

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2021
Rough Draft

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BOSTELMAN: Morning, everyone. Welcome to the Natural Resources Committee hearing this morning. It's 9:30, a little bit after, we'll get started. Have a few things I need to read for you. For the safety of our committee members, staff, pages, and the public we ask those attending our hearing to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it is necessary for you to attend the bill hearing in progress. This-- bill will be taken up in the-- the bills will be taken up in the order posted outside of the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that everyone utilize the identified entrance of-- entrance and exit to the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches seating capacity or near capacity, the entrance door will be monitored by Sergeant of Arms-- at Arms, who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter the hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability due to HVAC-- to the HVAC project of an overflow hearing room for hearings which attract several testifiers and observers. For hearings with a large attendance, we ask only testifiers enter the hearing room. We ask that you please limit or eliminate handouts. Welcome to the Natural Resources Committee. I am Senator Bruce Bostelman from Brainard and I represent District 23. I serve as Chair of this committee. The committee will take up bills in the order posted. 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 might come and go during the hearing. This is just a 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. Introduce-- introducers will make initial statements followed

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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 sheet before you testify. Please print, and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to a page or the committee clerk. This will help us make a more accurate public record. If you do not wish to testify today but would like to record your name as being present at the hearing, there is a separate white sheet on the table so you can sign for-- sign for that purpose. This will be a part of the official record of the hearing. When you come up to testify, please speak clearly into the microphone and you may remove your face covering, your mask. Tell us your name and please spell your first and last name to ensure we have an accurate record. 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 your time has ended. Questions from the committee may follow. No displays of support or opposition to a bill, local or otherwise, is allowed at a public hearing. The committee members with us today will introduce themselves starting on my left with Senator Gragert.

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

WAYNE: Justin Wayne, District 13, northeast-- northeast Douglas County and north Omaha.

HUGHES: Dan Hughes, District 44, 10 counties in southwest Nebraska.

AGUILAR: Ray Aguilar, District 35, Grand Island.

BOSTELMAN: And on my right-- Senator Groene.

GROENE: Mike Groene, representing Lincoln County.

J. CAVANAUGH: John Cavanaugh, District 9, midtown Omaha.

MOSER: Mike Moser, District 22, Platte County and parts of Colfax and Stanton County.

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BOSTELMAN: Mike Moser. Senator Moser serves as the Vice Chair of this committee. To my left is committee legal counsel, Cyndi Lamm, and to the far right is the committee clerk, Katie Bohlmeier. I would also like to recognize our pages for today. Both Lorenzo and Erin are here with us and we thank you for helping us with the hearing this morning. With that, I would invite Senator Hughes as we open-- as he opens on LB190.

HUGHES: Good morning, Chairman Bostelman, members of the Natural Resources Committee. I am Senator Dan Hughes, that is D-a-n H-u-g-h-e-s, and I represent the 44th Legislative District. I'm here today to introduce LB190. LB190 states that the Legislature shall not appropriate or transfer money from the Water Sustainability Fund for any purpose other than to further the goals stated in Section 2-1506, except if they find that the goals of such section are not being accomplished by the fund. Basically, LB190 would prevent the Legislature from sweeping the fund when they're trying to balance the state's budget or from someone else taking money from that fund for a different purpose. I'd be happy to try and answer any questions.

BOSTELMAN: Thank you, Senator Hughes. Are there any questions from the committee? Senator Moser.

MOSER: Senator Hughes, has this happened before?

HUGHES: There have-- the reason for this bill as I was visiting with Senator Stinner, the Chairman of the Appropriations Committee, and he indicated that the opportunity to sweep the interest earned on funds from the Water Sustainability Fund was pretty enticing for the Appropriations Committee when the state had a budget shortfall and felt-- I felt that that was an inappropriate use of those funds so I have introduced this legislation to prevent the state from taking money out of that fund, which is generated-- the interest generated.

MOSER: In other budget years when times were tough, has money ever been taken out of that fund?

HUGHES: I believe it has, yes. Well, the interest, not-- not the money that's been appropriated.

MOSER: Not for--

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HUGHES: --for this specific purpose, but the interest that is earned on that money as it's sitting there waiting for the grant process for matching funds to be generated.

MOSER: OK, thank you.

BOSTELMAN: Other questions from the committee? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you, Senator Hughes. That your answer there kind of just directly made me think about Director Riley's letter that he submitted and his concern about being able to withdraw that interest. Is that exactly what you're talking about or is that a different issue?

HUGHES: It is not my intent to inhibit the Department of Natural Resources from accessing some of those funds as long as they're related to the goals of the Water Sustainability Fund. My goal is to prevent the state from using that to supplement our overall budget.

J. CAVANAUGH: So your interpretation of the statute would be-- or this proposal would be that it wouldn't cause the problem he's concerned about in that letter then?

HUGHES: Yes, it is not my intent to affect how the Department of Natural Resources has been accessing those funds for water sustainability issues at all.

J. CAVANAUGH: Thank you.

BOSTELMAN: Thanks, Senator Cavanaugh. Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Real quick question. Would-- would it still remain like in-- in the funds that were evidently taken from here in the event of the 2019 flooding, which-- would have events like that, would this money still be possible, eligible potentially to emergency situation?

HUGHES: I believe the Department of Natural Resources did access some of these funds in that emergency to-- to do some things. I'm not-- I don't know specifically, but in my conversations with Director Riley, I think he indicated that DNR had used some of these funds and access

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to these funds, and it's certainly not my intent to prevent DNR from access to these funds.

GRAGERT: OK. Thank you.

BOSTELMAN: Thanks, Senator Gragert. Other questions from the committee members. Seeing none, thank you, Senator Hughes. I'm sure, you'll stick around for closing.

HUGHES: Absolutely.

BOSTELMAN: You think you would ask anyone of proponents who would like to testify as a proponent for this bill, please step forward. Welcome.

SCOTT SMATHERS: Chairman Bostelman, members of the committee, my name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. Today, I'm here as the sitting Chairman of the Natural Resources Commission, excuse me, on behalf of the support of LB190 presented by Senator Hughes. I have provided you a handout that includes part of my testimony, but in addition it shows the funding history since 2015. I have been a member, excuse me, I apologize, of the Natural Resources Commission prior to the creation of the commission with Senator Carlson's water funding task force in 2012, which resulted in LB1098 which created the statute for the water funding-- or for the Water Sustainability Fund. And I was then reappointed, or appointed by Governor Heineman to the Natural Resources Commission. And since that time I've been reappointed by Senator Ricketts twice and am waiting for my confirmation for my-- hopefully my last four-year term, which would put me at a dozen years-- on Friday, excuse me. I have been a member of the commission and held every chair possible from Chairman of the Rules Committee that wrote the initial rules for the fund, to the scoring committees, to Vice Chairman, as I said, currently the sitting Chairman of the organization. We appreciate Senator Hughes bringing this bill in an effort to protect the funding that has been achieved through LB1098 and 25 years of history, all the way back to LB962 in year 2000, trying to seek funding for water issues, sustainability for quality and quantity in the state. In your handouts, I provided you, right at the top of the page, two key links for your further education if you should desire to seek it. The first one is for our website for the Natural Resources Commission, which are many windows for you to explore, to look at facts, figures, numbers and what we've done each

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period. And then the last one is-- the second link is a link for you that we created this last year with the help of the IT Department, Department Natural Resources. It's a water story map of what the commission has completed since 2014. And so with that said, I hope you do take time, some of those added information in this packet that you have. And I want to stress that the Natural Resources Commission is not a division or reports to the Department of Natural Resources. We are a separate entity appointed by the Governor, 14 of us representing various stakeholders. And we have 13 elected members from the Nebraska Resource Districts, NRDs, that are appointed by other board members to represent their water interests in the state, making a grand total of 27 of us. We do not make decisions on what grants will be reviewed or scored. That is done by the Department of Natural Resources and now new Director Riley. Once we receive those at the Natural Resources Commission is when we grade, according to the statute that was created in LB1098, assigned scores, as you will see the funding list there proceed in the testimony. And then we make a decision and we grant the money, according to the scoring committee's direction. One of the issues that has been paramount with the Natural Resources Commission all the way back to the old Natural Resources Commission prior to my association is that the funds were swept at one point during down economic times in the state. After the old NRC had already allocated the project sponsors and projects were started around the state and then the money was swept due to economic conditions, leaving those stakeholders and those project managers high and dry for completion. When we created LB1098, and it was created through this body after the water funding task force, the intent of Senator Carlson and the committee of this-- of this-- the members of this committee in the body was to protect that funding. Once the money was allocated, it was unable to be swept by this body. The interest, however, has become a conversation point because we've been fiscally responsible with our-- with our grants typically leaving over between three and \$7 million of available funding in the account. The interest has grown tremendously over the last six years, representing a large pot of money that is available for the department to use for expenses, and hopefully we would like to get to the point where we can use that money and roll it back in after a period of time, quarterly or yearly, back into the total available pot for grants so we can spend our grant possibility. On the link-- I didn't include in your packet because it's a mind-numbing number and it's a little confusing to track. But on

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that-- on the link we provide to everybody that looks is the number of requests received each year in total dollar and number of applications in dollar amounts versus what we were able to fund via available funds. The shortfall is tremendous. So I would encourage you to support LB190 as you move to the floor. The attempts that have taken place, Senator Burke Harr brought \$ 100,000 bill to take from the interest for water gardens in Omaha. Senator Kate Bolz, last year wanted to take half a million dollars to the university from the interest. This year there's a bill, LB406, that says \$900,000 will come out of the interest. We are competitive grant process. You must file an application, you must be reviewed by department, by the Natural Resources Committee Commission, and then scored and judged as funding is given. We ask that method continues. With that, I'll end and answer any questions I can. Thank you very much.

BOSTELMAN: Thank you, Mr. Smathers. Are there any questions from the committee members? Seeing none.

SCOTT SMATHERS: Let me off early.

BOSTELMAN: Thank you, Mr. Smathers.

SCOTT SMATHERS: Thank you.

BOSTELMAN: Next proponent. Anyone else would like to testify as a proponent on LB190? Seeing none, any opponents? Anyone wish to testify in opposition to LB190? Seeing none, anyone wish to testify in the neutral capacity? Seeing none, Senator Hughes, you're welcome to close.

HUGHES: Thank you, Mr. Chairman, and members of the committee. I will point out my gratitude to committee counsel, Lamm, that she has worked on an amendment to this bill. There was some confusing language in there about the exemption to the exemption, so the committee will be getting an amendment to clarify that, and I do appreciate her work on that. And I am-- have looked at that and fully support of that. So, however, the Chairman wishes to proceed with that, at some point we'll take a look at that. But thank you for your time. And if you have any additional questions.

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BOSTELMAN: Are there any other questions from the committee members? Seeing none. We do have one written testimony that we received this morning from Lee Orton from the Nebraska State Irrigation Association. And we did receive position letters and proponents from the Nebraska Public Power District, Metropolitan Utilities District, Central Nebraska Public Power and Irrigation District, and neutral testimony from the Department of Natural Resources. With that, that will conclude our hearing on LB190. We will now open the hearing on LB191. Senator Hughes, you're welcome to open.

HUGHES: Thank you, Chairman Bostelman, and members of the Natural Resources Committee. I'm Senator Dan Hughes. That is D-a-n H-u-g-h-e-s. I represent the 44th Legislative District. I am here today to introduce LB191. LB191 removes the requirement from certain irrigation districts that all electors must be a resident of the state of Nebraska, if a surface water district meets the following requirements. If it-- if it borders another state, if it comprises less than 2,000 acres and at least half of the landowners, leaseholders or entryman of government lands are not residents of the state of Nebraska. There's a small surface water irrigation district in the southwest corner of my legislative district that this legislation will help. And there may be others also struggling with this issue now or in the future. With farms getting larger, there are fewer and fewer landowners and leaseholders farming the land. And since this district is next to the Colorado border, a number of the landowners within the surplus water irrigation district in my district, don't live in Nebraska. And most of the Nebraska residents in that area are elderly and have served on that board for decades and are wishing to relieve themselves of that responsibility. We're trying to create an opportunity for landowners who don't live in Nebraska to be eligible for membership on the board that will control the day-to-day operations of this surface water district. With that, I'll be happy to answer any questions.

BOSTELMAN: Thank you, Senator Hughes. Are there any questions from committee members? Seeing none, thank you, Senator Hughes. I'm sure, you will stay for closing.

HUGHES: Um-hum.

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BOSTELMAN: Thank you. We'll, now invite anyone-- testifiers would like to testify as proponent for LB191. Please come forward. Welcome.

MORGAN FARQUHAR: Thank you, Chairman. My name is Morgan Farquhar. That's spelled M-o-r-g-a-n, last name is F-a-r-q-u-h-a-r. I am an attorney who deals with quite a few different irrigation aspects in my practice. I practice primarily in Cambridge, Nebraska, and I work with a group called the Pioneer Irrigation District, which Senator Hughes alluded to earlier. That district is comprised of approximately 1,988.6 acres and is located within spitting distance of both Kansas and Colorado. The district has-- I've been assisting the district for several years with different issues. And one of the issues that they have run into is that they have a base of individuals who desperately want to be involved in the political process on a local level that controls the day-to-day operations of the irrigation system, which was hand dug beginning in Colorado on the divergence of the Republican River back in the 1860s. And that irrigation canal has been in operation ever since. The problem that they've run into is that more than half of the individuals who own land and want to serve in that public capacity are unable to do so because the law requires currently that those individuals be residents of the state of Nebraska. The other issue is that there are owners of property who may spend half their time here. They may spend time vacationing, or in other areas of the United States, and the residency requirement is questionable for them whether they can serve. This issue has-- is-- is something that I believe is going to affect a lot of smaller irrigation districts, especially those that border other states. As Senator Hughes stated, the population demographics of these groups, the age, I would guess, an estimate of the age of the individuals in the group that I represent is-- is certainly over 65. But there are young members who want to take on this role and be able to have a voice in their-- the local day-to-day operations of their irrigation districts. So I'm here today to-- to voice their-- their happiness for this bill being introduced by Senator Hughes and wanted to let the committee know that this may not be a major issue for the majority of Nebraskans, but for these-- for individuals who find themselves in a situation where they want to serve on a board that directly affects them financially and the legacy of the property that they own who are unable to do that, it is certainly is a major problem for them that they would like, or are

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hoping that the state can resolve for them. And with that, I would be more than happy to answer any questions if I could.

BOSTELMAN: Thank you. Are there any questions from committee members? Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. I have a quick question. You clarified, now is this under 2,000 acres or is it 20,000 acres?

MORGAN FARQUHAR: The-- the bill is under 2,000 acres.

GRAGERT: OK, thank you. Next thing is, with the age scenario, would renters or leasees be able to serve on the irrigation district?

MORGAN FARQUHAR: They-- they are currently, and I believe that provision is not affected by LB191. My recollection is, is that they have to have that leasehold estate for a period of five years or more to be qualified as an elector.

GRAGERT: OK. And so, but the encho or scenario here could be that 2,000 acres, one individual that doesn't live in the state of Nebraska would be in control of your irrigation district then?

MORGAN FARQUHAR: I-- hypothetically, I would-- I would say that you could. A person could lease all that ground. Currently, there are 16 families in this particular irrigation district that own property and count-- would normally count as electors. The issue is, is that approximately 65 to 70 percent of them are not Nebraska residents. Now, most of them live within-- well, several of them live within feet of the Colorado border. So we're talking about a geographical area that's really no more-- no larger than about a five by five square mile block that comprises all of the land and all of the individuals who have an interest in that land.

GRAGERT: OK. Thank you.

BOSTELMAN: Other questions from committee members,? Senator Moser.

MOSER: How are the directors elected or I mean chosen? I mean, what's the-- the citizen interface in order to protect what happens to the properties? Does the board nominate and approve their own board members or how does it work?

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MORGAN FARQUHAR: There is an election. It is-- the election occurs when all other county positions in Dundy County, Nebraska, would be filled. And those-- those positions, the three directors that are on the board, they are nominated by the rest of the owners and then they are, they're-- they have a vote and they are elected just like any other local position would be.

MOSER: OK. Thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. So it's on the local ballot then?

MORGAN FARQUHAR: It is.

J. CAVANAUGH: So what if all of the electors end up being nonresidents, they would be subject to a vote of people who are not owners of this property?

MORGAN FARQUHAR: The individuals who are allowed to vote are the electors.

J. CAVANAUGH: Even if they don't live in the state?

MORGAN FARQUHAR: Not-- not-- if LB-- let me--

J. CAVANAUGH: Sorry.

MORGAN FARQUHAR: --back up. I don't want to confuse the issue, but under current law, the only eligible people to serve on the board and also vote are those that are classified as electors under current law. That system excludes anyone who resides outside of the state of Nebraska. So you have interference with the political process on two different levels under the current law. They're not allowed to vote and they're also not allowed to serve. What this bill would do is allow those people who otherwise would meet the requirements of ownership and a number of acres and those types of things who are residents of a-- another state to be able to vote and also serve on the district board, which is comprised of three members.

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J. CAVANAUGH: That was going to be my next question. And so they will then be able to vote, but only on this portion of that county's ballot then.

MORGAN FARQUHAR: That's correct.

J. CAVANAUGH: OK.

MORGAN FARQUHAR: There wouldn't be any expansion of, you know, the general term of voter rights for any-- any other nonresidents. This exclusion would only apply to voting and serving on boards for irrigation districts that fit into this category, which the category would be created to essentially have your large districts where this is not an issue based on sheer statistics, and then smaller irrigation districts that border other states and have a certain proportion, at least 50 percent of the owners residing outside of the state.

J. CAVANAUGH: So where's the mechanism to allow those folks to vote then? How is that going to be facilitated?

MORGAN FARQUHAR: Could you ask that question again?

J. CAVANAUGH: I guess, I didn't see anything in here that addresses how the-- these new electors who live outside the state would receive their ballot or how they would cast that ballot.

MORGAN FARQUHAR: The voting is-- or the procedure, I guess, for voting is outlined in the procedures that the district has previously adopted. So in this case, the Pioneer Irrigation District has adopted that they will hold their election in Haigler, Nebraska, on regular election day. And there is a ballot, but it's not on the same ballot as the other county and state offices. But the election is held at the same time and at the same physical location.

J. CAVANAUGH: OK.

MORGAN FARQUHAR: I may not have been clear when you asked your first question.

J. CAVANAUGH: Yeah, that clarifies that. Thank you.

BOSTELMAN: Are there other questions? Senator Gragert.

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GRAGERT: Could I just clarify one-- you said now the individual could live in any other state, not just our bordering states, that they could live in California?

MORGAN FARQUHAR: That's correct.

GRAGERT: OK. Thank you.

BOSTELMAN: Any other questions from committee members? How many irrigation districts within the state would this apply to?

MORGAN FARQUHAR: I do not know the exact answer to that question. I-- and I think that's also a question that as time goes on, there will be additional-- potentially additional irrigation districts that fall into it. The only one that I've personally researched and looked into would be Pioneer Irrigation District.

BOSTELMAN: OK, and this really just, as our-- our state border irrigation districts and it's not-- won't be necessarily one in the central part of the state, I would think.

MORGAN FARQUHAR: No. I'm not aware of any in the central part of the state. I can say that just, you know, for the committee's reference, the-- all of the individuals in this of the 16 families that would be affected in Pioneer Irrigation District, all of the-- of those individuals are either residents of the state of Nebraska or Colorado. We-- we don't have any, I guess, absentee landowner situation where they're living, you know, several thousand miles away in a different state and they're just owning property for investment. These individuals reside within just a few miles of this area. Just happens to be a state line in the way that prevents them from being able to participate.

BOSTELMAN: OK, thank you. Are there any questions? Senator Wayne.

WAYNE: Along those lines if it doesn't stop somebody from living in-- living in maybe New York and buying down here in this area to be a partner, to be a elector? You just said right now they all live in Colorado, but they don't-- it doesn't stop somebody from--

MORGAN FARQUHAR: No, it wouldn't prevent them. And there's also the situation some of the individual landowners may spend a majority of

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their time in the winter in Arizona or New Mexico or something. Then what they-- their concern of those individuals is they-- they don't want to be in a situation where they may not qualify as a resident of the state of Nebraska, even though their ties are to Nebraska, they return to Nebraska. They've lived there their entire life. And there's a-- there's sort of some nuance to the residency issue with all laws in the state of Nebraska, not just affecting LB191 or these types of issues, but that's-- that's something that they're-- they don't want to step over that line, so to speak.

WAYNE: So, is it possible for anybody when I'm reading this, is it possible for Irrigation District to have nobody from the state of Nebraska on this bill?

MORGAN FARQUHAR: I-- hypothetically, yes. I don't envision that as something that would ever happen, but if-- if someone managed to purchase all the land and reside outside of the state of Nebraska, I-- they could.

WAYNE: Like a Bill Gates. I'm just throwing that hypothetically, you don't have to answer that. Thank you.

BOSTELMAN: Thanks, Senator Wayne. Are there any other questions? Seeing none, thank you for your testimony.

MORGAN FARQUHAR: Thank you.

BOSTELMAN: Is there anyone else who would like to testify as a proponent for LB191? Seeing none, would anyone like to testify as an opponent to LB191? Seeing none, is there anyone would like to testify in their neutral capacity on LB191? Seeing none, Senator Hughes, you're welcome to close.

HUGHES: Thank you, Chairman Bostelman, and members of the committee, I'll be brief. This is not special legislation. We drafted it very narrowly in order to take care of the situation, but it is designed to be able to used in other circumstances should this issue pop up in other areas. But we're just trying to solve a local problem and unfortunately, as Mr. Farquhar said, there just happens to be a state line right close to that. So, would take any questions and-- and look

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forward to visiting with the committee about this issue some more.
Thank you.

BOSTELMAN: Thank you, Senator Hughes. Are there any questions from the committee members? Seeing none, that will close our hearing on LB191 and end our hearings for this morning. Once we shut off the mike, we do have a question for committee members just on.

BOSTELMAN: Some of our COVID-19 hearing procedures. For the safety of our committee members, staff, pages and the public, we ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it is necessary for you to attend the bill hearing in progress. The bills will be taken up in order posted outside of the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that everyone utilize the identified entrance on that side and the exit on that side when entering and leaving the hearing room. We request that you hear a-- that you wear a face covering while in the hearing room. However, testifiers may remove their face covering during testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches seating capacity or near capacity, the entrance door will be monitored by Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability due to the HVAC project of an overflow hearing room for hearings which attract several testifiers and observers. For hearings with a large attendance, we request only testifiers enter the hearing room. We ask that you please limit or eliminate your handouts. So with that, welcome to the Natural Resources Committee. I am Senator Bruce Bostelman and I represent District 23. I serve as the Chair of the committee. The committee will take up the bills in the order posted. 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 might come and go during the hearing. This is just

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GRAGERT: Good afternoon. Senator Tim Gragert from northeast Nebraska, District 40.

WAYNE: Justin Wayne, District 13. northeast Douglas County and North Omaha.

AGUILAR: Ray Aguilar, District 35, Grand Island.

BOSTELMAN: And to my right.

GROENE: Senator Groene, Lincoln County.

J. CAVANAUGH: John Cavanaugh, District 9, midtown Omaha.

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MOSER: Mike Moser, District 22, Platte County, parts of Colfax and Stanton County.

BOSTELMAN: And Senator Moser serves as Vice Chair of this committee. To my left is committee legal counsel, Cyndi Lamm, and to my far right is the committee clerk, Katie Bohlmeier. Also joining us today for pages is Noah Boger and Savana Brakeman and we thank you for being here and helping us with a hearing today. With that, I will turn over to Vice Chair Moser.

MOSER: Thank you, Senator Bostelman.

BOSTELMAN: OK. Good afternoon, Vice Chairman Moser, and members of the Natural Resources Committee. My name is Bruce Bostelman. I spell it B-r-u-c-e B-o-s-t-e-l-m-a-n, and I represent Legislative District 23. I am here today to introduce LB148 on-- on behalf of the Nebraska Department of Environment and Energy and I'm also bringing to the committee an amendment, AM28, which is in your binder, which makes three clarifying changes and no technical changes to the bill. LB148 transfers statutory powers, duties, responsibilities and obligations. Employees and-- and funds for environment-- environmental programs relating to drinking water, swimming pools, recreational camps, mobile home parks, private water supply, private sewage and home loan inspections and water well standards and licensing programs from the Department of Health and Human Services to the Department of Environment and Energy. LB148 also creates two new cash funds for the Environmental Safety Act, the Environmental Safety Cash Fund and the Engineering Review Cash Fund. The Environmental Safety Cash Fund will be used by the department operationally for the issuance of licenses and permits and to complete annual inspections. The Engineering Review Cash Fund will be used operationally for the engineering reviews of plans, specifications required under this act. Since July of 2017, the Department of Environment and Engineer and the Department of Health and Human Services have been operating under a set of memorandums of agreement. Under these, MOAs, DEE has been largely-- largely responsible for managing the operational duties of the programs that would be transferred under this bill. Simply put, this bill will officially transfer these powers to DEE under Nebraska statute. Director Macy is here to answer any of your technical questions on this bill. So with that, I ask for your support of LB148, with AM28,

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and its advancement to General File, and I will take any questions that you have at this time.

MOSER: Senators have any questions for Senator Bostelman? Seeing none, thank you, Senator. OK, are other proponents?

JIM MACY: Good afternoon. Good afternoon, Vice Chairman Moser, Senator Bostelman. My name is Jim Macy, spelled J-i-m M-a-c-y. I'm the Director of the Department of Environment and Energy. I'm here today to testify in support of LB148, a bill to formally transfer several Department of Health and Human Services environmental safety programs into NDEE. That's the Department of Environment and Energy. I want to thank Senator Bostelman for introducing this bill on our behalf. LB148 represents the culmination of our three and a half year experience in managing the DHHS drinking water program, environmental programs and water well standards and licensing programs through a memorandum of agreement. LB148 bill moves for sanitary in programs commonly known as the Environmental Safety programs into the newly created Environmental Safety Act under NDEE. They include swimming pools, recreational camps, mobile home parks, private water supply and private sewage, home loan inspection programs. It also moves responsibility for the Nebraska Safe Drinking Water Act and the Water Wells Standards and Contractors Practice Act from the DHHS to NDEE. Both well drillers and public drinking water program-- public drinking water system operators are removed from the Uniform Credentialing Act. LB148 transfers the physical assets, personnel and funds from the DHHS to the NDEE so that programs continue to function seamlessly. The bill also provides that current regulations, licenses and permits will continue in force until NDEE amends or replaces them to provide continuity to those we regulate. We do not anticipate a change to the programs with the move from one agency to the other. These programs have proved to be a good fit for our agency. The DHHS Drinking Water and SRF programs are Environmental Protection Agency delegated programs that coordinate well together within NDEE's EPA delegated wastewater programs. We realize benefits from working together under the MOAs. These ultimately reflect in the state providing better services to communities across the state. It's allowed us to look holistically at all water issues that impact communities, prioritize projects and provide better services to the communities across Nebraska. Here are several successes of note. Working together has saved communities-- saved small communities, where a public water operator and a

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wastewater operator are likely to be the same person, the time and effort in not only having to coordinate with one agency and important for providing consistency and customer service. During the 2019 flood event, as a result of cross training of our staff, we were able to direct HHS drinking water field staff to inspect wastewater facilities in communities that were isolated by the flood and difficult to access. Permitting times for both, for processing both drinking water and wastewater construction projects has improved. We combined our engineering teams into one group and have an HHS engineer leading this team. Engineering permit processing times since the MOA reflect an 8 percent reduction in permitting time for drinking water permits and a 41 percent reduction in wastewater permitting time without adversely affecting quality. Finally, transferring these HHS programs to NDE will allow increased efficiencies by migrating all the teams under one computer network and reducing duplication of services for fiscal and human resources services experienced under the MOA. In conclusion, integrating the HHS environmental safety programs into NDE has made sense. The Safe Drinking Water Act programs under HHS and Clean Water Act programs under NDEE are each delegated to the state from EPA. DHHS teams under the MOA do similar work as do many of our programs and also communicate with many of the same community members. By transferring these programs to our agency, NDEE can focus its efforts on the environmental aspects of public health and safety. We would welcome the DHHS programs and teammates to have a permanent home with us. We would appreciate your consideration and support for LB148. I would be happy to address any questions you have

MOSER: Senators, have any questions for Director Macy? Yes, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman. Thank you, Director Macy. How often would you have to renew this MOA if we were not to adopt this recommendation?

JIM MACY: The MOA went, at its pleasure, I think it was three or four years.

J. CAVANAUGH: So we'd have-- fairly regularly then we'd have to renew. OK, thank you.

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MOSER: Any other questions? I have one. So will the citizens of Nebraska see anything different if we approve this bill? Can it be a seamless transition, more or less, and--

JIM MACY: It will be a seamless trans-- transfer. We just had a webinar with the League of Municipalities and I asked a poll question, which is, you know, on the spot to the water operators that attended that conference, and 69 percent of those responded that we had either increased our service with this MOA agreement and having both teams together, or it had stayed the same.

MOSER: OK, thank you. Last chance. Thank you, Director.

JIM MACY: Thank you.

MOSER: Anybody else here to speak as a proponent?

BO BOTELHO: Good afternoon, Vice Chairman Moser, and members of the Natural Resources Committee. My name is Bo Botelho, B-o B-o-t-e-l-h-o, and I'm general counsel of the Nebraska Department of Health and Human Services. I'm here today to testify in support of LB148, which would transfer certain environmental safety programs from the Division of Public Health to the Nebraska Department of Environment and Energy, NDEE. The Department supports LB148. It would officially transition environmental safety programs, including the regulation of water well contractors, recreation camps, swimming pools, mobile home parks and drinking water to the Department of-- to NDEE. DHHS and NDEE have been operating under a memorandum of agreement the past several years to transition the work of these programs to the Department of Environment and Energy. LB148 would make the transition official. Through dif-- through this transition, the Department of Health and Human Services staff members who work with these programs would transition to NDEE. LB148 includes provisions for the transition to NDEE of regulations, contracts, licenses, permits and judicial and administrative proceedings which were lawfully commenced or could have been lawfully commenced prior to the date specified in the bill. The provisions as to regulations in particular are necessary to avoid any unintended gaps in authority for continuing-- for continuing matters until NDEE can take the action to amend or replace those regulations. Department of Health and Human Services will retain operation of the Public Health Environmental laboratory, which performs testing of water

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samples and will retain the program for certifying other laboratories to perform similar water tested, the Drinking Water Laboratory Certification Office. In summary, LB148 will properly consolidate administration of environmental safety programs within NDEE. Both agencies are in agreement. Doing so will better serve communities in the state of Nebraska. We respectfully request that the committee support this legislation and moving on to the floor for full debate. Thank you. I'll be happy to answer any questions.

MOSER: Thank you. Questions from Senators? Senator Wayne.

WAYNE: This isn't necessarily about this particular bill, but how do you come about whether to take a position for or against a bill? How does your department do that?

BO BOTELHO: In general, Senator?

WAYNE: In general sense?

BO BOTELHO: Well, we look at the impact of the bill. We look at what the impact would be on agency operations. We look at whether we believe it would benefit Nebraskans or the community we serve.

WAYNE: That's fair. And the reason I'm asking and this isn't really to put you on the spot, but the reason I'm asking is because going back to elementary school, I thought we passed laws and the executive branch enforces them. And so I'm really confused on why DHHS takes any position on any bill, not just you, any agency, on any bill that comes before this body, because if we pass it, you're supposed to execute it and hold-- fulfill it to your best ability as the executive branch. Is that not true?

BO BOTELHO: It is.

WAYNE: So then why is it you are in favor or against the bill when it's our role to pass the bills and your role to enforce the bills?

BO BOTELHO: Well, whether were in favor of it or not, Senator, if the bill gets passed, as you said, we would execute the bill.

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WAYNE: But if you testify against it, what faith do I have you're going to implement it fully if you didn't want the bill in the first place?

BO BOTELHO: I can't speak to the-- your faith, Senator, but we would be obligated to effect the bill to the best of our ability once it's passed, whether we were-- whether we were a proponent or an opponent, once it becomes the law, our obligation is to effect the legislation.

WAYNE: I just have a fundamental problem with agencies taking a position on a bill when it's-- when it's our job to implement it. And so, I mean, I was inclined to support this bill, but now that you're supporting it, I'm raising the question of why, when at the end of the day, I feel like you're crossing over. And it's not fair to you, but I hope others in your department are understanding that if I have a Judiciary bill or I have a HHS bill, I'm really confused on why the department that is supposed to follow the law that we implement are taking a position on the law. And it's not fair to you, and I'm-- I'm-- and I do apologize for you for that because this isn't fair to you. But it just, you came here and you said you're in support of it but I don't know the processes in which your department picks, which bills to pick and choose to support and not support when it's really our obligation to pass the laws. So, again, it's unfair to you. And we've had emails before and I do appreciate you always getting back to me. And again, it's an unfair question to you, but I do think agencies need to testify in a neutral position and take what part of a bill they have technical problems with, but they should not be advocating for a bill or against the bill because I think it violates the premise of-- of three equal branches, in my opinion. Thank you.

MOSER: OK, any other questions from Senators? Thank you very much. Any more proponents?

LEE ORTON: Thank you, Senators. My name is Lee Orton, L-e-e O-r-t-o-n. I'm here this afternoon as the executive director for the Nebraska Well Drillers Association. We're here in support of this legislation. You've already heard from the other two testifiers that we have been a part of the organizational structure of the Nebraska Department of Energy and Environment for about three and a half years at this point in time with all of our programs that we're in the health department transferred over there under a memorandum of agreement. I'm here to

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tell you today that that program transfer has worked very well, quite frankly. The Water Level Standards and Contractors Credentialing Act program has been in existence for over 35 years. We were one of the very first states in the nation to actually have a licensing program for the profession. We were only the second state in the Union to actually have continuing education required to renewal licenses. And we've had that successful program in great place for a long time. We are recognized not only locally and regionally, but nationally and to some extent internationally for the success that our program has. And a lot of that has to do with the fact that the people who actually manage the program are people who have come from the industry. They are, in fact, water well professionals. And that means that when they're out dealing with a license holder across the state someplace, who is also one of those professionals, they have a good communication relationship. And so we don't fight with each other, we find ways to work together. And this program has been phenomenally successful in that regard. And I'm here to say that the program has worked very well for three and a half years out of this memorandum of transition. We were not necessarily pleased when that was done three and a half years ago, but we've discovered that it's worked very well. So we're ready to get on about it, quite frankly. We think this legislation is appropriate and very timely. We'll look forward to having an opportunity to work more extensively with the Department of Environment and Energy leadership, and we'll deal with the programs as we come forward, obviously, to make the program better still than it has been all along. So I want to simply say that we are in support of this legislation as it relates to the Water Level Standards program. We think we need to get it done and move forward. So I'd be happy to answer any questions, either historically or otherwise that you might have with regard to this program, and urge you to advance the legislation and get it adopted.

MOSER: OK. Questions from Senators for Mr. Orton. Seeing none, thank you very much--

LEE ORTON: Thank you very much. Appreciate it.

MOSER: --for coming to testify for us-- with us today. Any other proponents with us today? We had position letters from-- uh, being in support of the bill from the City of Blair, City of Lincoln, City of Omaha, City of Fremont, Village of Wauneta, Department of Defense

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Environmental Coordinator, Stanley Rasmussen. OK, is there anyone here to speak against this bill? Seeing none, anybody here to testify in the neutral position.

LARRY WENNEKAMP: Good afternoon. Senator Bostelman, Senator Moser, and committee members, my name is Larry Wennekamp, L-a-r-r-y W-e-n-n-e-k-a-m-p. Excuse me. I am-- I'm a water-- wastewater supervisor for the Schuyler Department of Utilities and the secretary-treasurer of the Nebraska Rural Water Association. The Nebraska Rural Water Association represents 476 communities across the state of Nebraska. We provide training, education, technical, financial and managerial assistance to these communities in areas of regulatory compliance and public health protection. Assistance is also provided to systems that have deficiencies or inexperienced operators. Many communities lacked the resources needed to effectively operate a water system while complying with federal drinking water regulations and-- and protecting public health. The Nebraska Rural Water Association is concerned regarding the merger of the drinking water program with the Department of Environmental Quality. The drinking water program has always been addressed as a public health program rather than an environmental program. The concern is the ability of the environmental issues to take precedence over the public health. A citizen's health should not be jeopardized for the sake of consolidation and budget efficiency. LB148 provides for the economic streamlining of the agencies and to increase efficiency in several internal areas. But there continues to be a concern, especially in the training and technical assistance supported by NDEE. The rural communities are facing changing regulations, aging infrastructure and changing work force. A significant number of operators in these small communities will be retiring in the next few years. They take with them their years of experience and institutional knowledge of their systems. Communities are having a difficult time finding those qualified that are willing to replace them. NDEE needs to make the commitment in assuring that the environmental side does not overshadow public health and that the protection of our communities is the number one priority. Therefore, at this time, the Nebraska Rural Water Association will remain neutral regarding LB148. Nebraska Rural Association appreciates the opportunity to be heard and hopes the Natural Resources Committee will take time and effort to ensure that

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the communities can continue to be able to deliver clean, safe and affordable drinking water to all Nebraskans. Thank you.

MOSEER: OK, we have questions for Mr. Wennekamp? Senator Wayne.

WAYNE: It's not a question, but I know you don't always get this-- so thank you for-- for being neutral and pointing out some issues. I really appreciate that and playing that role.

LARRY WENNEKAMP: Yes.

WAYNE: I know we always don't get thank yous, so we do things, so--

LARRY WENNEKAMP: Right.

WAYNE: --I do appreciate it.

LARRY WENNEKAMP: Thank you.

MOSEER: Other questions. OK, I have one. So you're thinking that switching it from the DHHS to environmental will cause you more regulation or cause you less regulation?

LARRY WENNEKAMP: Well, not necessarily. We believe on the regulation side of it, we just-- we still want to make sure that the public health side and the water side doesn't get lost in all the environmental issues and that it is still supported in the way that it has been in the past with the directors and that stuff that had been there. We've always had an excellent relationship with the Department of Health and Human Services and the water program and that stuff. We just don't want it to get lost in all the other environmental issues and that stuff that maybe-- that might happen out there under a program, under a department now that is being combined with so many entities.

MOSEER: OK, any other questions? Thank you very much for your testimony. Appreciate it.

LARRY WENNEKAMP: Thank you.

MOSEER: Any other neutral testimony? Senator Bostelman, would you like to close?

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BOSTELMAN: Thank you, I'll be brief. I do believe-- like last testifier, I do believe Director Macy will have a conversation. Director Macy, I think the last three years they've been very committed to the health side of-- of the drinking water, of the-- of the work that they've been doing. And I think they'll continue to do that and will look to ways to improve if there are some deficiencies within that. So I'd ask for you to support LB148 and the amendment on to the General File. Take any other questions, you may have.

MOSER: Yeah. Any other questions for Senator Bostelman? OK, seeing none, thank you. We'll give you control of the meeting back for-- we're done. That will conclude our hearing for today. Thank you for attending.