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Natural Resources Committee
January 26, 2017

[LB154 LB176]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, January 18, 2017, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB154 and LB176. Senators present: Dan Hughes, Chairperson; Bruce Bostelman, Vice Chairperson; Joni Albrecht; Suzanne Geist; Rick Kolowski; John McCollister; Dan Quick; and Lynne Walz. Senators absent: None.

SENATOR HUGHES: Well, before I start, I would like to recognize members of the seventh class of the Nebraska Water Leaders Academy who are attending our hearing today. The Water Leaders Academy founded in 2009 to educate future leaders about the vital role of rivers, streams, and Nebraska's abundant aquifers play in the economic stability of the state. If you would stand, we would welcome you to the Natural Resources Committee and commend you for your dedication to the program learning more about water in Nebraska. Thank you. Okay, welcome to your Natural Resources Committee. I'm Senator Dan Hughes of Venango, Nebraska, and I represent the 44th Legislative District. I serve as Chair of the committee. The committee will take up bills in the order posted. Our hearing today is our public part of the legislative process. This is your opportunity to express your position on proposed legislation before us today. The committee members might come and go during the hearing. This is just part of the process as we have bills to introduce in other committees. I ask you to abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Please move to the reserved chairs when you're ready to testify. These are the first two chairs on either side labeled the queue. Introducers will make initial statements followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sheet that is on the table at the back of the room. Please fill out the green sheet before you testify. Please print and it is important to complete out the form in its entirety. When it is your turn to testify, give the sign-in sheet to the committee clerk or to a page. This will help us make a more accurate record of the proceedings. If you do not wish to testify but would like to have your name entered into the official record as being present at the hearing, there's a separate white sheet on the tables that you can sign for that purpose. This will be part of the official record of the hearing. Written materials may be distributed to the committee members as exhibits only while testimony is being offered. If you have handouts, please make 12 copies, give them to the page to distribute to the committee. When you come up to testify, please speak clearly into the microphone, tell us your name and please spell your first and last name to ensure we get that into the record as accurate. We will be using the light system for all testifiers. You will have five minutes to make your initial remarks to the committee. When you see the yellow light come on that means you have one minute remaining and the red light indicates that your time has ended and you need to wrap up your comments. Questions from the committee may follow. No displays of opposition or support to a

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bill, vocal or otherwise, will be allowed in the public hearing. The committee members with us today will introduce themselves beginning on my far left.

SENATOR KOLOWSKI: Senator Rick Kolowski, southwest Omaha, District 31.

SENATOR GEIST: I'm Suzanne Geist. I represent District 25, which is here in Lincoln on the east side from south to north to Waverly.

SENATOR QUICK: Dan Quick, Grand Island, Nebraska, and I represent District 35.

SENATOR WALZ: Lynne Walz. I represent District 15, which is all of Dodge County.

SENATOR HUGHES: And to my far right.

SENATOR ALBRECHT: Good afternoon. I'm Joni Albrecht. I represent District 17. That's Wayne, Thurston, and Dakota Counties, northeast Nebraska.

SENATOR McCOLLISTER: John McCollister, District 20, central Omaha.

SENATOR BOSTELMAN: I'm Bruce Bostelman, District 23, which is Saunders, Butler, and the majority of Colfax Counties.

SENATOR HUGHES: To my left is committee counsel, Laurie Lage, and to my far right is committee clerk, Mandy Mizerski. We also have joining us today Beverly Neel, and she is a new committee clerk for the Business and Labor Committee and she will be observing Mandy this afternoon. We also have two pages at our disposal, Heather Bentley from Millard, Nebraska, and she is a freshman at UNL studying agriculture and economics; and we have Lee-Ann Sims from Lincoln. She is a sophomore at UNL studying political science and global studies. With that, we will begin our hearing today with LB154. Senator Geist. Welcome to the Natural Resources Committee.

SENATOR GEIST: Thank you. It's good to be here. Thank you, Chairman Hughes, and good afternoon fellow members of the Natural Resources Committee. I am Suzanne Geist, that's S-u-z-a-n-n-e G-e-i-s-t, and I represent the 20th Legislative District in Lincoln. I am here to introduce LB154 which is a simple bill on behalf of the Department of Natural Resources. The Department of Natural Resources administers the Safety of Dams and Reservoirs Act. One portion of the act requires that the owner shall file with the department certain materials signed and sealed by the

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design engineer certifying the completion of a new dam. No specific filing fee as outlined in the Safety of Dams and Reservoirs Act, so the general statutory provision for the agency indicates the miscellaneous fee specified in 33-105 in Section 8 would apply stating for filing any petition, affidavit, other paper or application for which no fee has been fixed, \$10. LB154 seeks to eliminate this \$10 fee by inserting the words "with no fee" in the act portion requiring filing the certification, 46-1657. Elimination of these particular fee and the substantive statute does not change the effect of the minimum filing fees of \$10 for other filings to the department. Director Jeff Fassett with the Nebraska Department of Natural Resources will be following me and will share more details with you. But with that, I appreciate your time and I'm open to any questions. [LB154]

SENATOR HUGHES: Thank you, Senator Geist. Any questions from the committee? Senator Kolowski. [LB154]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator, how many dams are we talking about in the state at this particular time, do you know, exactly? [LB154]

SENATOR GEIST: I do not know, but I'm sure my expert behind me does know. [LB154]

SENATOR KOLOWSKI: Thank you. [LB154]

SENATOR HUGHES: Any other questions for Senator Geist? You can stay for closing. Thank you. [LB154]

SENATOR GEIST: Thank you. [LB154]

SENATOR HUGHES: Okay. Proponents for LB154. Welcome. [LB154]

JEFF FASSETT: Mr. Chairman, thank you. Good afternoon. My name is Jeff Fassett, J-e-f-f, Fassett, F-a-s-s-e-t-t. I am the director of the Department of Natural Resources and I am present here today to testify in support of LB154 and be happy to answer any questions the committee may have. I'd like to first just thank Senator Geist for introducing this bill on behalf of the department. She indicated this is sort of a technical change bill from our standpoint that is a requirement for dam owners to submit a modest fee of \$10 along with the final set of plans and construction of any new dam. This removal will really be simply accomplished as the Senator described, with the removal or the insertion of words to remove the obligation of this particular fee in 46-1657(1). The \$10 fee is for filing these completion documents. Receiving the completion documents of the final construction of a dam is really the key aspect of the statute

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and the requirement to have those plans for the public safety purposes of the Safety of Dams Act is really the main driver. This fee is, for most purposes, turned into a nuisance issue for the agency. Getting the plans, having those plans certified by the engineer who takes responsibility for the final design in the construction as approved by the department is really the critical elements that we want to maintain. The fee itself is becoming an activity which requires a lot of manpower of follow up if it's simply forgotten when those plans first came in. And there's a number of sort of soft-cost time and effort that is expended by my agency in collecting this pretty modest fee. On an annual basis, there may be at most 30 to maybe 40 at the most dams in this state that would require this fee. So you can do the simple math in your head and understand that the revenue achieved by this is really somewhat inconsequential compared to the really...the confusion and controversy and inconvenience, quite honestly, that this modest fee has. It's really more important for us to make sure we get the follow-through, we get the final plans so that we know what was approved was actually built and constructed in accordance with the safety of dams obligations that we have under this act. And with that, Mr. Chairman, I'd be happy to answer any questions and certainly would ask the committee's support for this bill. [LB154]

SENATOR HUGHES: Thank you, Director Fassett. Any questions for the Director? Senator McCollister. [LB154]

SENATOR MCCOLLISTER: Yeah, thank you, Mr. Chairman. This is for...this fee, this \$10 fee is for the completion certificate. Is there any fee associated with the start of the process for completing a dam or is there anything...I would guess this is for the end of the process. Is there...when the process begins, is there a fee? [LB154]

JEFF FASSETT: Yes. Mr. Chairman, yes, Senator McCollister, there is. In fact, there are several fees. There's the...a standard sort of water right permit fee that would be required of any new dams to establish the right to store water in the dam itself. And then probably more importantly, there's a larger fee that is associated with the review and approval aspect of a new dam, a proposed new dam in the state of Nebraska. And so, these dam owners have already paid those two fees when their project comes to the office initially. And you're exactly correct. This is a fee at the end of the process that quite honestly the project is over and, as I said, it's really more of a nuisance issue. [LB154]

SENATOR MCCOLLISTER: Can you tell us what those two fees are? [LB154]

JEFF FASSETT: Yeah, the basic permitting fees are pretty modest for dams. It starts out at \$25, and then increases by \$10 depending on how big a reservoir you're proposing to be. The more substantial fee was actually established when our Safety of Dams law was first put in place and that ranges anywhere from \$150 to \$350 as a one-time fee when a new dam project is brought to

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the office. And that is under the Safety of Dams Act and is required because of the detailed technical review that the staff of the department occurs to review and approve any new dams. [LB154]

SENATOR McCOLLISTER: This \$10 fee as you indicated, Mr. Fassett, is pretty de minimis, and pretty small potatoes. Have you thought about doing a unified fee that where you could perhaps review that fee, see if it has been changed in the last 20 years and whether the fees are appropriate? [LB154]

JEFF FASSETT: Mr. Chairman, Senator, we have not done that sort of review. The current fee structure, I think for the other activities that I just described, the major fee was actually done about ten years ago. In 2005, I think the Legislature reviewed that fee, but we've not undertaken any sort of review of those fees, at least not since I've been the director of the department. [LB154]

SENATOR McCOLLISTER: As we've been discussing, do you think that it would be appropriate for this committee to review some of those fees and make adjustments accordingly? [LB154]

JEFF FASSETT: Well, that's certainly the prerogative of the committee if they'd like us to undertake that. We've not done that at this point that the fees have been established for quite some time. Like I said, this one is really... because it is at the end of the process, we don't see as much new construction of new dams. It's a pretty modest sort of revenue issue and like I said, it's really more important for us to get compliance than it is the small fee. [LB154]

SENATOR McCOLLISTER: Thank you, Mr. Fassett. Thank you, Mr. Chairman. [LB154]

SENATOR HUGHES: Okay. Other questions? Senator Kolowski. [LB154]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Director Fassett, thank you for being here. Unless something has changed or memory is failing me, I think NRDs do most of the dam examinations around the state where there's an existing dam for X number of years. Do you know the cycle of how often they go there and what the fees are when somebody is examining a long-existing dam as far as its stability and strength? [LB154]

JEFF FASSETT: Yeah. Mr. Chairman, Senator, actually that's not the NRD responsibility, that's our responsibility, so. [LB154]

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SENATOR KOLOWSKI: Is it farmed on occasionally because we did those in the Papio?
[LB154]

JEFF FASSETT: Well, you probably do as a dam owner. You certainly need to make your own inspections, but as a regulatory function, our Safety of Dams Program routinely reviews all high-hazard facilities once every five years. And we do that together with the dam owner whomever they are, many of which, as you suggest, are natural resource districts. [LB154]

SENATOR KOLOWSKI: Is there a fee to that? [LB154]

JEFF FASSETT: There is not. [LB154]

SENATOR KOLOWSKI: Okay. Thank you, sir. [LB154]

SENATOR HUGHES: Other questions? I just have one. I see this is a fee that was imposed upon a new or reconstructed dam. Are most all of them that this would apply to, are they new or reconstructed or kind of a mix of both and where are these dams being put in? I mean, are they pasture dams or...they're not on rivers, I'm pretty sure. [LB154]

JEFF FASSETT: Mr. Chairman, well, they're not on the major rivers but they are on streams. Some of these are certainly in the more urban areas of the state of Nebraska. We're seeing a lot of development of flood control structures and dams of that nature. So the Dam Safety law is driven by the public safety aspect, so it's the size of the dam and the bigger they are the greater hazard they are. And the law requires us to do the technical engineering review before we approve any new structures. But there are lots of dams in response to Senator Kolowski's question earlier to Senator Geist. We have about 2,900 dams that are of a significant size that do require an inspection every five years. So there's a lot more dams than what most people think is a fairly flat state than you might think. And there's way more smaller facilities. The 2,900 are only the larger dams. [LB154]

SENATOR HUGHES: Okay. Thank you. Any other questions for Director Fassett? I see none. Thank you for coming. Are there other proponents for LB154? Seeing none, any opponents? Seeing none, any neutral testimony? Seeing none, Senator Geist would you like to close? Senator Geist waives. That will conclude our hearing on LB154 and we will move next to LB176. Senator Bostelman. Welcome, Senator. [LB154]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Good afternoon, Chairman Hughes and the Natural Resources Committee members. My name is Bruce Bostelman, that is B-r-u-c-e B-o-

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s-t-e-l-m-a-n, and I'm introducing this bill, LB176. This is a bill with a narrow objective to repeal the archaic statutes of Chapter 56 of the Nebraska Revised Statutes which is authorizing the use of eminent domain powers to dam streams for the purpose of propelling water-powered machinery. I have introduced the bill on behalf of the Department of Natural Resources. Chapter 56 which includes only six statutes which is 56-101, 56-115, and 56-124 to 56-127. They're all originating in the 19th century prior to the enactment of the current appropriation system for water rights. They pertain to an eminent domain authority of any landowner of at least one bank of a stream wishing "to erect a dam across any watercourse for the purpose of building a water grist, saw, carding, or fulling mill, or of erecting any machinery to be propelled by water." The Chapter 56 statutes are cross-referenced with more modern eminent domain statutes in Sections 76-704 to 76-724, but remain archaic in subject matter. This bill proposal seeks their outright repeal. The laws are unnecessary today because dams built to raise head for water power or electric power, millponds are subject to regulations by other state and federal statutes. Any existing conventional current infrastructure for water power in the state is subject to permitting by the department under Sections 46-236 and other statutes rendering Chapter 56 unnecessary. The last annotated litigation of Chapter 56 authorities was in the 1920s. The unilateral authorities conveyed by Chapter 56 potentially conflicts with current policy on eminent domain and certainly conflicts with current laws on beneficial use of state's waters. I would also note that these...but the use of modern hydrokinetic power generation systems, low head or no head in-stream turbines and rivers or canals are not affected by the repeal of Chapter 56. The last milldam authorized by Chapter 56 authority that currently exist was previously owned and operated as a park and museum by the Nebraska Game and Parks in the town of Champion, but was ceded to Chase County, Nebraska, by a 2012 legislative action, (Section) 90-278. Nebraska Game and Parks retains the revisionary interest in the property which is in Sections 90-278(3), but expresses no opposition to this bill proposal. The Champion Lake facility has a power permit to raise head for operating the mill but primarily relies in a junior storage permit to store water of the Frenchman River. In times of drought a cooperative agreement with a local well owner furnishes groundwater to keep the pond viable as a park facility. No other agencies or political subdivisions are conceivably affected by the repeal. Therefore, I ask for the committee's support of LB176 and repealing this unnecessary statutes. [LB176]

SENATOR HUGHES: Thank you, Senator Bostelman. Questions? We're letting him off easy. (Laughter) Seeing none, thank you. [LB176]

SENATOR BOSTELMAN: Thank you. [LB176]

SENATOR HUGHES: Proponents of LB176. Welcome, Director Fassett. [LB176]

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JEFF FASSETT: Thank you, Mr. Chairman. Again, good afternoon. Jeff Fassett, Director of the Department of Natural Resources. I...Senator, I can...I know brevity is often rewarded in this committee, (laughter) and so I will just have just a very few comments. I think...Senator Bostelman, we certainly appreciate his sponsorship to this bill. He really outlined the nuts and bolts of what's going on here as far as just the obsolete nature of this old statute. People don't even know what some of these words mean at this point. And this is probably a technical issue that could have easily have come before this committee many years ago. I am here, though, obviously to support LB176 and the passage of that and would ask for your support. As Senator Bostelman indicated, it is really just archaic law, has no real effect on any construction of dams, the generation of power for milling or any other purpose which is completely covered by other statutes in Nebraska water law. So we just really saw this as a cleanup matter that just creates confusion or leaves in place some laws that are just no longer necessary at this point. I'd be happy to go further into other technical details, but I think Senator really covered the basics of why this...we are supporting and asked him to sponsor the bill to repeal this old statute. [LB176]

SENATOR HUGHES: Okay. Thank you. Questions for Director Fassett? Senator McCollister. [LB176]

SENATOR MCCOLLISTER: Thank you, Mr. Chairman. You know, everyone on this committee are green people. We favor renewable projects. Are you sure that by eliminating this law we won't eliminate any renewable projects that might occur in the state? [LB176]

JEFF FASSETT: Mr. Chairman, Senator, no, we do not. There's really adequate statutes that fully provide for people who want to seek the generation of hydropower in a variety of different methods. And the fact is as Senator mentioned, we're seeing the latest technologies are not to build dams at all, but to generate and place turbines actually in the flowing rivers as an in-stream use without building any head at all like you would in a traditional hydropowered dam sort of situation. So, we don't think we're eliminating. We think all types of projects are fully covered by existing law and this really was just an old law dealing with old language at the time of...before the turn of the century that is simply not relevant today. [LB176]

SENATOR MCCOLLISTER: Yeah. Thank you. [LB176]

JEFF FASSETT: Thank you. [LB176]

SENATOR HUGHES: Senator Kolowski. [LB176]

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SENATOR KOLOWSKI: Thank you, Mr. Chairman. Director Fassett, thank you again for your being here today. Historically, in its heyday, how many do we have in the state at one time? Do you have any historical facts or any numbers that you could share with us? [LB176]

JEFF FASSETT: Mr. Chairman, Senator, actually I do not. I did talk to the...sort of the historians of my agency. I've got the luxury of a lot of very long-term employees that have been involved with these issues. And as Senator Bostelman indicated in his presentation, the only one we could find on the books that still exists, this is one out in Senator Hughes's district. There were likely others back then, but the idea of using water power to grind our grains, it's just something you don't hear about much today, so. [LB176]

SENATOR KOLOWSKI: Thank you. [LB176]

SENATOR HUGHES: Okay. Other questions for Director Fassett? Seeing none, I guess...thank you. Are there other proponents? Any opponents? Any neutral testimony? Okay. Would you like to close, Senator Bostelman? Senator Bostelman waives closing. I will make a comment of the Champion Mill which is about ten miles west of Imperial, Nebraska, in southwest Nebraska. It is not a completely restored grain grinding mill, but the community has taken that over and is endeavoring to keep it from deteriorating further, but it is certainly worth a day trip to go take a look at it. With that, we will close the hearing and that ends the dam day at the Natural Resources Committee. (Laughter) Thank you, everyone, for coming. [LB176]