

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources Committee February 6, 2019

**HUGHES:** OK. I see it's 1:30 according to my phone, so I will-- will begin our proceeding today. Welcome to the Natural Resource Committee. I'm Senator Dan Hughes. I am from Venango, Nebraska, and I represent the 44th Legislative District. I serve as Chair of this committee. The committee will take up the bill and confirmation that are posted today. 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 this hearing. This is just part of the process, as we have bills to introduce in other committees. Please silence or turn off your cell phones. Introducer-- introducers will make initial statements followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green 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 it is your turn to testify, give the sign-in sheet to a page or to the committee clerk. This will help us make a more accurate record. If you have handouts, please make sure you have 12 copies and give them to the page when you come up to testify. And they will be distributed to the committee. When you come up to testify, please-- please speak clearly into the microphone. Tell us your name, and please spell your first and last name to ensure we get an accurate record. We will not be using the lights today unless a lot of other people show up. No support of this-- or no displays of support or opposition to a bill, vocal or otherwise, is allowed in a public hearing. The committee members with us today will introduce themselves beginning on my left.

**MOSER:** Hi, I'm Mike Moser from District 22. That covers Platte County, a little bit of Colfax County and almost all of Stanton County.

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

**GEIST:** Suzanne Geist, District 25 here in Lincoln on the east side of Lancaster County. And it includes Walton and Waverly.

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

**GRAGERT:** I'm Tim Gragert, District 40 in northeast Nebraska, Cedar, Dixon, Knox, Holt, Boyd, and Rock.

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**ALBRECHT:** Joni Albrecht, northeast Nebraska, District 17, Wayne, Thurston, and Dakota Counties.

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

**HUGHES:** To my left is committee legal counsel, Laurie Lage, and to my far right is committee clerk, Mandy Mizerski. Our pages for the committee today are Noah Boger, he is a freshman at UNL with a double major in political science and French, and Hunter Tesarek who is a sophomore at UNL with a double major in history and political science. So with that, we will begin our day with a gubernatorial appointment, Mr. Loren Taylor, if you'd like to come up and have a seat. Mr. Taylor is seeking reappointment to the Natural Resources Commission. Welcome, Mr. Taylor.

**LOREN TAYLOR:** Thank you, Mr. Chairman and members of the committee. I'm Loren Taylor, L-o-r-e-n T-a-y-l-o-r, from Broken Bow, Nebraska. I'm now a consultant for Sargent Irrigation, Sargent Pipe Company, Sargent Drilling, whatever activities we have. I come before you as being reappointed for the second term on the Nebraska Natural Resource Commission as appointed by Governor Ricketts. In the fall of 19--2014, Governor Heineman appointed me. That was shortly after the passage of LB1098, the Water Sustainability Fund. I've been in the water well contracting business, basically, all my life. I've got what I consider to be very good knowledge of Nebraska's underground water or surface water and of the Ogallala Formation. I felt that I had a lot to offer with the passage of LB1098 with the Water Sustainability Fund. I'll be quite honest with you, I lobbied pretty hard to make sure I got appointed by the Governor because I wanted to serve on this and I still do. Last fall, when my term expired, I gave some thought to quitting. And I thought, no, I think I've got enough knowledge that I can really help the program. So therefore, I submitted my name again, and I got reappointed. I'm real bullish on this water, underground water, surface water. Nebraska's got a unique, if it's a problem, I don't think it is the problem a lot of people consider it, a unique-- unique situation. There's no place like the water in Nebraska and the Ogallala Formation. Our friends to the south are mining their water. Go down to Lubbock, Texas, I travel that country a lot, western Kansas. They are mining their water. They don't have the recharge. We've got the Sandhills in Nebraska to recharge our underground water. It's doing a terrific job. We've also figured out that we can recharge some of our aquifers, where we have aquifer

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[INAUDIBLE] with water sustainability. Hey, if I asked every one of you people what is your definition of water sustainability, you'd have six or seven or eight different answers. To me, water sustainability is put water back in the ground so we could use it when we need it. When we import one million acre-feet of water a year, but basically all of it coming down the Platte River, and we're exporting out of the state nine to ten million acre-feet a year, why? We ought to use all the water we can. Save and conserve it for our economic growth. And you people right here in the Legislature's got a problem all the time of where do we get enough money. Well, it sure helped that we've got a strong agriculture people, raise livestock and corn production and so forth. I could sit here all day and talk to you about water, where we got it, why we got it, why we don't have it. But you don't want to hear all of that. You've got other things to hear. So much for that. I've been on several board committees basically for a long time. I've had real good success on some of them. But one of them that sticks out the most in my mind, I was one of the few water well contractors that came to the Legislature with a bill to license water well drilling contractors. When the Clean Water Drinking Act [SIC] passed on the federal level, we knew it was coming. So we got ahead of the curve on a lot of states. We got a license. I was involved-- I was appointed for three different terms on the Water Well Contractors' Licensing Board [SIC] and finally term limited off of that. I still get involved with it. This is to do the best we can not to contaminate our water, to make our [INAUDIBLE] water better, keep it better. We've got the water, we-- especially in the Ogallala Formation. Just don't contaminate it. Just do the best job we can. I think this is doing a great job. And I'm real proud to say I was one of them that said, we've got to get the well driller's licensing tag. And we've got to keep it and we have. If you've got any questions, I'll try to answer them. And I thank you.

**HUGHES:** Thank you, Mr. Taylor. Are there questions? Senator Gragert.

**GRAGERT:** Thank you, Senator Hughes. Thank you for your testimony. I was just wondering, you've been around, you know, quite a while on the committee. What-- what is the trend? Where do you see the trend of the water quality in Nebraska?

**LOREN TAYLOR:** We've got-- we've got some problems with water quality. I mean, we got point source contamination and nonpoint source contamination. Then, of course, we've got nitrate problems in the state. We've created that. The people in Nebraska, the farmers, I

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guess. Blame them. They created that problem. The nonpoint source, all of a sudden a few years ago, the uran-- the uranium started cropping up. That seems to be some of the problems from arsenic. And I just can't-- part of it-- part of it is we used to go to meetings and seminars, and University of Nebraska did a terrific job with that throughout the years. Going back 50 years ago, when they first started having a two-day seminar in the winter time to educate the drilling contractors where they talk about parts per million contamination. Now we've got the equipment to where we can check for parts per billion, see? And so we're seeing stuff that we didn't even know was there before. So as long as we do a good job and-- and the-- and the customer's using the fertilizer with better methods and technology we got and more of it coming all the time, I think we're going to be alright, Senator. But we don't want to go sleep.

**GRAGERT:** Thank you. Thank you.

**HUGHES:** Other questions? Senator Geist.

**GEIST:** Thank you for your testimony and thank you for being here today. And thank you for serving for such a long time in various areas of water. Would you give me an idea, since I've not ever sat in on a committee hearing that you have had on this committee-- not on this committee but the one we're-- we're reconfirming you for, what-- what a typical committee hearing looks like and what issues you might cover?

**LOREN TAYLOR:** On other things, you mean?

**GEIST:** No, on the one that we're confirming you for today, for the natural resource.

**LOREN TAYLOR:** On the water sustainability?

**GEIST:** Yes.

**LOREN TAYLOR:** OK. There's nothing goes like a storybook, you know. You've always got some-- you've got some different opinions and so forth. What-- we get approximately, which I thank the Legislature for and I hope it continues, we get approximately \$10 million a year for the Water Sustainability Fund. We've got, I guess, I just say it the way-- the way I see it, whether it's right or wrong, I'm not politically correct. We've got some people that would like to maybe spend some of that money for things that I don't think is-- is-- is

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water sustainable. I mean, we've always got, I'm not saying it happens, but we've always in the back of your mind, we've got fish and wildlife people that wants a piece of the action. We've got some other people that's got some other ideas, well, we'll-- a small town. Well, if we could get a little money from them to help build our little-- little dam that we want here in town, then we'd have a little recreation area where the kids can fish in. There's-- there's always somebody trying to maneuver something and make it look good--

**GEIST:** Um-hum.

**LOREN TAYLOR:** --that really in my opinion. Now I sat on the scoring committee for the-- how the funds are allocated. Some of them I have a little trouble with. Why did they even submit them because it's nothing to do with water sustainability? Water sustainability-- in my opinion, when you have an aquifer that will hold water and you have got available water and it's going to waste right down the Missouri, let's put every bit we can back in there for the dry years, the 2012, the 2001, '02 and '03 when we needed it so bad.

**GEIST:** Good. Thank you.

**BOSTELMAN:** Thank you. Are there other questions from the committee?

**GRAGERT:** Could I just?

**BOSTELMAN:** Sure. Senator Gragert.

**GRAGERT:** Thank you, Senator Bostelman. From what I'm hearing, and maybe rightly so and in my mind rightly so, water is the top priority at the NRD. What are your other priorities when dealing with the NRD?

**LOREN TAYLOR:** With the NRDs? We got 23 NRDs, I believe.

**GRAGERT:** Um-hum. That's correct.

**LOREN TAYLOR:** And we got-- the water's top priority with most of them. But we've got some NRDs, and rightly so, that have got a tremendous amount of urban people in them that like to see more hiking trails or more this, more that. I think water's the top of every one of them, on the top of every one that's left. But some of them, as they-- as they move down, well I know, Lower Loup out there, they-- they-- they do a lot with-- with getting trees planted and this kind of stuff, shelter belts and stuff like that. But water's still at the top of them. But there's always that-- that push where some people do deviate away from

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one thing to another. And then some of it is-- is for the urban people to have more places for recreation and so forth, like that.

**GRAGERT:** Thank you.

**LOREN TAYLOR:** I'm not against it. Don't get me wrong but-- because water-- water and-- agriculture and water are still my top deal. And I've-- I made the mistake of saying yes when, I think, maybe, I should have said no. And Blueprint Nebraska come out-- I've served on the natural resource committee on that, trying to put together what is top priorities for the Blueprint Nebraska. And, of course, as far as natural resources, number one is water. And we don't have that much oil, to speak of. And we don't have coal. And to where water's number one, then you got to go back to your-- your people and so forth for number two.

**HUGHES:** Any other questions? I just have one. So what year was the well license-- the well driller's license passed?

**LOREN TAYLOR:** 1986.

**HUGHES:** OK. Very good. And I think Senator Geist asked you the question, but I was headed out. What does the Natural Resource Committee [SIC] do? How often do you meet? You know, what kind of issues do you talk about?

**LOREN TAYLOR:** The Natural Resource Commission, we meet about four times a year.

**HUGHES:** OK.

**LOREN TAYLOR:** And there is-- I should have-- I should have really brushed up on that just a little bit, there's-- I didn't think that question was coming. There's-- one of them, of course, is the water sustainability deal, and then-- and then they run it by us. We've got some old projects that was under a different name that the Natural Resource Commission funded. The fact is they're about to be all phased out now. And that-- that's the biggest things.

**HUGHES:** OK. Any other questions? Seeing none, thank you, Mr. Taylor.

**LOREN TAYLOR:** Thank you very much for your time.

**HUGHES:** We appreciate you coming. Oh, I'm sorry, Senator.

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**MOSER:** No, I'm-- I'm fine. Thank you.

**HUGHES:** OK. Thank you, Mr. Taylor.

**LOREN TAYLOR:** You bet.

**HUGHES:** Is there anyone wishing to speak as a proponent for the confirmation of Mr. Taylor? Anyone wishing to speak in opposition to the confirmation of Mr. Taylor? Anyone wishing to speak in a neutral capacity for Mr. Taylor? Seeing none, that will close the hearing for the confirmation of Loren Taylor to the Nebraska Natural Re-- Nebra-- Natural Resources Commission, and we will open our hearing on LB319. Senator Moser, welcome to your Natural Resources Committee.

**MOSER:** Thank you very much. I'm glad that you said I was welcome. Mike Moser, M-i-k-e M-o-s-e-r. I represent Legislative District 22, Platte County, a little bit of Colfax County, most of Stanton County. I introduced a bill for the Department of Natural Resources, and it has three sections. Section one of the bill changes the public notice requirement related to the changes in local flood plain management-- management. Section two changes the requirement for rules and regulations related to the Water Resources Trust Fund. And section three changes the requirement for rules/regulations governing the administration of water. In the first-- the section 1 change is by eliminating the words "by mail" from the revised statute. [Section] 31-1017 line 5 requires the department to give notice of hearings on changes to local flood management, plain management, to clerks of cities and counties. By removing the "by mail" as the manner in which notice is to be given, allows the department to provide notice through additional means such as e-mail. In the Water Resources Trust Fund, the statute 46-753 prescribes in detail the use of Water Resources-- the Water Resources Trust Fund. Yet the subsection two requires the department to also adopt rules and regulations governing the administration of the fund. LB319 would make the rule and regulation authority permissive by changing the ""shall"" to "may." The current rule and regulation adopted by the department narrowed the use of the fund to a federal program in which the department no longer participates, but there is a residual balance in that fund. The bill would allow the department to determine whether it will deal with the remaining funds through the statute or through a new rule or regulation. Thirdly, the rules and regulations governing the administration of water, statute 61-206, sets out department duties. [Section] 61-206(1) requires the department to promulgate rules and regulations governing the administration of water. Arguably, the rule

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and regulation requirement in subsection 1 extends to all the remaining duties listed in Section 61-206(2) through (3) (h). LB319 changes the "shall" to "may" in 61-206 (1), thereby making the department's rule and regulation authority permissive in its administration and implementation of the statutes over which it has jurisdiction. This change is offered as a prospective measure to avoid unnecessary rules and regulations that simply repeat the language of any statutes that already prescribe how their provisions are to be implemented. So if you have questions, I will attempt to answer them. If they're too nasty, I'll refer to the director--

**HUGHES:** Thank you, Senator, Senator Moser.

**MOSER:** --who can get into the real details

**HUGHES:** Are there questions? Senator Geist.

**GEIST:** I hope this isn't too nitpicky, but I'm curious. Since you were talking about section two-- well, it's not section two, it's paragraph, I'll just simplify it, paragraph two, page four and it-- and it talks about changing the "shall" to "may" on the allocation and expenditure of the money from the fund. Do you know-- and that-- that fund is no longer used, you had referenced in your opening. And I'm wondering if you know what the balance of the fund is that's no longer used.

**MOSER:** That would be a question you'd have to ask the director. There are some funds in it. I believe some of those funds are state funds. Some of those are federal funds.

**GEIST:** OK.

**MOSER:** And I believe that the department had a narrower use for those funds than what the actual federal law required. And so I think they're looking for flexibility in being able to use those funds for other purposes than what the original was.

**GEIST:** Which is the reason for changing the "shall" to "may"?

**MOSER:** To give them some--

**GEIST:** Some latitude?



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**MOSER:** --some latitude in how they-- how they spend those funds. There is a whole administrative process when they change rules. If they say they "shall", there's a more protracted process--

**GEIST:** Um-hum.

**MOSER:** --that you have to go through. And so, I think they're looking for some flexibility, not to say that, you know, there may be some senators who would object to the changes that-- that we're bringing to the table. But I think that-- in my opinion, I think they're good changes.

**GEIST:** OK.

**MOSER:** One other thing I didn't mention is that every time that we don't send out a mailing to all the counties and cities, it saves us \$911.

**GEIST:** OK.

**MOSER:** I ran this by a couple of senators that I thought might be interested in the art of government, so to speak, and they wanted to talk about the change from "may" to "shall"--

**GEIST:** Um-hum.

**MOSER:** --or "shall" to "may". And one of them questioned the change in notice, you know, in going from by mail to some other form. But if you look at the law, it doesn't say that we notify by certified mail or that there's any indication that we get feedback from these entities that they have received that information. So e-mail would be less expensive and at least as reliable as the U.S. mail. I don't know if I want to get into that discussion so.

**HUGHES:** OK. Any other questions? Seeing none, I'm assuming you'll stay to close.

**MOSER:** Sure. I won't have much to say, but I'll stick around.

**HUGHES:** Great. That's the way we like it. OK. Anyone wishing to testify as a proponent to LB319. Welcome, Director Fassett.

**JEFF FASSETT:** Mr. Chairman, thank you very much. Good afternoon. I'm Jeff Fassett, J-e-f-f F-a-s-s-e-t-t, the Director of the Department of Natural Resources. I'm pleased to be with you this afternoon to

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provide additional information, although Senator Moser did a great job of introducing this bill for us. And I certainly want to be on record thanking him for-- for being willing to sponsor this bill. We began working on the elements of this bill more than a year ago as we began kind of a comprehensive rule-- review, excuse me, of all the agency rules and regulations. As the senator introduced the bill, it has three distinct sections, three different aspects of the laws that we administer. And we just bundled those together into the single bill for the purposes of efficiency. We identified these needs to change statutes primarily with our customers and the public in mind, trying to certainly seek general governmental efficiencies and to accomplish that through statutory efficiency. There are some savings that we'll talk about that the senator highlighted already, but it does change from mandatory to discretionary some of the rulemaking that we're involved with. We think that just makes our operations a little more efficient in a number of areas. So I'll just briefly, Mr. Chairman, walk through each of the sections, following the senator's lead, and then be happy to take any additional questions. Section one, of course, deals with our department's flood plain management duties. This is just one subset of all the aspects of what the Department of Natural Resources works on. Subsection 5 of Section 31-1017 empowers the adoption of rules and regulations in establishing minimum standards for local flood plain regulations. But in addition to the notice that's required in the APA, the Administrative Procedures Act, which covers all rulemaking across state government, it also requires this additional direct notification of over 600 local jurisdictions, independently, by mail, 20 days in advance of the APA hearing. Section one of this bill, as the senator described, is to look to your help to repeal the "by mail." It does nothing to change the notice requirement. It simply eliminates the method in which we would provide that notice. The APA is in full effect as will this additional notice be required, but will allow us to use electronic means or other-- other methods. It does save-- have some hard dollar savings, the senator mentioned, that is reflected in our fiscal note. And, of course, it just simply saves employees time to deal with a direct mailing of that significance. It simplifies the quicker and more efficient communications, and it provides, again, that we're not changing the noticing requirements. We're simply asking for relief on the method about which we go about getting that relief. In preparation for this bill, we went ahead and go and contacted the 600 folks that are in our master mailing list for flood plain, the activities that were-- might be affected by this law. And we sent that by e-mail to all of those entities. And we received only positive feedback, and

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quite honestly, from only a few of the various local jurisdictions that are-- that are certainly more focused than others in this state on this issue. The second section, starting on page 4 of the bill, Nebraska Revised Statute Section 46-753, this establishes the Water Resources Trust Fund which was recreated soon after the LB962, 2004 bill which was a major overhaul of the state's water laws and of planning processes. This fund is one of many that are managed by the department, and this one was facilitated at the time. And again, you have to think back to what was going on in '04 and '05. But it was, as the senator described, combining-- gave us a mechanism to combine federal dollars with some state dollars to work on the retirement of lands in these critical areas of our state where we do have some water shortage problems. So although the enactment, the actual statute had an explicit list of eligible uses, the rules actually provided additional restrictions and it was because we were forced with the language of "shall" to do a rulemaking process. I was not here at the time, but the rule as it was promulgated way back in 2005 did unintentionally limit some of the potential uses that the statute authorizes. The bill, on page 4 line 18, seeks to change the "shall" to a "may" to give us discretion, to potentially allow us to amend or maybe even entirely repeal this rule. That, of course, would go through the normal APA rulemaking process. Even a "repool" requires an extensive public process in that manner. So our rule, title 460-- title 460 of our rules, we have about 17 or 18 sets of rules for our agency, this is one unique set for this fund, does simply just-- if it were to be repeal, it would simply allow us to just rely directly on the statutory authority that the legislature provided clear back in 2005. So by doing this change, we believe, it would allow us to continue to certainly live within the guidelines and the authority and the directions for the use of the funds by the Legislature. But it would eliminate sort of the unnecessarily sometimes confusing and duplicative regulations that we have with a variety of funds that are associated with these programs. This fund is-- is not receiving any new dollars of any kind. It does accrue some revenue. There's some unique aspects of the fund that does bring in some sort of refunds, if you will, from activities from many years ago. But there hasn't been new appropriations to this particular fund in quite a number of years because our programs associated with the LB962 law have shifted to other funds that the Legislature has authorized. Lastly, section 3 of this bill beginning on page 5 deals, as the Senator Moser explained, our Revised Statute Section 61-206. This is the general grant of administrative jurisdiction to the department. And just briefly quoting-- quoting: over all matters pertaining to water rights for

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irrigation, power, and other useful purposes, except for such jurisdiction as specifically limited by statute. This is one of the broadest overarching authorities that really go way back to statehood that dealt with creating the Department of Water Resources, now the Department of Natural Resources. But elsewhere in this same chapter, Chapter 61, Article 2, it also sets out, in a different part of our laws, a separate general grant of authority to the department for rulemaking that is discretionary, Section 61-204 which is not in the bill, but is it-- it is an adjoining statute to 206 which is before you. So 206 itself says we shall adopt and promulgate rules and regulations governing the matters that come before us and includes a long list of activities that are sort of unrelated to that initial water rights responsibility that the department has had. When you look back through the legislative history, these mandatory, this "shall" aspect of 206 was moved into this statute at a very confusing time, when the Legislature was doing a more comprehensive merger of the Natural Resources Commission that Mr. Taylor was just sitting before you on, merging with the Department of Water Resources. When the Department of Water Resources merged with the Natural Resources Commission, they created what I now am proud to lead, the Department of Natural Resources. And there was a comprehensive set of changes that made that name change and put the authorities and the responsibilities together, back in the year 2000. Very similar to what this session of the Legislature is doing with the aspects of the Department of Environmental Quality and energy, similar merging of agencies occurred in 2000 that affected this bill. So when you look back, you will-- through a legis-- a very long legislative history, what I have been told, this was years before I had the pleasure of working here in Nebraska. That statutory process and old LB900 back in the year 2000, which was handling the merger of the Department of Water Resources with the Natural Resources Commission, that took aspects of laws and shuffled them together. And this 206 section that we have before you was really one of the initial sections that dealt with the Natural Resources Commission. So when you put all of those things together, I guess is what I'm trying to describe to you, section 206 says "shall", section 204 says "may". And we believe that simply just creates confusion in really the aspects of these role-- in these particular laws. So the bill that Senator Moser has before you at our request is on page 5, line 16, again, a simple change of "shall" to "may" in section 206. This will make it consistent with the other aspects of a very similar adjoining law in the same chapter of our statutes so that they all align in understanding that we have discretion in all this rulemaking. We have no intentions or plans at

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this time to repeal any of the rules that were based on 206 and these activities. These programs, are-- are running smoothly. But, again, this is, as the senator described, is a sort of a prospective effort at trying to clean up some of these regulatory matters throughout our statute. This one came to our light during our review and we just felt it would be a good cleanup activity to avoid future confusion about potential conflicting laws. We've-- we've, quite honestly, have enough of that elsewhere. And that gives good work for the legal community in the state of Nebraska sometimes. Mr. Chairman, with that I'll stop. I appreciate you listening to some of the-- the gory details. But the details are important to you and they certainly are to me. And I'll be happy to answer any questions you may have. And I hope that the committee will view Senator Moser's bill favorably.

**HUGHES:** Thank you, Director Fassett. Are there questions? I guess, I-- would you run through, again, when the Department of Water Resources and the Natural Resource Commission were merged in 2000?

**JEFF FASSETT:** The year 2000.

**HUGHES:** What was the bill number again?

**JEFF FASSETT:** It was LB900.

**HUGHES:** OK. So part of-- part of this-- the second section, where it's giving you more flexibility, changing the "shall" to "may", there's some funds left in that. And they were-- they were, basically, used for the EQUIP cost-share with the federal EQUIP program, is that correct?

**JEFF FASSETT:** That's correct, Mr. Chairman.

**HUGHES:** And then that-- that program has kind of gone away or is it no longer emphasized by the federal government or?

**JEFF FASSETT:** Well, EQUIP still is alive, but it is not-- no longer being used for these kinds of purposes. We-- we have, I think, Mr. Chairman, as you're familiar, we have now the CRP and the-- then the CREP programs within the Department of Agriculture, in addition to the EQUIP. And those are now the current primary federal dollars that don't come through the department. They go directly to landowners in the programs that we're managing now. This was a one-time effort clear back in 2004 and '05 where there was an input of dollars from EQUIP that went into this fund.

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**HUGHES:** So the remaining funds are there. Will they still be used for the new CREP program?

**JEFF FASSETT:** They can be, under the statutory authority setting up this fund. It's the rules that have restricted.

**HUGHES:** OK. So if we've changed the "shall" to "may", that will free up those funds and allow us to use--

**JEFF FASSETT:** Allow us to go forward with the rulemaking that would limit-- get rid of-- it could simply get rid of some of the narrowing that we did to ourselves, if you will.

**HUGHES:** OK.

**JEFF FASSETT:** We're not suggesting you change the statutory authority for the fund. We think the statute speaks clearly on its own which is part of the reasoning for wanting to reduce regulations where there are these potential conflicts with law. Not a-- not a conflict where we unnecessarily limited ourselves.

**HUGHES:** But that small amount of residual funds would still be-- if we change-- you could change the rules, they could be used for EQUIP or CREP or CRP and that's where-- that's where you're headed.

**JEFF FASSETT:** That's where we're headed.

**HUGHES:** OK.

**JEFF FASSETT:** And, Mr. Chairman, if I could, in response to Senator Geist's previous question to Senator Moser, there's about \$167,000 in this fund today.

**GEIST:** Thank you. And had I been more detail-oriented, I would have read that on this sheet. And I thank my colleague, Senator Gragert, for bringing that to my attention.

**JEFF FASSETT:** And so was my testimony just now accurate with the handout, Senator?

**GEIST:** Yes.

**JEFF FASSETT:** OK. OK.

**HUGHES:** I thought it said \$200,000.

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**GEIST:** Yes, it did. But on the flip side it says \$167,000.

**HUGHES:** Oh. Oh. OK.

**JEFF FASSETT:** That was the January 31 number from our accounting system, Senator.

**HUGHES:** OK. Less than \$200,000. I got that. Senator Bostelman.

**BOSTELMAN:** Thank you, Chairman Hughes. Thank you for being here, Director Fassett. I guess the question is is changing from "may" to "shall", what were some of those limitations? I mean, what are the-- I don't think we're going to see anyone in opposition here today potentially to testify against this, but what are some reason-- some of the reasons why we hadn't done this before, someone would be opposed to such-- to these changes?

**JEFF FASSETT:** Mr. Chairman, Senator Bostelman, it's going from "shall" to "may", not "may" to "shall". It-- probably because there's not that much money in this fund. Like I said, the initial surge of money that started this fund was about a million dollars, and all of that money was spent more than a decade ago. But the fund still existed. And so the-- the-- there-- there was revenue earnings, you know, there's sort of some money in this fund as we've just described but-- but not the substantial dollars that are necessary for these programs. So our goal here really is, as Chairman Hughes was suggesting, the rules very much put in place definitions that required a link to the EQUIP program. It was very specific in the kinds of dollars and the kinds of programs we could use the money for. The statute itself was much broader, still limited, but much broader than our own rules. And so, I don't know, I haven't been here that long to know why we weren't sort of acting to sort of clear up this issue in the past. But I think that's why we're bringing it forward now is that we if we had greater discretion in the law, then we could analyze our rules and present perhaps a different package of rules or perhaps repeal them altogether.

**BOSTELMAN:** Is there an area that you're looking at now to take those funds so that they may be applied to, to you, to your likes?

**JEFF FASSETT:** Well, our greatest need is in the fully and overappropriated area. It's-- our primary tool now is what's called the Water Resources Cash Fund. But this fund-- if you look at the language passed in 2005, it was, again, right on the heels of the passage of LB962. And there was a lot of discussion leading to that

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major change of our laws about the need for funding. And this was one of the early funds that got established. It had identified some potential federal dollars that could be linked with other sources. In fact, when you read this statute, this was one of the few funds we have that can accept donations of money. People can write a check if they want to put money in this fund to go to certain purposes. It's a fairly unique animal. So we're not here to repeal what was established. We're trying to get flexibility on our rulemaking so that if we wanted to repeal, we could repeal if we have a law that says you "shall" have rules. We wanted to simply repeal, simplify the rulemaking, simply rely on the statutory authority for the use of the funds. We still are limited by the definitions and the authorities that the Legislature first passed in 2005.

**BOSTELMAN:** OK. Thank you.

**HUGHES:** Senator Gragert.

**GRAGERT:** Thank you, Senator Hughes. And maybe if I can just follow up, so I'm kind of understanding this also. But these monies were first established and tied to EQUIP, the Environmental Quality Improvement Program. So now that program, some of the conservation practices within that program, we're no longer spending this monies? So now you-- you're looking to expand on to the Conservation Reserve Program and the CREP program, on all the easement programs where conservation practices may be, where you in the conjunction can work with?

**JEFF FASSETT:** That's correct. If you look back at the authorizing legislation, again, you have to look at our history. It was tied to this LB962 effort. And at that time, there was the designation of these areas that were clearly fully and overappropriated. The dollars are needed to help us resolve that issue. The EQUIP program, some of those funding programs, while they still exist as-- as I know, Senator, you're-- you're well aware, they aren't focused on the kinds of land retirement, irrigation requirements, and other activities that we're trying to incentivize and implement together with our partners to help us achieve the goals of LB962.

**GRAGERT:** OK. Thanks.

**HUGHES:** Senator Geist.



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**GEIST:** I'll make this quick. Are there any federal dollars that are still linked to using those dollars?

**JEFF FASSETT:** Not in this fund.

**GEIST:** OK.

**JEFF FASSETT:** The original federal state dollars that set this up are long gone.

**GEIST:** OK. So if any of this money is spent, it's-- it's independent of any federal matching or anything like that.

**JEFF FASSETT:** That's correct.

**GEIST:** Thank you.

**HUGHES:** OK. Any other questions? Seeing none, thank you, Director.

**JEFF FASSETT:** Thank you, Mr. Chairman. [INAUDIBLE]

**HUGHES:** Any additional proponents to LB319? Anyone wishing to speak in opposition to LB319? Anyone in the neutral position? Seeing none, Senator Moser, you're welcome to close.

**MOSER:** Do you have any other questions?

**HUGHES:** You could just waive.

**MOSER:** I'm only doing this once the whole time so.

**HUGHES:** Okay. Are there any other questions for Senator Moser?

**MOSER:** Thank you very much. I appreciate your attention.

**HUGHES:** That will conclude our hearings for today.