

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
November 06, 2009

---

[LB9 LB12]

The Committee on Natural Resources met at 1:00 p.m. on Friday, November 6, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB9 and LB12. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Ken Haar; Beau McCoy; and Ken Schilz. Senators absent: None. []

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee for the hearings today on LB9 and LB12. I'd like to welcome everybody that's here in attendance, in the crowd, as those that are as well watching us on the Internet as well as closed captioned television in many of our communities as part of our ability to keep you informed. I am Senator Chris Langemeier, I'm the chairman of the committee. I'd like to introduce those around the table. And we will continue to have more join us, so I'm going to talk about spots and I'll introduce them as they come in. But we'll start today, to my far left, we have Senator Ken Haar from Malcolm, Nebraska; and we have Senator Annette Dubas joining us who is also the vice chair of the committee, from Fullerton; we have Laurie Lage who is the legal counsel for the committee. To my right or to your left we have Senator Deb Fischer from Valentine, Nebraska; we have Senator Tom Carlson from Holdrege, Nebraska; we have Senator Tanya Cook from Omaha, Nebraska; and then Barb Koehlmoos is the committee clerk on the end for the committee. At this time we would ask that you turn your cell phones off in respect to those that are going to testify here today. If you are here to testify, we have in the corners of each room we have this green sheet. We'd like you to fill it out so we can help us keep a clear and perfect record to the hearing and the procedures before us today. And when you come up we would ask you to state and spell your name for the record before you start to testify, as well as then give this green sheet to the committee clerk when you come up. Now if you are here and you don't choose to testify but you want to be on the record in opposition or support of a bill for the official record and would like to, there's also this form in the back corners. It's a grid type form that you can give us your name and address and the bill you're here about and whether you support or oppose it. So we will have you in the record as being in attendance and having an opinion, even if you don't care to share it with us. So we do appreciate those that do that as well. At this time we are, as posted on the door, we have LB9 and LB12. I am the introducer of LB9 and I'm going to be here today for awhile. So we're going to give Senator Stuthman, who introduced LB12, we're going to go in a little backwards order. We're going to let him go first since he is here and has other things he would like to do as he does not sit on the committee. And so with that, Senator, welcome to the Natural Resources Committee. [LB12]

SENATOR STUTHMAN: Thank you, Senator Langemeier and members of the Natural Resources Committee. For the record, my name is Arnie Stuthman, A-r-n-i-e S-t-u-t-h-m-a-n, and I represent the 22nd Legislative District. The reason that I had

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
November 06, 2009

---

introduced this bill is the fact that I was trying to protect the checkoff funds. And in the discussion and the debate that we had with the government...when the Governor made his presentation, he said, yes, I realize that, but he said, find some type of replacement for it. So I went and searched for some funds to hopefully replace that dollar amount. And the way I understand it right now, the Appropriations Committee has met and they have decided that, you know, they support the fact that these funds should not be utilized to help with the financial situation of the state. One of the things that I don't want to happen is the fact that I don't want to send mixed messages out to the public and to the people of the state of Nebraska that we passed something one year and we turned around and changed it the next year. I think this can be a situation in the future with term limits, one body, one group will pass legislation and when a totally new group comes in of 20 to 22, things could be changed. And that will probably be the effects of term limits. The reason that I went for going for this tax credit on wind energy, on alternative energy is the fact that it was about \$1.2 million. And that was what we really needed. So I thought since there's been no applications or anyone has filed for it at the present time, then I figured we could utilize that for this next year, and possibly \$2.4 million in the second year, which would help greatly to preserve the fact of...the use of those checkoff dollars which are producer dollars. I understand that Senator Dubas has introduced a bill to give producers an opportunity to voice their opinion on the concerns of taking those checkoff dollars to help with the financial statement of the state of Nebraska. And, Senator Dubas, I thank you for that. As you know, I have supported wind energy, the bill last year. And we do have one very successful project that is either complete or near completion, the one up at Bloomfield, which has created jobs for the area. It has created revenue and a tax base for the school system. And I think that's very important for rural Nebraska because I always said we need to grow Nebraska, we need to get more people to the state of Nebraska to help with the paying of the taxes. I think there are other projects that are in the making that will utilize these funds in the near future. And you know, I don't want to rock the boat and send the message out that we put these out here, these funds, these tax credits for people to come to the state of Nebraska. And now when they decide to come to the state of Nebraska, make the applications, and say, well, I'm sorry but they took those funds away. I don't want to send that message. So that is why I introduced the bill. And I think it is very important, you know, for the ag producers in the state of Nebraska to come forward and also that we send the right message to the people of the United States and other states around that we're serious about what we do, and we're serious about the ag producers in the state of Nebraska on their contributions to their own personal funds that are used mainly for research, education and market development. And by that market development in these organizations, such as the Corn Board, they do add to the value of the state of Nebraska, which is definitely a benefit and does help with revenue coming into the state of Nebraska. So I...it is my intent, I don't know if there is going to be anyone that is going to speak on this. But I would ask the board, I will waive closing. I would ask the Natural Resources board to indefinitely postpone this bill and I would respect that. And that is my intent at the present time because I think that we have alerted the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
November 06, 2009

---

policymakers of the fact that we are serious about checkoff dollars, but we're also serious about keeping new business in Nebraska. So with that, I'd be open to any questions. [LB12]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB12]

SENATOR HAAR: Senator Langemeier. Senator Stuthman, do you agree with the proposal to put wind turbines in the Senate Chamber? (Laughter) [LB12]

SENATOR STUTHMAN: I would support it. It depends upon what area of the Chamber you're going to put them in, because I definitely have areas that could...that wind turbines would have...it would be high speed volume on them. (Laughter) [LB12]

SENATOR HAAR: Thank you very much. [LB12]

SENATOR LANGEMEIER: Thank you. Senator Carlson. [LB12]

SENATOR CARLSON: Senator Langemeier. Senator Stuthman, I've heard it said quite a bit that we've already got enough wind in the Legislative Chamber. (Laugh) [LB12]

SENATOR STUTHMAN: Yes, I think there probably is enough in there. I've got a license plate to prove it. My license plate is "Windy Hills." [LB12]

SENATOR CARLSON: Okay. [LB12]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB12]

SENATOR STUTHMAN: Thank you. [LB12]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. At this time, I'd like to introduce, to my far left on the end, Senator Beau McCoy has joined us from Elkhorn and Omaha. And then two over, Senator Ken Schilz has joined us from Ogallala. I'd also like to introduce Courtney Schuster, from Lincoln, who is a student at UNL, who is our page here today. I want to thank her for helping us through this process. We would now like to take testimony from those that would like to testify in support of LB12. Like to take testimony...seeing none, is there testimony in opposition? Seeing none, is there any testimony in a neutral capacity? Seeing none and, Senator Stuthman, you still care to waive? Thank you very much. I think your wishes will be granted. Thank you very much. At this time I will close the hearing on LB12 and I'll open the hearing...actually, I turn it over to the Vice Chair, Senator Dubas, as I open on LB9. [LB12 LB9]

SENATOR DUBAS: Good afternoon. [LB9]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
November 06, 2009

---

SENATOR LANGEMEIER: Senator Dubas and members of the committee, thank you for the opportunity to sit on this side of the table for a little while. I introduced LB9, very similar to Senator Stuthman's comments on the concern about the use of corn and grain sorghum excise...checkoff to help balance the state's budget. Two years ago when we passed LB701, as part of that bill there was a need for funding of the State Water Cash Fund. And as part of that fund there is an excise tax on corn and grain sorghum that was set to expire that was currently put into the Epic Fund to help ethanol promotion in Nebraska. That was set to expire on 12-31-2012. In LB701, we extended that as well as then put it into the Water Cash Fund. It would generate potentially about \$10.5 million to \$11.5 million a year to go into the Water Cash Fund, which we put in the Water Cash Fund right now \$2.7 million of General Fund dollars. And so the intent was agriculture will participate. And at that time, many of us, including myself said that we are not going to...we are going to look for alternative sources to fund the Water Cash Fund. Now I sit here today and tell you that I think the Water Cash Fund is extremely important. The idea of LB9 was not to say that we don't need a Water Cash Fund, but we don't need to fund a Water Cash Fund. As we all know in this committee, water issues are growing more, and more, and more every day. So I introduced LB9 as a reminder to all of us and to us that if we look to use the current checkoff dollars from corn and grain sorghum, maybe we don't want to use them again in 2013 for a different purpose, as then a checkoff becomes more of a tax than a checkoff in my mind. Now I have for those listening and in the crowd we have asked for an AG's opinion whether LB9 fits within the scope of our call. And they have verbally committed to me that it probably doesn't, and not so much because of the idea, but the way I wrote it, the way it's drafted. We would need to change some things with that. So for the committee's sake and those that are here today, LB9 cannot move forward whether we want to or not because the AG's Office when they render an opinion that says it's not within the call and we adopt it, they are responsible for immediate challenge of any bill that is deemed not within the call. So it can't move forward as drafted. We have some ideas how to redraft it to make it fit within the call, but it would have to be offered as an amendment to the bills basically 1 through 5 that you'll see coming out of Appropriations and Education that we will see later in weeks to come, days to come, I should say, as those committees conclude. So with that, I'm well aware that LB9 will not advance but I think it's a topic that is all dear to each and every one of our hearts as we had the discussion with LB701. And those of you that are new, you have been demonstrated on a daily basis how funding for water is going to be very future into the future. And we will have to continue to look for permanent sources of funding to fund water issues. So with that, I will conclude. I would ask those that testify behind me, knowing that this is not going to be...go forward, to be brief but give us their thoughts. I've asked a number of people that were going to come down and testify, I've advised them that it can't go forward, so they can kind of save their fire power. So we'll probably have less testimony than if this bill could go forward. The room probably would have been filled with grain producers that I've tried to slow down in this process. So with that, I would open myself up for questions if there are any.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
November 06, 2009

---

[LB9]

SENATOR DUBAS: Questions for Senator Langemeier? Senator Haar. [LB9]

SENATOR HAAR: Senator Dubas. Senator Langemeier, since I am only a year into this, can you tell me some of the uses that the Water Resources Cash Fund has been put to? [LB9]

SENATOR LANGEMEIER: It's a really good question. The Water Cash Fund was designed to help in implementation through...it wasn't specifically designed for 962, but it gets used for some issues in that. It was designed to, I think, one of the bigger uses was for the Platte River Recovery Act. As we start to chart our way down that act, we're going to need to do a number of things, whether it's buy habitat for wildlife, augment flows, and a number of those type of things. And so we're going to continuously see a demand for that as that may be a source to continue vegetation management into the future if the economy comes around, as well as the deal with compact issues, as well as the Platte River recovery, as well as, one of the bigger things I think we thought when that was created is to start to use that money through DNR for studies. So we truly know how everything is connected. As we use certain models in different parts of the state at some point we might start to look at how we can use models for Nebraska versus...or you get to use a Jenkins, you get to use the Loup, you get to use the L Model I should say, not the Loup, but the L Model on the Loup Model to make sure we know what we're using, a true picture of what our water use is. [LB9]

SENATOR HAAR: Do you know if the money for the clearing of the rivers and so on came out of this cash fund, or is that a different cash fund? [LB9]

SENATOR LANGEMEIER: No. Senator Carlson introduced a bill that was a direct appropriation for his first two years, I believe. And then re-extended that, which we had in this committee...no, Ag Committee had it, I take that back, which re-extended the program. But he has found alternative sources outside the legislative body and the General Fund to fund that project. I think you saw the industry, whether it's the feds and a number of people saw the benefit in that and made it a littler easier to hit USDA up for some funding. [LB9]

SENATOR HAAR: Thank you. [LB9]

SENATOR DUBAS: Other questions? Senator Carlson. [LB9]

SENATOR CARLSON: Thank you, Senator Dubas. Senator Langemeier, I fully support the bill. I really don't think that it fits into this session. And if that's the way it goes, would it be your intent to bring it back in the next session, come back in January? [LB9]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
November 06, 2009

---

SENATOR LANGEMEIER: Will we bring LB9 back? No. And the reason we wouldn't bring LB9 back because trying to meet the call, what I've done with LB9 is just stop the placement of the money into the Water Cash Fund. If I would then try to redirect it any place, it got me a little more questionable whether I was in the call. So even if we did LB9, that would just stop it. We would have to come back in January with a bill to say, what are you going to do with that money in 2013? So would the concept come back? Yes. But would this bill? No, because it needs to be bigger. I would have to come back with another companion bill in the regular session to either stop the excise tax, which is was supposed to stop, but I can't because that really messes me up with trying to stay within the call. So it's not in this bill. So I would have to come back in January with the actual, yes, I've said with this we're not going to put it in there. But I would have to come back with a chop off that says, yes, we're going to let it expire in 2012. So there would have been more step I'd have to do in January. But I think the reason I brought LB9 is it's tough to get a group of people agreeing that we need a different solution when there's already a solution there. So they just say, hey, you're going to get \$10.5 million from the checkoff, do we really need to address it right now? If I can stop it and say, okay, that's not your funding source, then I think everybody comes to the table. And then you can have a real legitimate discussion of what a good source would be. You know, we've had ideas floated out there that maybe we need a tax on bottled water to go into a Water Cash Fund. Well, you get the bottling people, and PepsiCo and those that say, oh, don't do that, that's our livelihood. And you have that over there, so just leave your excise tax. I think until you can strip that off and say, okay, now we got to come up with a source, it makes it a little easier to bring everybody together to come up with a solution. [LB9]

SENATOR CARLSON: Okay. So it won't be LB9, but your effort to take it away will not stop. [LB9]

SENATOR LANGEMEIER: Correct. [LB9]

SENATOR CARLSON: And I'm glad to hear that. And I'd be happy to join you and help you in any way that I could. [LB9]

SENATOR LANGEMEIER: Appreciate that. [LB9]

SENATOR CARLSON: Okay. [LB9]

SENATOR DUBAS: Other questions? None. Thank you. [LB9]

SENATOR LANGEMEIER: Thanks. [LB9]

SENATOR DUBAS: Do we have testifiers in support of LB9? Welcome. [LB9]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
November 06, 2009

---

JAY REMPE: Senator Dubas, members of the Natural Resources Committee, my name is Jay Rempe, that's J-a-y R-e-m-p-e. I am vice president of governmental relations for Nebraska Farm Bureau. And we are here in support of LB9 and extend our appreciation to Senator Langemeier for introducing the bill. And in visiting with him yesterday, we understand that it's not within the subject of the call. But I think it raises a good point for discussion. And we thought we'd offer a couple of comments this afternoon in that vein. As Senator Langemeier already explained, the checkoff that is going to the Water Resources Cash Fund, let me just offer a little further explanation. There's actually two separate checkoffs that are collected on corn sorghum. One is collected and goes to the Corn Board for the promotion, research, and to increase the demand and utilization of the commodity. The second is collected and goes into the Ethanol Incentive Program, it's used to provide incentives for ethanol production in the state. It's that second portion that Senator Langemeier described that in 2012 would be redirected into the Water Resources Cash Fund. And that was included in LB701. At that time, the Nebraska Farm Bureau supported LB701 because we thought it was important to put in place a potential or an outline or a paradigm, I guess, for a solution in the Republican Basin and the Platte Basin. Unfortunately, it hadn't quite worked out the way we'd hoped it would. But we never did support the checkoff portion of that bill, though. That was always a thorn in our side. And there was a couple reasons for that. One is, and you've heard this argument already this week in terms of those dollars are collected, they are paid by farmers across the state, and those are meant to go into the promotion and research of their product. And to divert those dollars gets away from that. And it's the principle that Farm Bureau and I know a lot of other ag and commodity groups stand on there. But secondly, we also opposed it because we felt that the package in LB701 relied too heavily on agriculture as a funding source and as a source of the solution. When you look at the use of water in this state, obviously, agriculture is a large user. But who benefits from that use? Research has shown that the economic benefit to the state, about a third of that goes directly back to the producer, and two-thirds of that is distributed to the economy at large. And so as we looked at this issue, we always thought, well, that's how we should, you know, a rough way of splitting up the cost, if you will, of trying to address some of these water challenges. And if you look, including the checkoff and at that time the occupation tax and the property tax that were included in LB701 and the regulatory effects that you have on farmers by the allocations and cutting back on their usage, we estimated at that time that most, about 90 percent of the burden was falling on agriculture to resolve the situation. We always thought that the use of water in this state benefits everybody. It's in everyone's interest to resolve these issues. And we need to distribute that burden a little more proportionately in our view. So with...so we've always had concerns with the use of that checkoff. And since that time we've had several discussions internally, with a lot of different groups, with senators on how we try to resolve this issue. We, like Senator Langemeier, believe that the Water Resource Cash Fund is sorely needed. These water challenges are growing and they are going to take some resources. And we need to...we'll extend our hand and our efforts in any way we can to try to resolve those issues and sit down and figure out

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
November 06, 2009

---

this funding issue as well. So with that I'll be glad and be happy to answer any questions. [LB9]

SENATOR DUBAS: Thank you, Mr. Rempe. Any questions? Senator Carlson. [LB9]

SENATOR CARLSON: Thank you, Senator Dubas. Jay, this just came to my mind as I'm listening to you. I don't know the answer. When farmers contribute to the checkoff, do they get a deduction for that, state or federal? [LB9]

JAY REMPE: You know I don't know. I'll have to find that out whether they do. I've never thought of that before, but I'll try to find that out. [LB9]

SENATOR CARLSON: Okay, thank you. [LB9]

SENATOR DUBAS: Other questions? Seeing none, thank you. [LB9]

JAY REMPE: Thank you. [LB9]

SENATOR DUBAS: Welcome. [LB9]

SCOTT MERRITT: (Exhibit 1) Good afternoon. My name is Scott Merritt. I'm the executive director for the Nebraska Corn Growers Association, S-c-o-t-t M-e-r-r-i-t-t. I just wanted to extend our support for LB9 and the general concept of it. I think Jay kind of went over most of the same...similar opinions that my organization has. We support the Water Fund and the principle of it. We do have a real concern with the funding mechanism in it and we have from the beginning. But we believe in production agriculture that we need to be part of the solution. We're willing to be part of the solution. We've had a lot of discussion over the course of the last year and a half, especially just prior to harvest on where we need to go on this issue. My committee's full annual meeting will have it on their resolution process. And there will be several aspects that we're looking at or ideas, concepts if you want to say. So, hopefully, we'll have a little better feel for where we're at mid-December. And we look forward to working with the committee on some long-term solutions beneficial to all of the state. And we do appreciate Senator Langemeier bringing this up to continue the discussion because I felt in the last year it's been kind of one of those deals, well, we'll address it when the time comes. But the time is coming very quickly, we believe. So if there's any questions, I'd be happy to answer. [LB9]

SENATOR DUBAS: Any questions for Mr. Merritt? Seeing none, thank you. [LB9]

SCOTT MERRITT: Thank you. [LB9]

SENATOR DUBAS: Other testifiers in support of LB9? Those in opposition. Neutral



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
November 06, 2009

---

testimony. Senator Langemeier. [LB9]

SENATOR LANGEMEIER: I don't really want to close. I just want to publicly thank everybody that contacted me that got the e-mails out to stop the crowd from coming, otherwise the room would have been full. I want to thank them all for sending those e-mails and telling everybody our legality problem with this. And I don't want the committee to think that because they didn't show up that there isn't the call out there to do something about this, because it is. We could have had overflow rooms if they wouldn't have done that for me. So I just wanted to thank them for that. Thank you. [LB9]

SENATOR DUBAS: Thank you. With that, that concludes today's hearings. Thank you all for coming. [LB9]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
November 06, 2009

---

Disposition of Bills:

LB9 - Held in committee.

LB12 - Indefinitely postponed.

---

Chairperson

---

Committee Clerk