-09	LB 437	Haar	Create the Wind Energy Development Zone Task Force	In Comm.
2-5-09	LB 438	Fischer	Prohibits instream appropriations in fully or over appropriated areas	In Comm.
3-11-09	LB 439	Fischer	Adopt the Home Energy Alternatives Act	In Comm.
1-29-09	LB 482	Langemeier	Change provisions of the Nebraska Ground Water Management and Protection Act	In Comm.
1-30-09	LB 490	Giese	Change provisions relating to nonresident hunting permits	In Comm.
2-4-09	LB 491	Haar	Provide for home energy efficiency loans	In Comm.
2-27-09	LB 502	Langemeier	Change the Petroleum Release Remedial Action Act	GF
2-27-09	LB 504	Langemeier	Authorize permits and provide penalties relating to discharge of dredged or fill material into the waters of the state	In Comm.
2-20-09	LB 535	Stuthman	Change membership of the Nebraska Natural Resources Commission and provisions relating to natural resources districts	In Comm.
2-4-09	LB 565	Louden	Adopt the Woody Biomass Energy Act	In Comm.
2-19-09	LB 567	Dubas	Change provisions relating to the State Energy Office and the Director of the State Energy Office	In Comm.
3-4-09	LB 582	Dierks	Create the Nebraska Invasive Species Council	In Comm.
2-19-09	LB 591	Dierks	Change approval provisions relating to electric generation facilities	In Comm.
2-4-09	LB 624	Haar	Provide for energy efficiency loans for public buildings	In Comm.
2-20-09	LB 643	Schilz	Change and provide notice requirements of road construction near electric lines	Signed 3-3
3-11-09	LB 644	Mello	Adopt the Electronics Recycling Act	In Comm.
2-26-09	LB 651	Christensen	Adopt the Water Resources Revolving Loan Fund Act	In Comm.
2-11-09	LB 663	Janssen	Adopt the Net Metering Act	In Comm.
2-25-09	LB 666	Langemeier	Change provisions relating to the Niobrara Council	In Comm.

## SUMMARIES OF ENACTED BILLS

### **LB 689**

LB 689 eliminates the requirement that an excise tax (three-fifths cent) be assessed on corn and grain sorghum and credited to the Water Resources Cash Fund, and redirects funds collected. The excise tax, currently credited to the Ethanol Production Incentive Cash Fund, is scheduled to end on December 31, 2012. The tax is to go to the Water Resources Cash Fund beginning January 1, 2013.

#### **Details of Final Bill**

**Section 1** amends 61-218, which created the Water Resources Cash Fund, by eliminating the requirement that the corn and grain sorghum excise tax be credited to the fund beginning January 1, 2013.

**Section 2** amends 66-1345, which created the Ethanol Production Incentive Cash Fund, by requiring the State Treasurer to transfer one-half of unexpended, unobligated funds to the Nebraska Corn Development, Utilization, and Marketing Fund and the Grain Sorghum Development, Utilization, and Marketing Fund instead of the Water Resources Cash Fund. The other half of the unexpended and unobligated funds go to the General Fund.

**Section 3** amends 66-1345.01, relating to the excise tax levy on corn and grain sorghum, by eliminating the three-fifths excise tax that was to occur October 1, 2012 through October 1, 2019.

**Section 4** amends 66-1345.02, relating to collection of the excise tax on corn or grain sorghum, by eliminating the requirement that the collected excise tax be remitted to the State Treasurer for credit to the Water Resources Cash Fund. Also eliminates fund transfer procedures.

**Section 5** repeals the original sections.

### **LB 696**

LB 696 amends the Integrated Waste Program by imposing a waste disposal fee on solid waste transported out of the state for disposal. An adopted committee amendment made the new law applicable to certain permitted facilities under the Integrated Solid Waste Management Act, which will make it easier for the regulatory agency to monitor.

#### **Details of Final Bill**

**Section 1** amends 13-2042, relating to landfill disposal fees, by requiring a solid waste disposal fee on waste transported from Nebraska transfer stations, which hold a permit under the

Integrated Solid Waste Management Act, for disposal out of state. The fee is \$1.25 for each six cubic yards of uncompacted solid waste, and \$1.25 for each three cubic yards of compacted solid waste, or \$1.25 per ton of solid waste.

**Section 2** amends 13-2042.01, relating to landfill disposal fee rebates to municipalities or counties, by making the rebate applicable to solid waste transported for disposal out of state, but removes the language describing the amount of waste the ten cent rebate applies to.

**Section 3** repeals the original sections.

### **LB 743**

LB 743 authorizes conveyance of certain real property by the Game and Parks Commission.

LB 163 passed in 1973 and became section 90-215 in Nebraska Statutes. That provision authorized Game and Parks to convey Arnold State Recreation Area to Custer County for public park purposes. Apparently that transfer never did occur, and now the current proposal eliminates the need for 90-215.

The Game and Parks Commission, and any other state entity, must have statutory authority before making such a conveyance of land. The Legislature grants the authority on a transaction by transaction basis. These local communities would like to take control of these park areas so that they can give more time and resources to upkeep that the Commission is not able to do.

### **Details of Final Bill**

**Section 1** creates new language that authorizes the Game and Parks Commission to convey Arnold State Recreation Area in Custer County to the village of Arnold for public park purposes. Also provides a legal description of the land and a statement that if the village of Arnold ceases to operate the land as a public park and recreation area that the title reverts back to Game and Parks.

**Section 2** creates new language that authorizes the Game and Parks Commission to convey Atkinson State Recreation Area in Holt County to the city of Atkinson for public park purposes. Also provides a legal description of the land and a statement that if the city of Atkinson ceases to operate the land as a public park and recreation area that the title reverts back to Game and Parks.

**Section 3** amends 37-201 by adding a reference to the new sections.

**Section 4** creates new language requiring that property transferred under this act be maintained and operated according to specific standards listed in the bill.

**Section 5** repeals the original section 37-201.

**Section 6** repeals outright section 90-215, which authorized the Game and Parks Commission to convey Arnold State Recreation Area to Custer County in 1973.

**Section 7** contains an emergency clause.

## **LB 764**

LB 764 changes provisions relating to integrated management plans under the Nebraska Ground Water Management and Protection Act. This bill would amend the policy created by LB 962 in 2004 for the integrated management of ground water and surface water.

Currently, a natural resources district (NRD) is required to do an integrated management plan (IMP) only if a river basin, subbasin or reach within the district is determined to be overappropriated or fully appropriated by the Department of Natural Resources. Fourteen of the 23 NRDs are in some stage of the development of an IMP. This change allows the other NRDs in not fully or overappropriated districts to develop an IMP, and a new statutory mechanism was needed that would not require the NRD to implement mandatory stays on new wells. This bill provides not fully or overappropriated districts with the necessary statutory format to develop IMPs.

### **Details of Final Bill**

**Section 1** amends 46-715, relating to the development of integrated management plans, by allowing a natural resources district to partner with the Department of Natural Resources to develop an integrated management plan if its area has not been declared fully or overappropriated. A district is to notify the department if it intends to develop an IMP with the intention of creating a plan that will achieve and sustain a long term balance between water uses and water supplies. If an IMP is developed under this section and the department subsequently determines its area to be fully appropriated, the district and department may amend the IMP.

**Section 2** amends 46-717, relating to the type of information that is to be used to develop an IMP, by adding that IMPs developed according to the provisions of this bill must involve the district and department consulting with any party that relies on water from the affected river basin, subbasin or reach.

**Section 3** repeals the original sections.

## **LB 797**

This bill makes the Power Review Board's (PRB) publishing of the "conditions certain" report discretionary instead of mandatory.

In 1996, the Legislature passed LR 455 which directed the Natural Resources Committee to perform a study to examine issues related to competition and restructuring of the electric utility industry and the possible effects on the state. The first phase of the study examined the history and current status of Nebraska's electric industry and provided a comprehensive overview of the structure, governance, operations, financing and comparative effectiveness of Nebraska's consumer-owned electricity industry.

The second phase examined the transition of the electric utility industry nationwide and the possible impacts and options for Nebraska's electric industry. Based on those examinations, the Phase II report was to provide a planning framework for Nebraska centered on a "conditions certain" approach to retail competition. The "conditions certain" approach requires that specific preconditions in structure and market be in place when, and if, a transition to retail competition is to be made for Nebraska's electric industry.

In 2000, the elements of the "conditions certain" approach were incorporated into LB 901, which directed the Nebraska Power Review Board to hold annual hearings concerning the benefits of retail competition in the electric industry in Nebraska and what steps, if any, should be taken to prepare for retail competition. LB 901 also directed the board to submit an annual report to the Governor, with copies to the Legislature, analyzing five items or conditions concerning the electric system in Nebraska and the region to help determine when and if retail competition should be initiated – the "conditions certain" report.

The bill leaves the option of producing a report open, which the board will do if interest is shown.

By eliminating the need for a consultant to prepare the annual report, the PRB would reduce its budget by \$12,400 in FY2010-11, and \$4,000 in FY2011-12. A one-time allocation of funds for a consultant would be requested if the board finds it necessary to issue a report.

### **Details of Final Bill**

**Section 1** amends 70-1003, relating to the creation of the Nebraska Power Review Board, by eliminating obsolete language, and by eliminating the requirements that the board hold public hearings and issue an annual report on the steps to be taken to prepare the state for retail competition in the electricity market. The language instead allows the board to hold hearings and issue a report at its discretion and requires the board to consider the sufficiency of public interest. Further eliminates language allowing the board to submit periodic reports, in addition to the annual reports, on the same information if necessary.

**Section 2** repeals the original section.

## **LB 798**

The Litter Reduction and Recycling Act was created by LB 120 in 1979 to promote the protection of public health, safety, and well-being, the maintenance of the economic productivity and environmental quality of the state, and the conservation of natural resources through implementation of a comprehensive litter reduction and recycling program.

The Litter Reduction and Recycling Grant Program was created in 1979 by the Litter Reduction and Recycling Act. Funding is generated by an annual litter fee imposed on manufacturers, wholesalers, and retailers of products which commonly contribute to litter, engaged in business in the state and having annual gross proceeds of at least \$100,000. Funds are applied for and awarded to support programs to reduce litter, provide education, and promote recycling in Nebraska. Grants may be awarded to both public and private entities. The litter fee is \$175 per each \$1 million of gross sales of the designated products only, which amounted to around \$1.7 million in 2009.

### **Details of Final Bill**

**Section 1** amends 81-1566, which provides a termination date for the Nebraska Litter Reduction and Recycling Act, by striking the 2010 date and inserting 2015.

**Section 2** repeals the original section.

## **LB 832**

This bill eliminates a private insurance requirement relating to petroleum release remedial action because coverage is already obtained under the Leaking Underground Storage Tank Fund (LUST.)

Federal law requires underground tank owners to prove financial responsibility to cover the cost of cleaning up a release from underground petroleum storage tanks. According to the Nebraska Petroleum Marketers, insurance companies were reluctant to provide coverage so states created Leaking Underground Storage Tank Funds to provide coverage. Money in the Nebraska fund is generated through underground storage tank fees of nine-tenths of one cent on gasoline and three-tenths of one cent on diesel.

In 2005 the policy became that financial responsibility was to come from the private sector. It was agreed that starting on July 1, 2009, sites that had never had underground storage tanks on them would have to obtain insurance through the private sector. Because they also had to pay into the LUST fund, tank owners held that they were paying the equivalent to two insurance premiums.

## Details of Final Bill

**Section 1** amends 66-1501, which cites the Petroleum Release Remedial Action Act, by eliminating reference to section 66-1532, which states:

“Beginning July 1, 2009, the owner of any new tank at a site where tanks have not been previously located shall be fully insured through private insurance to cover the costs of any remedial action to such tank or the site on which such tank is located after such date.”

**Section 2** repeals the original section.

**Section 3** repeals outright section 66-1532.

## LB 836

This bill was introduced to address the deer over-population problem by implementing a mandatory, biennial deer depredation season. The original bill also would have provided for a two deer for one permit provision; a requirement that permits be issued within three days of such a season announcement; reimbursement to the landowner for half the permit fee when they produce a lawfully killed deer; deer hunters being allowed to hunt using artificial light; and a tax credit for deer killed.

The committee amendment replaced most provisions in the original bill and clarifies that the same rules used during regular hunting season apply to hunting under this act. Further floor action added the provisions of Sen. Louden’s LB 747, a bill to allow farmers and ranchers to kill predator mountain lions.

## Details of Final Bill

**Section 1** amends 37-201 by adding a reference to the new language.

**Section 2** amends 37-448, which provides for a special deer depredation season, by allowing the Game and Parks Commission to extend an existing deer hunting season for deer depredation. Permits under this section are to specify the species of deer, bag limits, and beginning and ending dates for the depredation or extended season. Further eliminates language allowing one deer per permit under this section; the requirement that permits be issued within three days of the season announcement; and the requirement that the landowner be reimbursed for half the permit fee for proof of a lawfully killed deer.

New language requires that: the permit fees be used to help pay for damage caused by deer; an unlimited number of free permits be provided to one owning or operating at least a 20-acre

farm or ranch within the designated hunting area for taking antlerless deer; and that permits be allowed for immediate family members who share ownership of the property.

**Section 3** amends 37-523, relating to hunting violations, by changing the radius in which hunting is allowed from 200 yards to 100 yards of an inhabited dwelling or livestock feedlot.

**Section 4** amends 37-559, relating to agricultural depredation predators, by defining “predator”, and allowing a farm or ranch operator to kill a mountain lion without notice or permission that is in the process of stalking, killing or consuming livestock on the operator’s property. Such operator is to immediately notify the commission to arrange for the transfer of the killed animal. Also clarifies that one is entitled to defend himself or herself or another person without penalty against a mountain lion that is stalking or showing aggression towards a person in its presence. Species that are protected by federal law are excluded.

**Section 5** creates new language that allows the commission to issue mountain lion-killing permits to farmers or ranchers who have notified them that a mountain lion caused depredation on the property under the farmer or rancher’s control, or of mountain lions preying on their livestock or poultry, and requires that arrangements be made for the transfer of the carcass. The commission is to confirm that any damage was caused by the mountain lion before a permit is issued. The farmer or rancher has up to thirty days to act on the permit and is required to notify the commission if a mountain lion is killed.

**Section 6** repeals the original sections.

## **LB 862**

LB 862 was introduced to allow qualifying natural resources districts (NRDs) to participate in water management programs (which may be required to maintain compact compliance), and to allow the proceeds of an occupation tax to be used to pay for the costs of qualified projects without issuing river enhancement bonds.

During floor debate the content of LB 785 was amended into LB 862. LB 785 was introduced to address exceptions to the “written consent” provisions of a law passed last year that requires one seeking certain transfers of water uses or irrigated acres, or who wants to participate in an incentive program under 46-739(8), submit to the affected natural resources district a report of title reflecting all liens against the land in which the water uses or irrigated acres are to be transferred.

## **Details of Final Bill**

**Section 1** amends 2-3226.01, relating to river-flow enhancement bonds of natural resources districts, by allowing a natural resources district to issue negotiable and refunding bonds and entitled river-flow enhancement bonds if:



- It has jurisdiction that is part of a river basin for which the district has adopted an integrated management plan (IMP);
- The IMP is in accordance with 46-715;
- The IMP refers to 2-3226.04; and
- The IMP explicitly states the district's intent to utilize qualified projects described in 2-3226.04.

[The programs authorized in Nebraska Revised Statute **2-3226.04** require that the funds shall only be used to pay or refinance the costs of (1) acquisition by purchase or lease of ground water or surface water rights; (2) purchase or lease or the administration and management, pursuant to mutual agreement, of canals and other works, including reservoirs, constructed for irrigation from a river or any of its tributaries; (3) vegetation management, including, but not limited to, the removal of invasive species in or near a river or any of its tributaries; and (4) the augmentation of river flows consistent with the authority granted under Chapter 2, Article 32.]

**Section 2** amends 2-3226.05, relating to the occupation tax levied by a district with an IMP as described in section 1, by adding a purpose for which the occupation tax may be used. The purpose is for payment of all or any part of the costs and expenses for one or more 2-3226.04 qualified projects. For districts that have more than one river basin within its jurisdiction, the occupation tax is to be confined to the geographic area affected by an IMP adopted pursuant to 46-715.

**Section 3** amends 46-739.01, relating to lienholder consent for water transfers under the Nebraska Ground Water Management and Protection Act, by clarifying that the subsection does not apply to certified water uses or certified irrigated acre transfers due to 1) a one-time transfer of four acres or less; 2) participation in an incentive program involving the transfer, purchase or retirement of four acres or less; or 3) a transfer that involves irrigation efficiency improvements, has one single-tract landowner, and has no reduction or increase in certified water uses or certified irrigated acres.

**Section 4** repeals the original sections.

## **LB 871**

LB 871 addresses a possible loophole in the statute that created the Apprentice Hunter Education Exemption Certificate program. The statute can be read as allowing apprentice hunters to be accompanied by one without a state approved firearm or bow hunter education course.

Sen. Fischer sponsored LB 690 in 2008, a bill that created an apprentice hunter education exemption certificate to encourage more young people to try hunting by allowing them to be accompanied and supervised by a licensed hunter who was at least 19 years old. The bill was signed by the Governor on February 7, 2008, and became effective in July, 2008.

Though no problems have occurred, Game and Parks Commission representatives believe that the law could be interpreted as allowing two unlicensed hunters to accompany and supervise each other while hunting.

#### **Details of Final Bill**

**Section 1** amends 37-413, relating to the firearm hunter education program under the Game and Parks Commission, by clarifying the criteria one must meet before being eligible to accompany a person with an Apprentice Hunter Education Exemption Certificate or those under 12 years old to hunt with a firearm or crossbow. The new language requires a person directly supervising a person under the age of 12 who is at least 19 but not older than 29 to have received certification for completing a course for firearm hunter education if hunting with a firearm or crossbow, or for bow hunter education if hunting with a bow and arrow.

**Section 2** repeals the original section.

#### **LB 911**

A law passed last year, LB 246, provided for the development of a state-wide strategic biotechnology plan and the commissioning of a non-profit organization focused on biotechnology issues. The bill required a final report to be issued by June 30, 2010, but the commissioning of the non-profit was delayed, so the Legislature agreed to an extension of the report due date. A contract with a three month extension was requested and signed. Therefore, a change to the original authorizing legislation was necessary to reflect the new date.

The contract authorized under current law between the non-profit entity and the Legislature notes that the final report is due on September 30, 2010.

#### **Details of Final Bill**

**Section 1** amends 50-501, relating to the state's interest in biotechnology, by striking June and inserting September, so that the report making recommendations for the development of a statewide strategic plan would be due on September 30, 2010.

**Section 2** repeals the original section.

**Section 3** contains an emergency clause.

#### **LB 993**

LB 993 allows additional uses for the fund that retains income from an excise tax on corn and grain sorghum.

### **Details of Final Bill**

**Section 1** amends 61-218, relating to the Water Resources Cash Fund, by adding that the fund may be used to enhance streamflows or ground water recharge in basins that are fully or overappropriated or bound by an interstate compact.

**Section 2** repeals the original section.

### **1010**

LB 1010 requires natural resources districts to utilize a new procedure for the use of eminent domain to take private real property for a recreational trail.

The committee amendment, AM 2029, replaced the original bill.

### **Details of Final Bill**

**Section 1** states the purpose of the new sections 1 through 8.

**Section 2** creates a new definitions section that includes “supermajority” as meaning sixty-seven percent and “private real property” as not including public land or land under the Board of Educational Lands and Funds.

**Section 3** creates new language that requires a district to consider the following before establishing a trail: the proposed route and mode of transportation; adjacent areas to be used along the route; characteristics making the route suitable as a trail; development, operation and maintenance plans; anticipated problems; status of real property ownership and potential use; estimated cost to acquire the real property; and the real property interest needed to do the trail, right-of-way acquisition process, and circumstances under which eminent domain may be used.

**Section 4** creates new language that allows a district to acquire private real property for the trail if the section 3 process is followed. If the district is not able to acquire property through good faith negotiations with the property owner, it may, by a supermajority vote, adopt a resolution calling for a public hearing, held no sooner than 45 days after notice, to determine whether to use eminent domain. If the board finds, by clear and convincing evidence, that the criteria are met, it may, by a supermajority vote, elect to use eminent domain.

The criteria: (a) a public hearing, with proper notice, on the proposed trail plan, (b) good faith attempts to negotiate with landowners that have failed, (c) consideration of all other possible

trail routes with special attention given to private property that would have to be acquired, (d) location of the trail took into consideration the directness of the route, trail design and costs, safety to users, vehicle operators, and adjacent persons. Also to the adverse impacts and intrusions on private landowners, (e) good faith attempts to address private landowners' concerns with trail design, privacy, land protection, management, and maintenance, and (f) trail development and management is "harmonized with and complement" established forest or agricultural plans for the private property.

**Section 5** creates new language that requires reasonable, mutually agreeable access to the portion of a parcel that has been divided by a trail which would otherwise be inaccessible by the property owner.

**Section 6** requires eminent domain proceedings to be conducted according to the existing statutes, which provide a process for how the power is to be completed.

**Section 7** states that the adjoining private landowner has no duty to maintain or repair the trail, and no duty to protect trail users from dangerous conditions, unless the condition is due to an intentional or negligent act of the landowner.

Also requires a written negotiated agreement between the district and landowner stating their respective rights and obligations.

**Section 8** allows a private landowner to appeal a district's decision to use eminent domain to the district court.

**Sections 9 through 12** contain technical changes and an emergency clause.

## **LB 1048**

### **Purpose**

To encourage and allow opportunities for private developers to develop, own, and operate renewable energy facilities for the export of wind energy from the state, while at the same time preserving the benefits Nebraskans receive as a result of the state's unique public power system.

### **Background/Existing Law**

Current Nebraska law is specifically drafted for the unique public power structure in place for Nebraska's electric suppliers. And, while Nebraska law does not prohibit the development of private energy resources, it does not have a process in statute that would clearly allow approval for generation and transmission facilities. With some exceptions for special generation applications for renewable energy, the Nebraska Power Review Board has historically been required by Nebraska law to base its approval of new generation facilities and transmission lines on necessity, cost, and non-duplication of facilities. These qualifiers are in

place to ensure that all development of electric generation and transmission facilities is done in such a way that it benefits the ratepayers in Nebraska with low electric rates and a high level of system reliability.

### **The Problem**

The current Power Review Board regulatory regime does not contemplate export of power outside the state. Wind developers are hesitant to move forward with export wind projects when the statutory process for getting approval for a generation or transmission project, regardless of the quality of Nebraska's wind, is unclear.

There are also eminent domain concerns by those financing private wind farms that create fear that a large development could be taken by a public power system. The statutes regarding eminent domain were written at a time when public power was directed to take over private electric utilities in the state and includes some language that appears to mandate the use of eminent domain. Lack of eminent domain authority for private renewable energy developers makes the construction of transmission lines, necessary for renewable energy export, difficult and costly.

### **Solution**

LB 1048 creates a process within Nebraska statutes for private development of renewable energy resources for export to primary markets outside of Nebraska by allowing the Nebraska Power Review Board to consider, and approve of, such renewable energy facilities for the purpose of energy export.

The legislation also deals with protections for both private developers of renewable energy for export as well as protections for the consumer-owned electric utilities in the state. The bill provides an exemption from public power's use of eminent domain for export projects, addressing a major concern of private wind project investors. In addition, the bill provides a new method for taxing projects that will benefit local communities and the developers by creating an alternative to the five-year depreciation of personal property schedule that is currently in place.

### **Details of Final Bill**

**Section 1** amends 13-518, which lists definitions under the Nebraska Budget Act, by clarifying that funds received from the nameplate capacity tax created in this amendment are not restricted funds.

**[This section was included because this is where individuals look for the definition of what is included within the definition of restricted funds.]**

**In 1996 the Legislature adopted a package of property tax bills that formed the basis for current budget restrictions and levy limits. LB 299 limited growth of county budgets for FY1996-97 and FY1997-98 through a calculation classifying property taxes as restricted**

funds. In 1998 the Legislature passed LB 989 to indefinitely extend the time limits. Subsequent bills limited tax levies and procedures. The restricted funds component of the budget limitations provision is borrowed from earlier budget limits. Restricted funds are received from property taxes, payments in lieu of property taxes, local option sales taxes, state aid, transfers of surplus user permits or regulatory fees not directly related to the activity funded, license or occupation tax in the second fiscal year the county receives a full year of receipts, any excess tax collections per 77-1776, and restricted funds budgeted for capital improvements but not spent.

Restricted funds are funds that are restricted by county budget (spending) lids. AM2129 provides that the nameplate capacity tax is not constrained by a spending lid for the first five years of the wind farm, thus providing counties with additional funding sources for that five year period. This was an accommodation to those counties that are up against their budget lids and close to being restricted from budgeting additional funding for projects. The counties want to use prospective tax revenues from large pending projects to make improvements that they have not otherwise been able to make, due to low tax revenues. It was agreed that this spending authority should not last forever, so this section effectively sunsets the spending lid exemption after the wind farm has operated commercially for five years.

In other words, it closes a loop. In the section of law (13-518) that states what tax funds are restricted by a spending lid, the nameplate capacity tax revenues are exempted for the first five years of the wind farm.

**Section 2** amends 70-1001, which contains a public power policy statement, by adding language that encourages and allows for the development of private renewable energy for export, but ensures that Nebraska's ratepayers are protected.

**[Intent language, to clarify state policy that Nebraska wants to encourage wind projects AND protect our public power system.]**

**Section 3** amends 70-1001.01, which provides definitions, by adding a definition for "certified renewable export facility" as one that:

- generates electricity using solar, wind, biomass, or landfill gas;
  - will be constructed and owned by an entity other than a public power system;
  - has a power purchase or similar agreement with an initial term of ten years or more;
  - has a power purchase agreement with an initial term of ten years or more for the sale of at least ninety percent of the output with a customer or customers located outside the State of Nebraska (excluding the ten percent output purchase that public power may make);
  - maintains such an agreement for the life of the facility; and
  - includes all generating equipment, access easement and interconnection equipment within the facility and connecting the facility to the transmission grid,
- and "stranded asset" is:

- a generation or transmission facility owned by an electric supplier which cannot earn a favorable economic return due to regulatory or legislative actions or changes in the market and , at the time of application, either exists or has been approved by the board or the governing body of an electric supplier.

**Section 4** amends 70-1013 , which contains language dealing with the hearing process for applications for electric generation facilities and transmission lines; applications; hearing; waiver; appearances; objections and amendments in Article 10, Section 70 dealing with the Nebraska Power Review Board. Also changes the time frame to hold a hearing from 30 days to 60 days and that for good cause the hearing could be scheduled up to 120 days from the filing of the application. The Board shall file its decision within 60 days.

**Section 5** amends 70-1014, containing the “least cost” clause on which the Power Review Board is to base its approval, by excluding a certified renewable generation facility from having to meet the standard.

**[Current Nebraska law requires the Power Review Board to only approve of new energy generation projects if they will result in the lowest cost for ratepayers.]**

**Section 6** creates new language that:

- Adds a definition for electric supplier applicable only to this section. Definition includes only public power systems;
- Provides conditional and final approval of a certified renewable export facility criteria for the Nebraska Power Review Board;
- Voids the approval if construction does not commence within 18 months unless good cause is shown;
- Requires reimbursement of costs not covered by a regional transmission organization tariff;
- Requires that electric suppliers serving loads greater than 50 MW be offered an option to purchase a pro rata share of up to ten percent of a facility’s output if it has a nameplate capacity of at least 80 MW;
- Sets application fee at \$5,000. Actual fee based on actual cost. Provides for refund and the collection of additional funds to cover reasonable expenses. Allows for an hearing if there is an objection to the costs;
- Requires an applicant to establish decommissioning security at the tenth year after approval and to submit a decommissioning plan to the board. Requirement waived if local government has enacted decommissioning requirements.
- Provides an exemption from eminent domain by an electric supplier or other entity if the purpose would be to acquire the facility for electric generation or transmission;
- Authorizes the use of eminent domain by an electric supplier to acquire the land rights necessary for the construction of transmission lines and related facilities for a certified renewable export facility. Deems such projects to be a public use;
- Provides that an electric supplier may be a party to a joint transmission development agreement for transmission facilities serving a certified renewable export facility if the

transmission facilities cross the service area of any electric supplier owning transmission facilities of 115,000 volts or more and such electric supplier is deemed to be required to receive notice pursuant to section 70-1013; and

- Establishes a decertification process for certified renewable export facility.

**[This is the meat of the bill. It provides the procedure to be followed to develop a large-scale wind project in Nebraska.]**

**Section 7** amends 70-1014.01, relating to special general application approval, by providing the same exemption from eminent domain provided to certified renewable export facilities.

**Section 8** creates new language providing for safety markings on “met towers” or wind measurement equipment so that low-flying aircraft operators can see them.

**[Safety provisions added at the request of the Nebraska Aviation Trades Association to avoid met tower/low-flying aircraft situations that have happened in other states.]**

**Section 9** amends 76-710.04, relating to eminent domain, by adding transmission lines to public projects that are exempted from the prohibition of the use of eminent domain for economic development purposes, and adds taking private property for a transmission line to serve a privately developed facility generating electricity using wind, solar, biomass, or landfill gas to the list of exemptions. Nothing in this section is to be construed to grant the power of eminent domain to private developers.

**[This language is to ensure public power is able to work with a private entity to build transmission infrastructure. Note: nothing in this section grants the power of eminent domain to private developers. The language only helps public power build transmission for wind projects.]**

**Also, one of the factors to be reviewed by the board in considering an application is whether the application will provide reasonably identifiable and quantifiable public benefits, including economic development to the state’s residents. To ensure that the quantifiable public benefit and economic development language does not trigger the prohibition against condemnations that benefit economic development projects, the language in 76-710.04 is needed.]**

**Section 10** amends 77-105, which defines tangible and intangible personal property, by defining all property used in the generation of electricity using wind as the fuel source as personal property to make it clear that no part of facility is real property.

**Section 11** amends 77-202, relating to property tax exemptions, by exempting personal property used directly in the generation of electricity using wind as the fuel source.



**Section 12** creates new language stating the Legislature’s intent to levy a nameplate capacity tax to replace property taxes currently imposed on wind infrastructure and that the tax is not to be singled out for General Fund use in times of economic hardship.

**Section 13** creates new language defining “commissioned” as a wind generation facility in which the turbine has been in commercial operation for at least 24 hours and connected to the electrical grid; “nameplate capacity” as the capacity of a wind turbine to generate electricity measured in megawatts; and “wind energy generation facility” as one that generates electricity using wind as the fuel source.

**Section 14** creates new language that:

- Requires payment of an annual nameplate capacity tax at a rate of \$3,518 per megawatt.
- Exempts wind energy generation facilities owned by public power or other entity and customer-generators.
- Clarifies taxes under this section are not to be construed to constitute restricted funds for the first five years after a facility is commissioned.
- Requires the Department of Revenue to collect the tax and to distribute such tax to the appropriate county treasurers within 30 days of receipt.
- Requires that the tax be imposed beginning the first calendar year the turbine is commissioned and provides that facilities commissioned prior to this act are to be taxed under the new system.

**Section 15** creates new language requiring the county treasurer to distribute revenue received under this act to local taxing entities that would have received the personal property tax revenue that is currently collected and provides a calculation method.

**[Replaces the property tax with a nameplate capacity tax so that the amount that is currently due can be spread out over a 20 year period for the benefit of the developer and the county to which the tax is being paid. No new taxes, just a current tax collected a different way.]**

**Section 16** amends 79-1018.01, relating to the school aid formula, by adding into the definition of “other actual receipts” the revenue from the nameplate capacity tax distributed under this act.

**Sections 17 and 18** assign placement of certain sections and repeal the original sections.

## **LB 1057**

LB 1057 creates the Republican River Basin Water Sustainability Task Force to study how to ensure sustainable water use in the basin, maintain compliance with interstate compacts, and avoid water-short years.

## Details of Final Bill

**Section 1** creates the Republican River Basin Water Sustainability Task Force. There are to be 22 voting members (excluding the state agency representatives) representing a cross-section of the Republican River Basin. The Governor is to appoint members representing the following entities, with the number of members to be appointed noted in parentheses: natural resources districts in the Republican River Basin (2); irrigation districts in the basin (4); University of Nebraska Institute of Agriculture and Natural Resources (1); Game and Parks Commission (1); Department of Agriculture (1); Department of Natural Resources (1); agriculture related businesses in the basin (2) and one representative each from a school district, city, county, and public power district in the basin.

The Legislature's Executive Board chairperson is also to appoint four ex-officio, non-voting senators, including two who reside in the basin, one with a portion of his or her district in the basin, and the chairperson of the Natural Resources Committee. The task force is to be housed within the Department of Natural Resources for administrative and budgetary purposes, advisory support may be requested from federal and state agencies, and non-state employees are to be reimbursed for expenses.

**Section 2** creates the Republican River Basin Water Sustainability Task Force Cash Fund, to be administered by the Department of Natural Resources at the direction of the new task force. Further states sources of funding and investment procedures.

**Section 3** amends 46-2,137, which created the Water Policy Task Force Cash Fund, by directing the State Treasurer to transfer \$50,000 from the Water Policy Task Force Cash Fund to the Republican River Basin Water Sustainability Task Force Cash Fund, and to transfer the balance of the Water Policy Task Force Cash Fund to the Water Resources Trust Fund.

**Section 4** amends 46-753, which created the Water Resources Trust Fund, by authorizing transfers provided for in section 3 to the fund.

**Section 5** repeals the original sections.

**Section 6** contains an emergency clause.

## SUMMARIES OF BILLS ADVANCED, INDEFINITELY POSTPONED AT END OF SESSION

### LB 747

LB 747 would have clarified the process under which one may kill a mountain lion that is a threat to a person, livestock or other property. An amended version of this bill was adopted in LB 836, a description of which can be found on page 15.

#### **Section-by-Section Description**

**Section 1** creates a reference to the new language.

**Section 2** amends 37-559, relating to destruction of predators, by adding a definition that a predator is a badger, bobcat, coyote, gray fox, long-tailed weasel, mink, opossum, raccoon, red fox, or skunk. New language allows a farmer or rancher, without a permit, to kill a mountain lion caught stalking, killing or consuming livestock on a farmer's or rancher's property. The farmer or rancher is further responsible for immediately notifying the Game and Parks Commission to arrange the transfer of the body. One is entitled to defend himself or herself or another person without penalty if the mountain lion is stalking, attacking, or showing unprovoked aggression towards another. Last, references to federal laws are updated or clarified.

**Section 3** creates new language giving the commission authority to issue a permit for killing mountain lions that are preying on livestock or poultry. The 30-day permit requires notification and transfer of the carcass to the commission. A farmer or rancher may qualify for a permit if they notify the commission to confirm there has been depredation by a mountain lion. The commission is to confirm damage was caused by a mountain lion prior to issuing a permit. Also allows the commission to adopt and promulgate rules and regulations.

**Section 4** repeals the original sections.

### LB 785

LB 785 would have amended the law passed last year that requires that one seeking certain transfers of water uses or irrigated acres, or who wants to participate in an incentive program under 46-739(8), submit to the affected natural resources district a report of title reflecting all liens against the land in which the water uses or irrigated acres are to be transferred. This bill was to address exceptions to the law.

An amended version of this bill was adopted in LB 862, a description of which can be found on page 16.

### **Section-by-Section Description**

**Section 1** amends 46-739.01, relating to lienholder consent for water transfers under the Nebraska Ground Water Management and Protection Act, by adding that the subsection does not apply to one-time transfers of ground water or participation in a financial or other incentive program for transfers, purchases or retirement of four certified irrigated acres or less.

The committee amendment, AM 2090, adds an exception for one landowner on a single tract of land where there is no reduction or increase in certified acres and the transfer is for irrigation efficiency improvements.

### **LB 895**

LB 895 would have changed the process for filling natural resources district board vacancies.

### **Section-by-Section Description**

**Section 1** amends 2-3215, relating to natural resources districts board vacancies, by adding a new procedure for vacancies when one occurs in the first year of the unexpired term, or prior to September 1 of the second year of the unexpired term. In such case, the appointee is to serve until the first Thursday after the first Tuesday in January after the next regular general election. At that regular general election, a director will be elected to serve the unexpired term.

However, if the vacancy occurs after September 1 of the second year, or during the third or fourth year of the unexpired term, the appointee is to serve until the term expires.

**Section 2** repeals the original section.

## SUMMARIES OF BILLS HELD IN COMMITTEE, INDEFINITELY POSTPONED AT END OF SESSION

### LB 755

This bill was introduced in response to issues surrounding the Keystone XL pipeline project that will run through Nebraska. It would have provided requirements and fees for certain oil or natural gas companies.

TransCanada is building a 1,300 mile, \$5.2 billion pipeline from Canada through Nebraska to Illinois refineries. Affected landowners in Nebraska and other states formed Landowners for Fairness to address easement payments and liability for leaks. The group is also concerned about liability for environmental issues that may come up.

#### **Section-by-section description:**

**Section 1** creates new language requiring landowners be held harmless from liability for oil or natural gas pipelines operating interstate or intrastate unless damage is intentional. Requires the pipeline company to have an insurance policy insuring all affected landowners for litigation costs and damage awards or settlements.

Topsoil reclamation is to be done by the standards of the Natural Resources Conservation Service of the USDA for construction of a pipeline. The pipeline company is to continue topsoil reclamation until approved by a USDA agent.

Requires that new pipelines be buried and maintained at a depth of five feet.

**Section 2** creates new language exempting certain public utility pipelines. Creates an annual oil or gas pipeline fee beginning January 1, 2011, to be distributed to the state, county, affected school districts and affected landowners based on the units of product, with the unit price based on the New York Stock Exchange average annual price for oil by the barrel and natural gas by the cubic foot. Multiply the unit price by the number of units transported annually in the state through the pipeline calculated per mile using the set out formula. Distributions are to be: twenty percent to the state, counties, and school districts, and forty percent is to be paid to the landowners.

Further allows the attorney general to bring an action for unpaid fees.

**Section 3** provides that the new sections supersede existing state or local legislation on the topic.

**Section 4** contains a severability clause.

**Section 5** contains an emergency clause.

### **LB 845**

LB 845 was introduced to encourage state government to implement more energy efficient policies in its buildings. There have been various Executive Orders and Nebraska Energy Office programs over the years that encouraged agencies to utilize energy efficient practices.

#### **Section-by-section description:**

**Section 1** creates new language requiring each state agency to develop and implement a plan for conserving energy and requires them to set a percentage goal for reducing its use of electricity. The plan is to include use of “switchable power strips”. The plans are due to the Energy Office by December 1, 2010 and the agencies are to report progress annually.

**Section 2** amends 81-1603, relating to Energy Office powers, by authorizing the compilation of agencies’ conservation plans for distribution to the Governor and Legislature.

**Section 3** repeals the original section.

### **LB 932**

This bill would have changed provisions relating to repayment of financial assistance by natural resources districts.

#### **Section-by-section description:**

**Section 1** amends 2-3226.06, which authorizes payments to water rights holders, by clarifying that if the Legislature requires repayment of funds from the Water Contingency Cash Fund paid to water rights holders, then repayment may be made under LB 701 (rather than “shall” be repaid under LB 701).

**Section 2** amends 2-3226.07, which creates the Water Contingency Cash Fund, by eliminating the requirement that a natural resources district contain a river subject to an interstate compact among at least three states and includes at least one irrigation district within the compact river basin, and replacing it with the requirement that the district contain part of a river basin in which a majority of districts have adopted controls, such as ground water meters.

**Section 3** amends 2-3226.08, relating to repayments to the Water Contingency Cash Fund, by eliminating the requirement that the district reimburse the Water Contingency Cash Fund if it did not collect the tax, and instead providing that if the district is no longer authorized to use or levy the tax described in this act, then the district has no obligation to repay the financial

assistance received. Also eliminates the requirement that reimbursements be made by June 30, 2013.

**Section 4** repeals the original sections.

### **LB 960**

This bill would have changed provisions relating to net metering. Last session the Legislature passed and the Governor signed LB 436, a bill to allow net metering. The law became effective at the end of August, 2009. LB 436 allowed utilities to contract with customer-generators with renewable generation units having a rated capacity at or below 25 kilowatts. Over the interim, the committee conducted an interim study on the effects so far of LB 436 on the utilities. That report can be found on the Legislature's website.

#### **Section-by-section description:**

**Section 1** amends 70-2002, containing definitions related to net metering, by adding a definition of nonresidential customer-generator as one not located in an area zoned for residential use. Adds that a qualified facility is one that has a capacity of 25 kilowatts for residential customer-generators, and 125 kilowatts for nonresidential customer-generators. Adds a definition of residential customer-generator as one that is located in an area zoned for residential use.

**Section 2** amends 70-2003, relating to local distribution utilities, by allowing a utility to enter into an agreement with nonresidential customer-generators with more than 125 kilowatts.

**Section 3** repeals the original sections.

### **LB 964**

This bill would have prohibited the leasing of land in a county road right-of-way for oil and gas exploration and development. This change is to a long-standing statute that allows counties, cities and other political subdivisions to enter into oil and gas leases.

#### **Section-by-section description:**

**Section 1** amends 57-218, relating to oil and gas leases by governing boards, by excepting authority for county boards to enter into an oil and gas lease for exploration and development in a county road right-of-way.

Also defines county road right-of-way as an area designated a part of the county road system and not vacated pursuant to law.

**Section 2** repeals the original section.

### **LB 1011**

This bill would have eliminated a natural resources district's power of eminent domain for recreation trails. The issue was the subject of an interim study, LR 124, on which the committee held a public hearing and issued a report.

The findings in the study were intended to assist the committee with the development of a policy and procedure to be used when an agreement cannot be reached between an NRD and landowners. LB 1010 was enacted as the remedy to this issue.

#### **Section-by-section description:**

**Section 1** amends 2-3234, relating to a natural resources district's power of eminent domain, by adding an exception to the power for development or management of recreational trails or corridors, unless associated with a flood control structure.

**Section 2** repeals the original section.

**Section 3** contains an emergency clause.

### **LB 1016**

LB 1016 would have adopted the Nebraska Statewide Water Planning Commission Act. This bill was introduced in response to the idea (mentioned by members of the Water Policy Task Force and the natural resources districts) that an independent entity would be best suited to develop a statewide water plan.

#### **Section-by-section description:**

**Section 1** creates new language naming the new provisions the Nebraska Statewide Water Planning Commission Act.

**Section 2** provides definitions of commission and executive director.

**Section 3** creates the Nebraska Statewide Water Planning Commission, which is to have seven members, appointed by the Governor and confirmed by the Legislature, and provides for their terms.

**Section 4** allows the commission to hire an executive director, and provides the director's duties.



**Section 5** allows the executive director to adopt and promulgate rules and regulations.

**Section 6** provides duties for the commission, including the development of a statewide water plan, maintaining and maximizing water use, planning for water management that encourages economic health and prosperity, and making recommendations to the Governor and Legislature.

**Section 7** creates the Nebraska Statewide Water Planning Commission Fund, and requires that funds in the Division of Planning and Assistance of the Department of Natural Resources, and leftover funds from the Water Policy Task Force, be transferred to the new fund.

**Sections 8 through 13** provide for the manner in which statewide water planning is to take place, by making technical/clean-up changes.

**Sections 14, 15 and 16** contain general provisions that refer to state entities and provide duties for the Department of Natural Resources, by adding reference to the newly created commission.

**Section 17** repeals the original sections.

## **LB 1019**

This bill would have provided for trails dispute boards to decide disputes between county boards and natural resources districts concerning recreational trails.

### **Section-by-section description:**

**Section 1** creates new language stating that if a majority of the county board disputes the alignment or right-of-way acquisition of a recreational trail proposal by a natural resources district, it may vote to create a trails dispute board for resolution. The Governor and district must be notified. The dispute board would exist until the dispute was resolved, and may be reconvened. One who would receive a financial benefit or detriment would not be eligible for the board unless "such benefit or detriment is indistinguishable from the effects of such action on the public generally or a broad segment of the public." The Open Meetings Act applies.

Within 45 days of notification of the board's creation: the district is to appoint two members, the county board two members, and the Governor three members to serve on the board. The Governor appointees may not reside in the affected county and are to be taken from a list provided by the State Highway Commission.

The trails dispute board:

- Is to convene within 50 days;

- May take action with the vote of four members;
- Is to select a chair and support staff;
- Select a mediator within 15 days of convening;
- Have its NRD and county members meet with the mediator and mediate within 45 days of the meeting.

If mediation is successful, the agreement is to be implemented. If unsuccessful, the dispute and plans are submitted to the dispute board, and disputes between them are allowed for two weeks after. The dispute board has 45 days to find a solution. A public hearing is to be held, at which anyone may testify.

The solution must: allow the NRD plan to move forward; choose an alternate route; or prohibit use of eminent domain for the trail.

The dispute board has 15 days to issue a final decision. The dispute board may be reconvened to address problems. Expenses are to be shared by the county board and the NRD board.

Defines a recreation trail as a trail developed for recreational purposes, not in conjunction with a water project of a natural resources district.

#### **LB 1054**

LB 1054 would have adopted the correlative rights doctrine relating to the use of ground water as prescribed. The doctrine of correlative rights holds that water users must share in times of shortage; in times of abundance, users can pump what they can reasonably and beneficially use. All are expected to reduce consumption when there is a shortage. Correlative rights are managed by the natural resources districts.

#### **Section-by-section description:**

**Section 1** amends 46-701, which cites the Nebraska Ground Water Management and Protection Act, by adding reference to the new language.

**Section 2** amends 46-706, which lists the definitions of the Act, by adding the definition of correlative rights as meaning a coequal right of landowners over a common aquifer to extract water from the aquifer without (a) unreasonably harming other landowners by lowering the water table, (b) directly and substantially affecting a watercourse, or (c) reducing artesian pressure.

**Section 3** creates new language stating that the state adopts the correlative rights doctrine as it applies to ground water. Further states that the doctrine applies when the department or a district determines it is necessary to comply with a compact, then allocations of ground water in the basin for irrigation may be reduced so that landowners share the shortfall equally.

If the department reduces allocations to zero, then it is to provide just and fair compensation to the landowner.

**Section 4** repeals the original sections.

### **LB 1056**

This bill would have provided for measurement of aquifer depletion and limitations on irrigation as prescribed. The provisions in this bill represented a new policy for establishing groundwater allocations based on the depletion amounts that have occurred since predevelopment of groundwater supplies.

#### **Section-by-section description:**

**Section 1** amends 46-701, which cites the Ground Water Management and Protection Act, by adding reference to the new language.

**Section 2** creates new language requiring the Department of Natural Resources to work with the Conservation and Survey Division of the Institute of Agriculture and Natural Resources at the University of Nebraska to find a method of measuring aquifer and ground water changes in each river basin. Also requires the department to measure aquifer and groundwater changes yearly and report findings to the Legislature annually on December 31.

*Change is to be determined based on a comparison to saturation thickness of the aquifer in the base year 1963. The department determines the percentage change in the aquifer or ground water relative to the base year and the area in each basin where change has occurred.*

If change results in depletion to an area greater than ten percent but not more than twenty percent of the base year saturation thickness, then meters are to be placed on all irrigation wells in the depletion area of the basin to measure water usage. Ground water allocations for irrigation are to be imposed on all landowners in the depletion area.

If the change is more than twenty percent but less than thirty percent of the base year saturation thickness, no landowner may use more than fifty percent of the annual allocation of ground water under subsection 2 of this section for irrigation. Unused allocation may be transferred outside the depletion area.

If there is a change resulting in a depletion of more than thirty percent of the base year saturation thickness, no landowner may use any portion of the allocation for irrigation. Unused allocation may be transferred outside the aquifer or depletion area.

**Section 3** creates new language that allows use of ground water allocations for irrigation to resume for areas where recharge has occurred since the previous annual measurement

showing that aquifer depletion is no longer greater than thirty percent of the base year saturation thickness.

**Section 4** repeals the original section.

### **LB 1076**

This bill would have changed provisions relating to evaluation of river basins, subbasins, and reaches. The provisions in this bill were part of the original LB 862 that passed in 2004.

#### **Section-by-section description:**

**Section 1** amends 46-713, relating to Department of Natural Resources annual river basin evaluation, by eliminating the language that exempted a river basin, subbasin or reach for which an integrated management plan was being developed from the mandatory annual evaluation requirement.

Eliminates the provision that exempted overappropriated river basins, subbasins or reaches from being evaluated by the department.

Also eliminates the requirement that in order for a river basin, subbasin or reach to be deemed overappropriated it must be subject to an interstate cooperative agreement with three or more states.

**Section 2** repeals the original section.

## SUMMARIES OF BILLS INDEFINITELY POSTPONED

### LB 885

LB 885 would have transferred the responsibilities of the Nebraska Oil and Gas Conservation Commission and the State Energy Office to the newly created Nebraska Energy Commission.

The Nebraska Oil and Gas Conservation Commission was created in 1959. The Energy Office was originally created by executive order in November 1973 as the Fuel Allocation Office within the Department of Revenue. The bill would have taken all of the duties performed by the State Energy Office and merge them into the office of the Oil and Gas Conservation Commission.

#### **Section-by-section description:**

MOST OF THE BILL'S PROVISIONS ARE NOT SUBSTANTIVE AND ENTAIL: REFERENCES TO THE NAME OF THE PROPOSED NEW COMMISSION, REFERENCES TO THE NEW LANGUAGE IN THE BILL, REMOVAL OF OBSOLETE LANGUAGE AND OTHER TECHNICAL CHANGES IN THE CHAPTERS ON: OFFICIAL BONDS & OATHS; CITIES, COUNTIES & OTHER POLITICAL SUBDIVISIONS; IRRIGATION & WATER REGULATION; MINERALS, OIL & GAS; MONEY & FINANCING; OILS, FUELS & ENERGY; STATE ADMINISTRATIVE DEPARTMENTS; POWER DISTRICTS & CORPORATIONS; PUBLIC LANDS, BUILDINGS & FUNDS; AND STATE OFFICERS.

THE SUBSTANTIVE CONTENT IS IN THE FOLLOWING SECTIONS:

**Section 13** amends 57-904, which establishes the Oil and Gas Conservation Commission, by changing that commission to the Energy Commission, and requiring the Governor to appoint two additional commissioners with experience in renewable energy production and energy conservation.

**Section 14** amends 57-905, relating to the Oil and Gas Conservation Commission's duties, by adding duties relating to: energy assessments, data collection and analysis; recommendations to the Governor and Legislature; educating and consulting with the public; collecting and disbursing funds; federal level participation; preparing for energy shortages; assisting local government; and conservation promotion. Also allows the new commission to: do rules and regulations; enter into contracts; carry out all necessary duties and responsibilities; and form advisory committees, but not to perform powers delegated to other state agencies.

**Section 20** amends 57-917, relating to the commission's director, by renaming the Oil and Gas Conservation Commission director the Energy Commission director and removing the requirement that the director be an experienced, qualified petroleum engineer.

**Section 49** amends 81-1607.01, relating to reports from the Energy Office, by requiring that any money in the State Energy Office Cash Fund be transferred to the Nebraska Energy Commission Cash Fund.

**Section 71** creates new language clarifying that contracts and obligations entered into by either the Oil & Gas Commission or the Energy Office are to be recognized, and funds designated to such contracts or obligations are to be transferred accordingly. All licenses, certificates, registrations, permits, seals or other approvals issued by the separate entities are to remain valid, unless revoked or if they expire, under the original names of the issuing entity. All documents and records may be authenticated by the new commission for legal purposes.

**Section 72** creates new language clarifying that all rules and regulations set by the two entities are to remain effective, all legal action commenced before creation of the new commission is to remain active, and any references to the separate entities are to be interpreted as applying to the new commission.

**Section 73** creates new language clarifying that employees of the Oil & Gas Commission and Energy Office are to become employees of the new commission without penalty and according to any applicable bargaining agreement.

**Section 74** creates new language clarifying that all property of the two separate entities become the property of the new commission.

**Section 87** provides an operative date of January 1, 2011.

**Section 88** repeals the original sections.

**Section 89** repeals outright 57-901, 81-1601, 81-1602, 81-1603, 81-1605, and 81-1612.

## **LB 1025**

LB 1025 would have changed provisions relating to stays on new water appropriations.

### **Section-by-section description:**

**Section 1** amends 46-714, which provides the procedures to be followed when the Department of Natural Resources declares a basin to be fully appropriated or overappropriated, by allowing the department to act on an instream flow water use application or other use not involving a consumptive use, as long as there is no harm to senior surface water appropriators or ground water users with wells depending on recharge which were in place before the date the basin was designated as overappropriated or preliminarily fully appropriated.

**Section 2** repeals the original section.

## INTERIM STUDY RESOLUTIONS

### REPORT ON THE PRIORTIZING OF INTERIM STUDY RESOLUTIONS Pursuant to Rule 4, Section 3(c)

COMMITTEE: Natural Resources Committee

DATE: April 6, 2010

The following resolutions were referred to the Committee on Natural Resources. The committee has prioritized the resolutions in the following order:

<b><u>Resolution No.</u></b>	<b><u>Subject</u></b>
474	Interim study to examine aquifer depletions in the State of Nebraska
465	Interim study to examine the benefits associated with constructing another nuclear power plant in Fort Calhoun, NE
473	Interim study to examine the correlative rights doctrine relating to the use of ground water and clarify a definition for Nebraska statutes
478	Interim study to examine proposals to create a statewide water planning commission or agency focusing on the development of a statewide water plan to manage Nebraska's water resources
435	Interim study to examine issues relating to oil and natural gas pipelines in the State of Nebraska
450	Interim study to examine the establishment of an electronic waste recycling program in Nebraska
481	Interim study to examine the practice of prescribed burning such as controlled burns and the function of prescribed burning in managing plant and animal communities
491	Interim study to examine requiring a boating education course in order to reduce the number of accidents
523	Interim study to examine the impact of LB 436 which established a statewide net metering policy
508	Interim study to examine the availability of land for hunters in the State of Nebraska
524	Interim study to examine regulation of renewable energy generation in other states and in regional transmission organizations