

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources Committee January 29, 2020

**HUGHES:** According to my phone, it is 1:30. Welcome to the Nebraska Resources-- Natural Resources Committee. I am Senator Dan Hughes. I am from Venango, Nebraska, and represent the 44th Legislative District. I serve as Chair of this committee. The committee will take up the bills in the order not posted. We are going to switch LB855 will be first. LB769 will be second, but Mr. tenBensel, you are on the hot seat. Not yet, hold on. You will be first, eventually. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members may come and go during the hearing, this is just part of the process as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Introducers will make initial statements followed by proponents, opponents and then neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sign-in sheet that is on the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print and it is important to complete the form in its entirety. When you turn in-- when it is your turn to testify, give the sign-in sheet to the page or the committee clerk. This will help us make a more accurate public record. If you do not wish to testify but would like to record your name as being present at the hearing, there is a separate white sheet on the tables that you can sign in for that purpose. This will be part of the official record of the hearing. If you have handouts, please make sure you have 12 copies and give them to the page when you come up to testify. They will be distributed 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 that we get an accurate record. We will be using the light system today. 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. The red light means your time has ended and we would like you to wrap up your testimony as quickly as possible. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, is allowed in the public hearing. The committee members with us today will introduce themselves starting on my left.

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**MOSEER:** Hi, I am Mike Moser. I represent District 22. That includes Platte County, most of Stanton County and a little bit of Colfax County.

**HALLORAN:** Good afternoon. I'm Steve Halloran. I represent District 33, which is Adams County and parts of Hall County.

**QUICK:** I'm Dan Quick. I represent District 35, which is Grand Island.

**HUGHES:** And on my far right.

**GRAGERT:** Senator Tim Gragert, District 40, northeast Nebraska.

**ALBRECHT:** Senator Joni Albrecht, northeast Nebraska, Wayne, Thurston and Dakota Counties.

**BOSTELMAN:** Bruce Bostelman, District 23, Saunders, Butler, and majority of Colfax Counties.

**HUGHES:** Very good. To my left is our committee counsel, legal counsel, Andrew Vinton, and to my far right is our Committee Clerk, Mandy Mizerski. Pages for the committee today are Kaitlin McKenna, is that correct? Very good. Kaitlin is a senior at UNL majoring in political science and history. With that, our first item on the agenda is Jan tenBensel for the Nebraska Ethanol Board. Jan, if you'd like to come up, we'd be interested in hearing a little bit of background about yourself and what you're accomplishing on the Nebraska Ethanol Board for us. Welcome.

**JAN TENBENSEL:** Thank you, Senator Hughes. Thank you, Senators. My name is Jan tenBensel, J-a-n t-e-n-B-e-n-s-e-l, and I'm from Cambridge, Nebraska. I was born in Cambridge, Nebraska, grew up there, spent the majority of my life there, with the exception of some time in Fort Knox, Kentucky, and time spent at UNK. I'm a diversified grain farmer. I'm married with two children, 6-year-old twins, which are, I don't know, which is harder being on the Ethanol Board or having twins, but it's a wonderful blessing. I came here-- I've always been an ethanol proponent since I was very young. I had no idea what I was doing of course 20 years ago, but I knew that this was the homegrown answer that we needed and during the 1990s, especially in the Gulf War. I've always been very involved in many organizations, the fire department, Nebraska National Guard, EMT first responder, and many boards-- local community boards, school board, mostly economic. I've been on the economic development in Cambridge for I think 16 years now. I'd better

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not quote that, but a long time and I keep getting pulled back into these boards and I can't quite escape them. However, there is one board that I am really passionate about, really interested in, and that is the Nebraska Ethanol Board. We-- when I came here four years ago, I thought I knew a lot about ethanol. Well, I quickly figured out that I didn't know very much at all. The-- the-- the learning curve that I have had is tremendous. I've since joined the ASTM, which is the American Society of Testing and Measurement. I seek out experts. I seek out the smartest people I can find to teach me as much as I can, and the more I know, the more I find out that I know less all the time. I have also returned to school. I had left UNK in 1997 after my father had a heart attack, so I'm going back for my degree now. I have since started attending Mid-Plains Community College just patching-- patching classes in here and there and kind of working towards that. Of course, there's plenty of time now. When I was 19, I thought I didn't have any time. Now I really know I did. I had lots of time. The-- there's a lot of issues in the ethanol world. Since I've been on the board, we've done a transition period between a director that had been there for 43 years and that was quite a shock to the system with that much institutional knowledge leaving and we've-- it's been quite an adjustment. Now we have a great administrator, Roger Berry, and I believe he's behind in the room here. Most of you have met him. He was formerly with the Corn Board. There's a lot of issues in the ethanol industry. One issue that we have is match blending versus splash blending. You'll see an article that's anti-ethanol and it'll-- it'll quote a study even by the EPA. Well, the studies that they do and any article you read, if you dig into the article, you'll find either the methodology in the study was bad or the test materials were not real world fuels. I'll give you one example, and without getting too technical. When you have a-- when they do studies like, for instance, the MOVES Model for the EPA, which is going to determine how we're going to be reset on the the RFS and it's also going to determine how, for instance, Denver in the front range is going to-- whether or not they're going to maintain E10 or go to E0. The MOVES Model tests a match blended fuel. Well, a match blended fuel is a laboratory made fuel versus a splash blended fuel, which would be something you'd buy at the gas station and, well, my first thought was why would they just buy gas station fuel? Well, the difference between mash blended fuels and splash blended fuel, matched blended fuel has a higher density, higher aromatics and an increased distillation temperature. Splash blended real world fuel has lower density than this and lower aromatics, lower distillation temps. They make a worser fuel to be tested with ethanol, essentially adding in some cases, salt, acid, a

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variety of products into the fuel mix. When I do these testing, the testing is so flawed, it's-- it's shocking, and I think that's probably the most shocking thing that I've learned is-- my time with the board is when I look at these studies, you know, you have to dig so far into them to know what to trust. And, you know, the state of Nebraska did file a lawsuit against the EPA, before my time so I don't know the exact details on that, but it was rejected because we couldn't prove substantial harm to the state. Well, if we do go badly in the RFS reset or something like that, then we will be able to prove substantial harm, but unfortunately, I think the harm at that point will be more than we can stomach. So things are a moving target. The policies, ethanol policies with the President and with the-- the national scene change sometimes daily. Last week, we had a very favorable outcome with the 10th District Court on some small refinery exemptions that came out in favor of the ethanol industry. It's too early to say what's going to happen here. But I also remind that several years ago we had a-- a decision by the courts that that one of the EPA to remand 400 million gallons back into the system. Well, now we're talking about if we-- if we can't get 400 million gallons put back into the system, how are we going to put a large number back into the system? So it might be good news, it might be bad news, but hopefully, we'll-- we'll get things straightened out going forward. You know, the oil culture is a huge roadblock for us. Most engineers and most chemical engineers were working for about 90 percent work for the oil companies or for oil related industries. It's very hard to get ethanol-friendly people on our side in many of these cases. There's many roadblocks. UL rules for tank infrastructure. We can add 10 to 20 percent more toluene or benzene, something-- carcinogens are toxic and nobody says a word, but we add 5 percent more ethanol to go to E15 and everybody loses their mind because now how can the system be OK? Well, we need to make changes with that. We're working towards finding out how to begin making those changes. The aromatics in the fuel are going to become a huge problem, a huge health problem for us. The aromatics turned into all kinds of toxic and cancerous items. But one problem is, is aromatics are increasing in our fuel supply. The reason for that is because our-- our abundance of shale oil, which is a blessing and a curse at the same time, has really poor octane values. And you don't hear this hardly anywhere. It's very-- not talked about much, but they need more aro-- aromatics or octane boosters. Well, we can either boost octane with ethanol or we can boost ethanol with, excuse me, gasoline with aromatics. Ethanol, of course, would be our preferred method of choice there. You know we're-- Nebraska was an early adapter of ethanol. You know, we've got a two-fuel system here.

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We've got an E10 and an E0 system. And I believe that's because we were early adapters where other states didn't-- didn't adapt on this. And then when E10 came along, they just switched over to E10. Texas for instance. Nebraska's ethanol per-- percentage usage, it was just very sad because we're, I believe, number 36 in the country as far as percentage use-- actual percentage use per gallon on average. A lot of great things are happening, though. We've got a state study with E30 where we're testing E30 and the-- on the state fleet with 52 vehicles. I have Roger explaining that a little bit better if you-- if you have some more questions on that. But that study is going very well. And I know for, personally, the 30 works great because I've got several hundred thousand miles E30 on nonflex fuel car, so I always come to Lincoln back and forth on E30 myself. So anyway, I've given you the quick version and if anybody have any questions, I'd be glad to try to answer them.

**HUGHES:** OK. Thank you, Mr. tenBensel. Are there any questions from the committee? Senator Halloran.

**HALLORAN:** Thank you, Mr. Chairman. And I should probably know, but I don't, what are aromatics?

**JAN TENBENSEL:** Oh, aromatics like benzene, toluene, xylene, ethylbenzene, they're a carbon six, seven and eight molecules. The really bad aromatics are the carbon, nine molecules, and they're dirty, dirty, dirty things but I can't name them.

**HALLORAN:** Okay. Thank you.

**HUGHES:** Any additional questions? Senator Bostelman.

**BOSTELMAN:** Thank you for being here today for this. Could you explain to me exactly what role the Ethanol Board has within the industry? Are you a advisory? Are you a married with hands on, or are you just advising? Do you have-- what role does the board play?

**JAN TENBENSEL:** Well, it-- that will take more than my five minutes, of course. But originally the Nebraska Ethanol Board was the Industrial Utilization Board back in 1970-ish, two, one, before I was born. And that-- that-- that role changed and evolved over time until we were trying to build the industry in the state. And then at one point, there were two boards with-- this is all before my--, long before I was involved. So that brought us to the present. The role of the board is is to promote and to look for roadblocks to try to facilitate the

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production of ethanol in the state to facilitate the use and also, of course, facilitate the national use wherever we can by working with the Corn Boards, the trade organizations, anything we can do to help. I'll give you an example. Right now we're doing E15 seminars, conferences where we're bringing in fuel retailers and we're bringing in the weights and measures. The fire marshal, we're putting people in the room together so questions can be asked in a casual way. You know how it's hard to make the call to the fire marshal and ask the question. It's easier to be in more of a social setting and ask that. That's our big push right now. We do an emerging issue forum in April where we bring national people in and to talk about emerging issues with the industry and for the state and how that's, you know, how things are going on there. Promotion, promotion, promotion, of course. And just a general facilitation, I guess would be a-- the nickel answer.

**BOSTELMAN:** Right. Right. And you meet how many times a year?

**JAN TENBENSEL:** Oh, we meet three or four times a year.

**BOSTELMAN:** OK. Thank you.

**HUGHES:** And additional questions? Seeing none, thank you, Mr. tenBensel for your service to the state. Is there anyone wishing to testify as a proponent to Mr. tenBensel's reappointment to the Nebraska Ethanol Board? Welcome.

**TROY BREDEKAMP:** Chairman Hughes, members of the committee, my name is Troy Bredenkamp, B-r-e-d-e-n-k-a-m-p, executive director of Renewable Fuels Nebraska. We're here to just lend our strong support to Jan tenBensel's reappointment to the Nebraska Ethanol Board. I don't think you guys missed-- you may have missed his excitement, and the energy he has for this ener-- for the industry and that is a great thing. Simply put, Jan is a tireless supporter of the ethanol industry. As Chair of the Ethanol Board, he's constantly exploring ways to enhance Nebraska's ethanol industry while adding value to the efforts and programs carried out by the Ethanol Board and its staff on behalf of the industry itself. Simply put, we couldn't ask for a more dedicated spokesperson, and Ethanol Board member than we have found in Jan tenBensel. So we would strongly support his reappointment.

**HUGHES:** Thank you, Mr. Bredenkamp. Are there any questions? Seeing none, thank you.

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**TROY BREDEKAMP:** Thank you.

**HUGHES:** Anyone else wishing to testify as a proponent? Welcome.

**ROGER BERRY:** Thank you, Senator Hughes, and committee. My name is Roger Berry, R-o-g-e-r, Berry, B-e-r-r-y, and I, too, want to thank all of you for the opportunity to be here today to support Jan tenBensel. In the past 20 years, since I have quit farming and gotten more on the other side of agriculture of working in offices and my experiences with Nebraska Farm Bureau, with the Alliance for the Future of Agriculture, with the Nebraska Corn Board and now with the Nebraska Ethanol Board, I have worked with a lot of board members. And I can honestly say that there's good people on all those boards, very dedicated people. But in the past nine months since I have been appointed as the administrator of the Nebraska Ethanol Board, I've got to know Jan very well, even though I knew him before from my work with the Corn Board and his work with ethanol, but it has been an absolute joy working with Jan for the past nine months here and of all those board members that I've worked with in the past, I have not run onto one that's as dedicated as what Jan is. He is constantly trying to increase his knowledge of ethanol, the policies of anything that has to do with ethanol, he's-- he's there. As you heard from when he was up here testifying just a little while ago, he knows the subject and he knows it well. Because of that and because of the work that he does, the tireless work that he does for the Nebraska ethanol community, which, by the way, is an industry that contributes about \$5 billion a year to the Nebraska economy, so it is a very important industry here in the state of Nebraska. I would just highly encourage you to support-- strongly support his reappointment to the Nebraska Ethanol Board.

**HUGHES:** Thank you. Mr. Berry. Are there any questions? Seeing none, thank you for your testimony.

**ROGER BERRY:** Thank you.

**HUGHES:** Any additional proponents? Seeing none, anyone wishing to speak in opposition to the reappointment of Jan tenBensel to the Nebraska Ethanol Board? Any opponents? Anyone in the neutral position? Seeing none, that will close our reappointment hearing for Jan tenBensel to the Nebraska Ethanol Board. Next up, we have LB855 .Senator Moser. Welcome.

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**MOSER:** Good afternoon, colleagues. Thank you for this opportunity to talk to you about LB855. Good afternoon, Chairman Hughes, members of the Natural Resources Committee. My name is Mike Moser, spelled M-i-k-e M-o-s-e-r, and I represent District 22 in the Legislature. LB855 removes a section of state statute that requires legislative confirmation on appointments of board members to the Nebraska-- Niobrara Council. The council was founded in 1997 and confirmation wasn't required by the Legislature until 2016. The confirmation process was added in LB1038 in 2016. It was first introduced as part of another bill and then it was amended into LB1038. LB1038's main purpose was changing water appropriation application provisions. The Niobrara Council board member approval takes time and resources of the Legislature and it also puts a burden on the prospective board members. They either call in or travel to Lincoln to get approval for their volunteer positions. There are over-- there are 223 nominated boards in Nebraska. Legislative confirmation is required on only 45 of these 223 boards. The Niobrara Council's successful track record and the Legislature's 100 percent approval rate of the Niobrara Council nominees suggests that legislative approval is not necessary. In conclusion, this bill removes legislative confirmation of the Niobrara Council board members because it's not necessary and it takes a burden off the Legislature and the board members themselves. With that, I will take up any questions that you may have.

**HUGHES:** Thank you, Senator Moser. Are there any questions from the committee? Seeing none, you'll stay for closing?

**MOSER:** Yes.

**HUGHES:** OK. Very good.

**MOSER:** Thank you.

**HUGHES:** Those wishing to be proponents of LB855? Welcome.

**TANYA STORER:** Good afternoon. My name is Tanya, T-a-n-y-a, Storer, S-t-o-r-e-r, and I am here to represent the Niobrara Council. I have served on the council since 2015 and have served as the chairman of the council for the last three years. We are here to give a little background and we're here also to obviously to support Senator Moser's bill. We have only had this process in place, as he said, since 2016. We have not seen any-- and there's detailing. I'm not going to read what I'm passing around, I'll let you take a look at the detail there, but the council simply doesn't see that there is a benefit to the



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nomination process. The way the members were-- were sat on the board and nominated and approved prior to the Natural Resources Committee confirming those. It requires that the commissioners, the four elected commissioners that sit on the council have to make that approval. Then it's passed on to the Governor as a recommendation, then the Governor makes that appointment. And so there is a vetting process. It has worked. And-- and the confirmation process through the Natural Resources Committee does seem to add a whole, another layer. It takes your resources. It adds time for us to get members seated and simply has not shown-- shown to have a benefit. And so we're very much in support of removing that process out from under the the Natural Resources Committee.

**HUGHES:** OK. Thank you, Ms. Storer. Are there any questions? Senator Bostelman.

**BOSTELMAN:** Thank you, Chairman Hughes, and thank you for being here to testify today. Could you tell me why the change came in 2016? Can you give me some background on that?

**TANYA STORER:** The council did not ask for that change and-- and we were not necessarily supportive of that change. It ended up being an amendment on a piece of legislation that our district senator at that time, Al Davis, did propose for us. The original intent of the amendment, which was to get some-- what we referred to as sort of some Band-Aid funding at the time in a-- in a budget crisis for the council. That was the-- that was the original bill and this just kind of got added in. I honestly cannot tell you the intent of Senator Davis for doing that at that time, but it was not-- it was not a request or supported by the council, so.

**BOSTELMAN:** Sure, I understand, part of, you know, what you're-- as far as traveling in. We have lots of people traveling across the state and you're not the only ones. I appreciate you coming in today, completely. I know previous confirmations, you know, what you mentioned earlier on 2008-- '16 the issue that's come up before is funding. How do you think this is going to help you in that that-- with that area?

**TANYA STORER:** This bill in particular, I don't think will have any impact on our funding. Is that-- is that the question?

**BOSTELMAN:** And that's-- that's been kind of those who have been coming in for confirmation before. That was one thing we heard very loud and

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clear, I think was their frustration was lack of funding. And I just don't know how the confirmation process here, it's not something that deals specifically with that, but it is a vetting process, if you will, to find out what issues are going on out there, and if there's something we can do. So, you know, it could be helpful, so that's what I'm getting at.

**TANYA STORER:** Yeah, I think I-- I think if I understand your question correctly, there was some comments made by this year's candidates or last year, I guess, nominees reflecting our frustration with funding. And perhaps it enables this committee to be more aware of those concerns is that, yeah.

**BOSTELMAN:** Sure.

**TANYA STORER:** And certainly that would be a benefit. You know, I think it's the job of the Niobrara Council also to reach out to you directly. And we've had that conversation on our board multiple times in the five years that I've served on the board. It is important for not just the Natural Resources Committee, but the senators, by and large. The council is a-- is a creature of Legislature. We were created by the State Legislature. So it is important for us to be proactive in reaching out. So I think there are other ways for us to communicate not only with this committee, but with the Legislature as a whole.

**BOSTELMAN:** OK. Thank you.

**HUGHES:** Any additional-- Senator Gragert.

**GRAGERT:** Thank you, Chairman Hughes. Just to follow up on what Senator Bostelman was asking, is part of this just because you've got to drive from Valentine in to the confirmation process? And I believe-- I believe it's-- we can call in, you can call in and I-- I guess, yeah, that's the first thing I would think of is whenever we're able to talk to the individuals, you know, you get a-- kind of a different perspective on how-- how the whole process is going.

**TANYA STORER:** Sure.

**GRAGERT:** Do you agree with that or not?

**TANYA STORER:** So your question is, are we app-- or a proponent of this bill simply because of the distance and the burden to come for confirmation hearings? That's not necessarily the primary reason that

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the council voted to support this bill. Just-- there is a delay between oftentimes and it depends when we have a vacancy. You know, sometimes we have committee members that retire mid-year. You know, so it doesn't always happen in a timely fashion when the Legislature is in session and it does create a delay. Those members, you know, can technically be seated, but it just sort of muddies the water. And honestly, we haven't seen from the council's perspective that it's really provided a benefit. So it seems to be a use of resources that is just not beneficial.

**GRAGERT:** Thank you.

**HUGHES:** Senator Albrecht.

**ALBRECHT:** Thank you, Chairman Hughes, and thanks for making the drive down to talk about this. So when I think about the people that called in that we were able to visit with, do you find it difficult to find people to serve on this board? And if you do, do they have to be in a specific district up there or-- or area that you can draw from? And what are the length of terms that they have? Because I'm not quite understanding why we were not hearing from this council before, but then 2016 all of a sudden we are. I'm confused as to why we didn't before and we do now.

**TANYA STORER:** Right. So the reason that you would not have heard from the council prior to 2016 was that it was not a requirement prior to that, that the members--

**ALBRECHT:** And who made the requirements?

**TANYA STORER:** It was part of the piece of legislation and I don't-- I think it's in the letter here, but that Senator Davis proposed and was passed--

**ALBRECHT:** OK.

**TANYA STORER:** --that added that confirmation process. It had not-- it had never been part of-- part of the seating of our members prior to 2016.

**ALBRECHT:** OK.

**TANYA STORER:** Yeah, so in answer to your question about finding board members, so we have four counties that are represented in the Niobrara Council, Cherry, Rock, Keya Paha, and Brown. And so there's a--

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there's a commissioner representative from each of those four counties. And then we have a landowner representative from each of those four counties. So that would be specific to a region.

**ALBRECHT:** OK.

**TANYA STORER:** The other-- the other positions can be, you know, there's representation from the-- the timber industry. There's representation from the recreation industry. Those can all be someone from any one of those four counties, if you will. But yes, I think it's true. I've-- I've seen in recent years it's getting more difficult to find people for volunteer positions across the board. I mean, by and large. Certainly we don't have-- we don't have a stack of applications or the phone's not ringing off the wall with interest--

**ALBRECHT:** Right.

**TANYA STORER:** --and so we're very grateful when we identify someone who is qualified and fits the-- fits the requirements. In some cases they are county specific, but.

**ALBRECHT:** OK. Thank you.

**HUGHES:** Additional questions? I just have one. What is the funding for the Niobrara Council? Where does that come from?

**TANYA STORER:** How are we funded?

**HUGHES:** Yes.

**TANYA STORER:** So again, we were created by the Legislature and just a really, really brief-- I guess I will advocate as to why I believe the council is important. It was a result of that scenic river designation that was made and it was a process to come to-- to its current form. But really the-- the purpose behind it was to allow for local interaction and sort of a local voice, I guess, to work with the National Park Service as they carry out the mandate of the National Scenic River. And I think at the time there may be others now, but at the time we were one of a kind in the nation. And so it really allowed more input locally, which I think is incredibly important, because almost all the land in the Niobrara Scenic River is privately owned. And so it has-- certainly has value. The funding has changed a little bit through the years, but a portion comes from the park service and that we just signed a new five year agreement with them, an understanding of what you know, what-- what responsibilities or what

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we're agreeing, I guess, to do. And some of that's education based. Some of it is taking care of, you know, physical toilets that are along the river. Different things like that. A lot of education stuff that we do in cooperation with the council or with the park service, and so they-- I wanna say reimburse us but provide funding to do those things. So the other piece and much smaller pieces come from the the state and it comes through the Game and Parks budget that it comes-- it comes from you, from the Legislature. It has pretty much stayed-- there's been minor fluctuations, but we've not really seen any increase in that funding to sort of keep up with the cost of doing business, if you will. And it's, I believe, I can get the exact figure for you, but right around fifty thousand right now. And it's never really been much higher than that, more than maybe a few thousand dollars fluctuation through the years. But I would, you know, since you asked the question, I certainly would advocate that-- that we could be recognized as-- as needing funds to sort of keep up with inflationary cost because those are the dollars used to pay our executive director primarily and very basic office-- office expenses. And so we're-- we've been very fiscally responsible and made some significant cuts and created some significant efficiencies in the last three or four years in order to make that work. But certainly remember us when the budget process comes around again.

**HUGHES:** OK, very good. Thank you. Are there additional questions? Seeing none, thank you for traveling all this way to testify for us.

**TANYA STORER:** Absolutely. Thank you for your time.

**HUGHES:** Appreciate it. Are there any additional proponents to LB855? Welcome.

**MIKE MURPHY:** Welcome, Senator Hughes, and members of the Resource Committee. My name is Mike Murphy, M-i-k-e M-u-r-ph-y. I just happened to be in town this week for the NRD activities and NRDs are one of the two representatives on the Niobrara Council since its origination. And I've been working for Lower Niobrara and the Middle Niobrara since 2001 have been involved directly and indirectly with the Niobrara Council since that time. I'm seeing some of the changes. Back in the day we used to come down here every year and have socials and meet and greets with the senators and the Natural Resources Committee. And like Tanya pointed out, the change of funding and everything else is-- is been restrictive of those type of activities and stuff. But with that being said, the council did have significant discussion at its last meeting about-- about this bill and the benefits of meeting face to

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face with everyone. And I think that's the key here, is nobody wants to see the council just be forgotten about. But on the other hand, if it allows you guys more opportunities to do your jobs and tasks, and the same thing, vice versa, I think that's-- that could be-- could be key. And, yeah, Tanya is exactly right. You know our-- Niobrara council funding, I've yet to see it ever increase. I believe it started out in that just right around that 50,000 range and I-- not to correct her, but I think right now we're down to about \$42,000 how that gets run through the General Fund and through Game and Parks like she said. Back in the day, I think the park service funding was 250 to 300,000. Now that's down to about a 100,000. So it's-- it's really made things more challenging, you know, over-- over the years to-- to operate in the function with their one and a half employees that they have. I don't believe our-- our executive director and staff have had a--had raises for like six years and stuff. So, so anyway, those are, yeah, the financial challenges that you've heard from these-- these other appointees are real and stuff. But that being said, we've made a lot of changes to be more efficient and, yeah, Senator Moser introduced this bill, and I hope that everybody does feel that it's an efficiency deal. So that's all have, Senator.

**HUGHES:** Thank you, Mr. Murphy. Are there any questions? Seeing none, thank you for being here today. Any additional proponents to LB855? Anyone wishing to testify in opposition to LB855? Welcome.

**JIM JOHNSON:** Welcome, Senators. My name is Jim Johnson, J-i-m J-o-h-n-s--o-n. I am the interim executive director of the Nebraska Wildlife Federation. The mission of the Nebraska Wildlife Federation is to preserve and protect Nebraska's wildlife and habitat. We've been doing this for 50 years, which coincidentally is, 2020 is our 50th anniversary. Our history with the Niobrara River goes back a long ways. We were opponents of the Norden Dam and we were proponents of the scenic river designation and we won both. We adamantly opposed this bill as we fear any kind of lack of oversight to a tax supported entity or agency is dangerous. It shouldn't happen. And we fear if this does, this may lead to a-- to end the scenic-- scenic river designation on the Niobrara. If any of you been up there, it's a beautiful river. It needs to be protected. So we oppose this bill, as do most of the conservation groups in the state. Any questions?

**HUGHES:** Thank you, Mr. Johnson. Are there any questions? Senator Bostelman.

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**BOSTELMAN:** Thank you, Chairman Hughes. Thank you for being here today testifying. As we heard, funding is an issue for them. So explain to me, has there been other opportunities from, as a commissioner for-- from your group or other groups that are out there, to help them with funding to alleviate some of the-- some of the challenges they have of funding?

**JIM JOHNSON:** Not-- not that I'm aware of.

**BOSTELMAN:** Has anyone thought about setting up maybe a foundation or something like that where funds could be given to them?

**JIM JOHNSON:** Not really, no, but that's a great idea.

**BOSTELMAN:** Do you know-- can you tell me then how are those funds used? Why? What's that? Near my understanding, this is a critical thing that this commission stays and that they come before us. Can you tell me why the Niobrara Council itself is important?

**JIM JOHNSON:** Well, the Niobrara Council itself is important and as has been mentioned before is you do get local input. And, you know, anytime you have that, that's-- that's good. But also at the same time, it could end up being-- and without legislative oversight it could end up being, well, I don't know what [INAUDIBLE] lean one way more than the other. And like I said, that's the fear we have is it could lead to a push to in the scenic river designation.

**BOSTELMAN:** Is there a limited number of potential council members, do you think, since it is landowner-- landowner, it's how-- how many? You know, some things it is-- it's difficulty in finding someone to sit on the council. Do you see that that's a limiting factor or an issue?

**JIM JOHNSON:** No.

**BOSTELMAN:** OK. Thank you.

**HUGHES:** Any additional questions? Senator Albrecht.

**ALBRECHT:** Thank you, Chairman Hughes. Thank you for being here, Mr. Johnson. And so you're with the Nebraska Wildlife Federation.

**JIM JOHNSON:** Yes.

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**ALBRECHT:** So what is it that-- that people who serve on this board that actually have a liking for the area and what they would like to see, what-- what do you see that they could possibly do that would-- would upset your organization?

**JIM JOHNSON:** We fear developments.

**ALBRECHT:** Development along--

**JIM JOHNSON:** Developments and also, there's a-- there's a issue with inflow in the river and water rights, that type of thing. You know, where the-- if they pull too much water out of the river, you know, it could lead to the end of a lot of the activities they have around there flowing down the river, just being the river, wildlife, habitat.

**ALBRECHT:** So have they in the past ever done anything that your organization would have a red flag that you would not be happy with or that you're able to go to their meetings and visit and discuss it?

**JIM JOHNSON:** Well, I don't know how far in the past you want to go. I-- like I said, we oppose more in the dam, that would have been a huge mistake to dam the river. And there have been other instances where there have been issues as far as inflow, stream inflow, that type of thing. And, you know, we-- we just --we just fear-- excuse me.

**ALBRECHT:** I'm just trying to wrap my head around. Has there been something in the past that's happened or what do you foresee in the future that could be a problem if we don't--

**JIM JOHNSON:** Well, that-- that is it. If we look into the future, if we-- if we lack-- if we end legislative oversight on the members of the council, we fear that this-- this could lead to the council perhaps pushing for the ending of the scenic river designation and possibly if that happens, then that opens up the area to development. And as the-- was expressed before, land around the scenic river is-- is valuable. And we fear that. We fear the loss of wildlife and habitat if that happens.

**ALBRECHT:** Thank you.

**HUGHES:** Any other questions? Seeing none, thank you for your testimony.

**JIM JOHNSON:** OK. Thank you.



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**HUGHES:** Are there any other opponents to LB855? Seeing none, anyone wishing to testi-- testify in the neutral capacity? Seeing none, Senator Moser, you're welcome to close.

**MOSER:** Well, I'd like to thank everybody who came to testify today, and I appreciate that two members of the Niobrara Council came to testify in support. And then the concerns by the gentleman who testified before me, after the hearing, I-- I want to talk to him a little bit and visit with him a little bit about it. But the-- the way the process works is they're nominated by the Governor and then they come to our committee and we interview them and we can approve them or not. I don't think we've ever not approved whoever was nominated. They serve at the pleasure of the Governor. So if this organization goes off the rails, the Governor is the only one that has any authority to do anything about it. We-- I don't think we have a mechanism to remove a member of the Niobrara Council. So I don't see-- I understand his passion and his concern for the area, but I don't see how this bill changes the balance of power there because the Governor has the right to nominate and to remove them if for some reason, you know, they're not serving or not participating in the process. I just think that sometimes they'd call in, sometimes they'd show up here, but the call-ins, you couldn't see their face and you really couldn't tell as much as if you see them in person. And I just-- I think it's extra overhead for us, and I think it's a burden on them to come here to to testify before us to approve them. I think the Governor vets them and they serve at his pleasure. If things are not going the way he wants, he could remove them. Again, I don't-- I don't know if our council has prepared to answer a question like that, but I don't believe we have any mechanism to remove them if we wanted to.

**HUGHES:** OK. Any questions for Senator Moser? Seeing none, thank you. That will close our hearing on LB855, and we will-- the next and last item on the agenda, LB769. Senator Gragert. Welcome to your Natural Resources Committee.

**GRAGERT:** All right. Thank you, Chairman Hughes, members of the Natural Resources Committee, I'm Senator Tim Gragert, T-i-m G-r-a-g-e-r-t, representing the District 40 in northeast corner of the state. I'm here today to introduce LB769. LB769 would require that each member of the Natural Resources Commission be a resident of the state of Nebraska. The Natural Resources Commission is charged with helping to conserve, protect and utilize the water and related land sources of the state through the oversight of six state aid programs established

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for these purposes. The commission consists of 27 members who represent diverse water and land conservation and related natural resources management interests. Chief among the NRCs responsibility is allocation of a water sustainable fund. In 2013, the Legislature formed the Water Funding Task Force to develop a plan to list the project and prioritize the water funding needs of the state and to develop a governmental framework to administer these funds. After 20 public hearings, tours and educational psych-- sessions, the task force achieved a consensus on creating a water sustainable fund. The task force then agreed to a board makeup of the Natural Resource Commission to help fairly allocate these funds. Based on this concession, bills creating a water sustainable fund and changing the makeup of the Natural Resources Commission were passed by the Legislature in 2014. The Water Sustainable Fund was provided a one-time startup fund of 21 million and the dedication of 11 million per year. This fund has been a General Fund appropriation, so the NRC is dealing directly with allocation from the Nebraska tax dollars. It is perplexing to me that the Nebraska residency was not a requirement built in to serving on the Nebraska Natural Resources Commission. To me, this is a common sense requirement for a board that is administering Nebraska tax dollars and focusing on sustainability of Nebraska's water supply. Although there was a recent instance of an NRC member moving out of Nebraska and remaining as a commissioner, I am not bringing this bill in response to any one instance or commissioner, but rather to protect the integrity of the commission for the long term. Thank you for your consideration on LB769. I urge your favorable vote to advance the bill. If you have any questions, I'd be happy to answer them.

**HUGHES:** Thank you, Senator Gragert. Are there any questions? Seeing none, you'll stay to close?

**GRAGERT:** You bet.

**HUGHES:** Very good. So we'll open it up to proponents of LB855. I'm sorry, LB769. Sorry.

**PAT O'BRIEN:** Good afternoon, Senator Hughes, and members of the Natural Resources Committee. My name is Pat O'Brien, P-a-t O-'-B-r-i-e-n, and I'm the general manager of the Upper Niobrara-White Natural Resources District from Chadron, Nebraska. I'm here today to offer testimony in support of LB769 on behalf of the Upper Niobrara-White NRD and the Nebraska Association of Resources Districts. The National Resources Commission was developed with the

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formation of the NRDs and has multiple responsibilities, including oversight of several fund-- several funding programs. Most notably as Senator Gragert mentioned, the commission allocates funds from the Water Sustainability Fund, which the Legislature established to protect Nebraska surface and groundwater resources. For each of the fiscal years 2019-20 and 2020-21 the Water Sustainability Fund received approximately \$11 million. The commission also oversees other programs such as Soil Water Conservation Program, Natural Resources Water Quality Fund and the Water Quality Commissioning Fund. However, these are much smaller in terms of dollars that are given out each year. Currently, there are 27 commission members. 13 of the commission members represent unique river basins throughout the state and are elected by a caucus of NRD directors who reside in that specific river basin. It should be noted, though, that an NRD director or any person who lives in the river basin can be elected as a commission member. There is no requirement that said person be an NRD director. The remaining 14 members are appointed by the Governor to represent various water-related interests such as recreation, public power districts, irrigation districts, wildlife conservation and others. All the commissioners serve four-year terms and the elections or appointments are offset to allow for some continuity. While the statute do require residency requirements within a river basin, neither the elected or appointed members currently are required to be residents of the state of Nebraska. There are several river basins that do extend beyond the state borders, such as the Niobrara basin that extends into Wyoming and also into South Dakota, and there is an opportunity for a nonresident to be elected as a member or to be appointed. The attendance bill is straightforward to require that Nebraska Natural Resources Commission members who are responsible for the delegation of millions of dollars be residents of the state of Nebraska. Thank you to Senator Gragert and Erdman for introducing this bill and for the opportunity to testify today. I'll be happy to answer any questions.

**HUGHES:** Thank you, Mr. O'Brien. Are there any questions? Senator Bostelman.

**BOSTELMAN:** So, thank you, Chairman Hughes, and thank you for being here to testify today. So are the-- all the members appointed?

**PAT O'BRIEN:** No, there are 13 of them that are residents of river basins. They're elected by a caucus of the NRD directors who live

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within the river basin, so offset every couple of years, you have about half of them, six or seven, because it's an odd number.

**BOSTELMAN:** They serve two years?

**PAT O'BRIEN:** Four years.

**BOSTELMAN:** Four years. And does the NRDs then have the ability to remove them?

**PAT O'BRIEN:** I don't know. That's never-- it's never happened since I've been around so I'm not sure.

**BOSTELMAN:** Because I would think as a previous bill we had, the Governor has the-- serve at their-- at his pleasure or her pleasure. Would that not be the same case here, I guess. And the other question I'd have is, do you know on the commissions-- and I've asked this question before. Are there other commissioners, commissions such as this that require the person to be a resident of the state of Nebraska, that it's stated in statute?

**PAT O'BRIEN:** Right. I would hope so. I don't know that answer, but I would hope so.

**BOSTELMAN:** OK. Thank you.

**PAT O'BRIEN:** You're welcome.

**HUGHES:** Senator Albrecht.

**ALBRECHT:** Thank you, Chairman Hughes. Thanks for being here. So these-- these people that are put on to this board through a caucus of NRD member?

**PAT O'BRIEN:** Directors.

**ALBRECHT:** Directors. Are any of those that are put on this commission directors of NRDs?

**PAT O'BRIEN:** It's a mix. There are some that the directors actually want to be on it so they they put themselves in the position to be on it. And in other situations where just a general member of the public, who's not an NRD director, also wants to serve on the commission who gets elected by a caucus of those board members.

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**ALBRECHT:** I'd be curious to know how many directors are on this commission because that would make a difference I would think.

**PAT O'BRIEN:** Of the 13, the last time I checked of the 13 that are-- that are caucus, 10 of them were NRD directors and three of them were not.

**ALBRECHT:** Ten were directors. Of the funds that they get every year, this eleven million, they decide what projects. Is there a list somewhere of the projects that those folks take a look at?

**PAT O'BRIEN:** It would be on the Natural Resources Commission website. They put the list of funded projects out there every year.

**ALBRECHT:** Good. Thank you.

**HUGHES:** Additional questions? Senator Quick.

**QUICK:** Thank you, Chairman Hughes, and thank you for being here. You know, like if, say someone wanted to resign or step down or someone maybe passed away while-- while serving, is there a mechanism where you would have to reelect someone in the middle of a term?

**PAT O'BRIEN:** They would recaucus. If it was one of the elected members, the board members or the NRD board members would recaucus and then the appointed ones, of course, reared by the Governor's selection.

**QUICK:** All right.

**HUGHES:** Any additional questions? Seeing none, thank you, Mr. O'Brien--

**PAT O'BRIEN:** Thank you.

**HUGHES:** --for coming down today. Are there additional proponents to LB769? Seeing none, are there any opponents to LB769? Is there anyone wishing to testify in the neutral position of LB769? I was remiss in reading letters. We do have one letter in support of LB769 from Cathy Wilmot of Beaver City, Nebraska. And LB855, we do have four letters in opposition. So my apologies to Committee Clerk. So with that, Senator Gragert, you're welcome to close or waive.

**GRAGERT:** I'll just waive.

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**HUGHES:** Thank you, Senator Gragert. We appreciate that. With that--  
that concludes our hearing today. I would like to maybe have a short  
Exec before you--