

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 28, 2019

HUGHES: We're live. Very good. Welcome to the Natural Resources Committee. I'm Senator Dan Hughes. I am from Venango, Nebraska, and represent the 44th Legislative District. I serve as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your part of the public legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members may come and go during the hearing. This is just part of the process as we have bills to introduce in other committees. I ask that you abide by the following procedures to facilitate today's procedural-- proceedings. Please turn off-- or silence or turn off your cell phones. 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 the committee clerk. This will help make a more accurate public record. If you do not wish to testify but would like to record your name as being present at the hearing, there is a separate white sheet on the tables that you can do-- you can sign in for that purpose. This will be part-- become part of the official record of the hearing. If you have handouts, please make sure you have 12 copies, and give them to the page when you come up to testify. And they will be distributed to the committee. When you come up to testify, please speak clearly into the microphone. Tell us your name, and please spell your first and last name to ensure we get an accurate record. No displays of support or opposition to a bill, vocal or otherwise, are allowed in the public hearing. The committee members with us today will introduce themselves starting on my left. Senator Moser.

MOSER: Mike Moser, District 22. I represent Platte County, a little bit of Colfax County and almost all of Stanton County.

HALLORAN: Good afternoon. Steve Halloran, District 33, Adams County and the better part of Hall County.

QUICK: Dan Quick, District 35. I won't go there. I have Hall County as well.

HUGHES: And on my right.

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GRAGERT: Hello there. Tim Gragert, District 40, northeast Nebraska: Cedar, Dixon, Knox, Holt, Rock and Boyd County.

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

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

HUGHES: To my left is committee counsel, Laurie Lage, and to my far right is committee clerk, Mandy Mizerski. Our pages for today are Noah Boger, he is a freshman at UNL with a double major in political science and French, and Hunter Tesarek. He is a sophomore at UNL, and a double major in history and political science. With that, we will take up our first agenda item and that is Mr. Don Batie who is seeking reappointment to the Natural Resource Commission. Welcome, Mr. Batie, if you'd like to give us a little background about yourself and what the Natural Resource Commission does.

DON BATIE: Sure. My name is Don Batie, D-o-n B-a-t-i-e. I farm northeast of Lexington, Nebraska. And I have served on the Natural Resource Commission for the last four years and was reappointed by Senator-- or by Governor Ricketts for a additional four-year term. The Natural Resource Commission has been a long-standing commission. Lot of cases, it acted as something of a go-between between all the natural resource districts in the state. Four years ago, the Unicameral expanded the Natural Resource Commission, added 11 new members, and I was one of the 11 new members, and then also established the Water Sustainability Fund which has been getting roughly \$10 million a year from the Unicameral from General Funds. And that is all to be used for water sustainability projects in state. And so I did serve on the committee that wrote the rules and regulations for the Water Sustainability Fund which took us probably almost two years to get through. And then I have been on the scoring committee for two years. This year I finally got off the scoring committee but was able to-- didn't score the first three rounds of projects. And I think we're-- definitely, the Water Sustainability Fund is starting to make a difference. I think we've got some very good projects funded. There's some new, bigger projects I think are coming on line. It just took a little while to get things up to speed. So that's the lot of what we've been doing. I'm willing to answer any questions any of you have.

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HUGHES: OK. Thank you, Mr. Batie. Are there questions? Senator Albrecht.

ALBRECHT: Thank you, Chairman Hughes. Well, welcome to the committee.

DON BATIE: Thank you, Senator.

ALBRECHT: And thanks for your service. OK. You say they give \$10 million. And so do the-- the NRDs throughout the state let you know when they have a project that they can't fund? Like we just had Papio in here saying that they would like to have a little bit more. If they prove to you that it's needed and for economic development--

DON BATIE: Um-hum.

ALBRECHT: --it's a great project, I mean, I'm sure you have criteria that they have to meet.

DON BATIE: Right. And I can explain that. First off, the enabling legislation, 10 percent of the funds that is appropriated by the Unicameral goes directly to, essentially city of Omaha, but it's to municipalities with combined sewer issues, the sanitary and street sewer systems. And so 10 percent goes immediately to the city of Omaha for that project. The remainder of the funds, according to our rules, we've divided into two groups. We have people who apply for small projects. These are projects that cost less than a quarter million dollars and typically are ones that can be done fairly quickly. And we did-- we set aside 10 percent of the money. That's an internal separation that we can-- as a commission, we can move around if we need to. But we arbitrarily set 10 percent of the funds aside for small projects. And then the other funds, the other 80 percent, go into large projects which are the projects larger than a quarter million dollars. Every year, we take applications in, I believe it's June, is the deadline for applications. They'll accept applications any time, but that's the deadline is in-- in either June or July 1. I'm not positive. And then the way the rules read, the director of the natural resource, they actually goes through and making sure they're actually an appropriate application, that they actually do fulfill some water sustainability. And there is a set of guidelines that was in an enabling legislation that he has to follow.

ALBRECHT: OK.

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DON BATIE: And then, after he gets done, then it goes to a scoring committee of the Natural Resource Commission, and we typically have ten members. Five of them are appointed by the Governor and five of them are elected by natural resource districts, just represent different areas of the state. And so it's kind of a mixed group. And then we score these projects based on 15 criteria that, again, was in the enabling legislation for the Water Sustainability Fund. And we had a lot of discussion about the criteria and how to score it and how to weigh it and so forth. But it is interesting. The first year we did the scoring, we all scored it individually on our own. And that took probably about 15 to 20 hours of work reading--

ALBRECHT: Uh-huh.

DON BATIE: --because some of these applications are anywhere from 30 to 100-and-some pages long.

ALBRECHT: Uh-huh.

DON BATIE: We'll get-- and then they'll have-- for example, one of the first projects was the city of Hastings on a nitrate issue. It had 100 attachments to their application that we had to read as well.

ALBRECHT: Uh-huh.

DON BATIE: So that-- that project alone took over 8 hours of reading, just one project.

ALBRECHT: Do you have like a rolling-- I mean, do you have ten of them out there wishing for some-- some help or do you have?

DON BATIE: Oh, we have a number-- for example, I think we had-- we're typically running around 30 applications a year.

ALBRECHT: OK. You have the 30, you select about?

DON BATIE: We-- we-- we select until we run out of money.

ALBRECHT: OK.

DON BATIE: And so we score the applications and we rank them, large projects in one ranking category, small projects in another. We don't judge them against each other. And then we just go down the list until we run out of funds.

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ALBRECHT: So you use that \$10 million every year.

DON BATIE: We have more projects that are qualified projects than we have funds for.

ALBRECHT: OK.

DON BATIE: So it hasn't been a shortage of an issue. The very first application, we did reserve quite a bit of funds. We didn't-- because-- we don't think a lot of the natural resource districts or municipalities in the state had enough time to get a lot of quality projects. And so we felt the quality of the first application wasn't as high, so we actually reserved about half the funds.

ALBRECHT: Um-hum. And do they have to match?

DON BATIE: But since then we've had more--

ALBRECHT: Does like a city, a municipality, have to give you--

DON BATIE: Yes.

ALBRECHT: --so much? And surely, they've had a study done and [INAUDIBLE].

DON BATIE: Yeah. They-- there's-- yeah, they have to have-- just to apply, they have to do quite a bit of work and studies and so forth. It's, as I say, the applications are quite complex.

ALBRECHT: Um-hum.

DON BATIE: Most of them are done by engineering firms to make sure they're complete. And yeah, there's roughly-- to start with, it was a straight 60 percent. We would provide 60 percent. The local would do the 40 percent. We have adjusted our rules, and now it's up to 60 because we actually had-- for example, the city of Lincoln, two years ago, applied for some work on their well field for drought protection for the city of Lincoln so they wouldn't have to make a call when the [INAUDIBLE] shut the irrigation off. And they actually didn't need the full 60 percent. They only wanted 50 percent. At the time, our rules said 60. And so that was what they-- and so they-- I'm not sure, they may not submit all their bills so they-- to get the-- any bill they submit, then we reimburse 60 percent of any bill that has been submitted.

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ALBRECHT: And they don't pay it back. It's just a--

DON BATIE: It's a grant.

ALBRECHT: Grant?

DON BATIE: It's a-- it's a grant. And it's-- so the \$10 million that comes from the-- from the Unicameral from general appropriations. And I say roughly because-- because of the budgets, we've had to adjust-- you guys have had to adjust a couple times and so but it's in that ballpark of \$10 million a year. But-- and I did not bring with me a list, but--

ALBRECHT: Oh, you're fine.

DON BATIE: --we-- we have-- we have approved projects from border to border, small municipalities, NRDs, all the way up to the city of Omaha. We've tried to-- we don't have to, but we try to watch and make sure that we are trying to cover all areas.

ALBRECHT: Thank you very much.

DON BATIE: Certainly.

HUGHES: OK. Any additional questions? Senator Moser.

MOSER: Are there any issues before your commission that are problematic? Do you have any unsolvable problems?

DON BATIE: Well, money-- money solves most problems, Senator. And that-- that is probably the biggest issue that we foresee as trying to maintain the-- the-- this Water Sustainability Fund because it is-- we see that as being-- water is probably the biggest benefit Nebraska has over any other state in the union. We have some of the best water supplies and the goal of Nebraska is to not use up our water. We want to maintain our water for the future generations. And that is so different than our neighbors to the south who are looking to mine their water and use it while it's here. Then when it's gone, it's gone. And so that's why I think the Water Sustainability Fund is so drastically important for Nebraska, is to try to maintain-- and I feel that we're starting to make a difference. And I'm hopeful we can continue those funds. But I would say, that's probably the largest thing we do. But then we have-- we also do a lot of other small funds. We oversee some cost-share funds that the NRDs do. But by and large,

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the Water Sustainability Fund is our, that's what our most time-consuming thing is.

MOSER: The Ogallala Aquifer is the majority of what--

DON BATIE: Um-hum.

MOSER: --the underground water amounts to in Nebraska. Does that travel from the northwest to the southeast?

DON BATIE: Roughly, yeah. Typically, the Sandhills is the source of the Ogallala Aquifer. Most of the rain and the snowfall that falls in the Sandhills goes through the sand into the Ogallala Aquifer and then it slowly moves south and east. And I mean slowly. Some of the studies show it's measured in feet per year. The water is extremely slow-moving through Nebraska. The Ogallala Aquifer goes all the way down into Texas and New Mexico. However, at just around the Nebraska-Kansas border, there is a bottleneck in the Ogallala Aquifer, and so typically, their Ogallala Aquifer is hydrologically separate than Nebraska's which is actually a good thing because we have great water and good water supply, and theirs is failing. So the underground aquifers are good. We have good surface water.

MOSER: Thank you very much. Appreciate that

DON BATIE: You're welcome.

HUGHES: Any additional questions? Senator Geist.

GEIST: Just in relation to what you just said--

DON BATIE: Um-hum.

GEIST: --their aquifer is failing and ours is thriving.

DON BATIE: Correct.

GEIST: Is that due to the-- the measures that we've taken?

DON BATIE: I think it's due to quite a few things. First of all, we're very lucky geologically. Nebraska has some of the best geological formations for water supply, underground water supply, of anywhere in the world. But also, Nebraska has been, by far and above, one of the leading states far as conservation of water. The natural resource districts which were established-- fifty years ago?

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HUGHES: Not quite.

DON BATIE: Not quite?

HUGHES: 45.

DON BATIE: That-- it was-- at the time they were established was unheard of anywhere else and the powers that was granted to them. And there were a lot of people who were against it, but the wisdom of the Unicameral that many years ago is showing its difference because the Uni-- the natural resource districts with the local control, able to craft rules and regulations specific to their area, has been incredibly important in maintaining our water supply. There is a-- because every NRD has different sets of rules and regs on maintaining both the quantity as well as the quality of our water with nitrates, etcetera. And so the NRDs take that very, very seriously and it's-- and it's definitely helping Nebraska out.

GEIST: OK. Thank you.

HUGHES: Anything else? Senator Halloran.

HALLORAN: Thank you, Chairman Hughes. So the Sandhills, obviously, is a big resupplier of the aquifer--

DON BATIE: Um-hum.

HALLORAN: -- but we also, I think, receive a significant amount of replenishment from snowmelt from the Rockies--

DON BATIE: Correct.

HALLORAN: --to the river system--

DON BATIE: Correct.

HALLORAN: --through Nebraska.

DON BATIE: Yeah. The-- the-- the river systems, predominately the Platte River system, relies on snowmelt in the Rocky Mountains. The Republican is, more or less, just a runoff, whatever falls on the ground here in Nebraska that runs into the stream. But the Platte River relies on snowmelt in the Rocky Mountains. And which-- Lake McConaughy is, obviously, the largest dam in Nebraska which is very critical. We irrigate all of ours ground. And that's actually how I

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got into water issues is because of the relicensing of the Kingsley Dam and hydro. Twenty-eight years ago, I got started into this project. And so the snow supply in the Rocky Mountains helps replenish Kingsley, Lake-- Lake McConaughy, and the water that runs through the irrigation canals that come from that as well as the irrigation canals in the Panhandle coming up the Platte River. They do a lot of replenishment in the area. Probably, obviously the largest one is Tri-County Canal which runs just on the north side of Holdrege. There is a water mound there that has been developed from the canal system that's been raising the water table. And I can't tell you the numbers, but, you know, maybe 15, 20, 30 feet it's been raised because of the canal recharging the underground aquifer. The aquifer right lives north of Lexington. Dawson County Canal went through our farm in 1894. And we've been irrigating on our farm since 1894, and our water table has not substantially changed since then. If anything, it's higher now than it ever has been in the past. But yeah, between the aquifer-- the canals recharging the aquifer and then the huge sponge of the Sandhills, it's-- we have a great system in Nebraska.

HALLORAN: I've heard some hydrologists would-- have claimed that if we stopped-- hypothetically if we stopped irrigating totally, stopped-- which is one of the huge-- larger demands for water, that we would-- we would even struggle to get back to predevelopment levels.

DON BATIE: I would agree with that. I think-- think most places in Nebraska, we've got a pretty good equilibrium and the NRDs are trying to meet some of the rules and regs established by the Unicameral and all on overdevelopment of the water. We're getting close to that, I think.

HALLORAN: Thank you, sir.

HUGHES: OK. Anything else? Seeing none, thank you, Mr. Batie, [INAUDIBLE]--

DON BATIE: Thank you for seeing me today.

HUGHES: --for your willingness to serve.

DON BATIE: Um-hum.

HUGHES: Is there anyone who wishes to speak as a proponent to Mr. Batie's appointment? Is there anyone wishing to speak as an opponent to Mr. Batie's appointment? Anyone wishing to speak in the neutral

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capacity? Seeing none, that will close our hearing on the reappointment of Mr. Don Batie to the Nebraska Natural Resources Commission, and will open up LB580. Senator Hilkemann, welcome to your Natural Resources Committee.

HILKEMANN: Thank you. Thank you. Good afternoon, Chairman Hughes and members of the committee. I'm Senator Robert Hilkemann, R-o-b-e-r-t H-i-l-k-e-m-a-n-n, and I represent District 4 in west Omaha. I'm here to introduce LB580. As written, the bill would increase the per ton landfill fee as defined in the Nebraska Integrated Solid Waste Management Act from a \$1.25 to \$2. The 75-cent differential would be then rebated back to the originating landfill entity with the fees collected to be used specifically for operational funding for residential household hazardous waste facilities, and/or household hazardous waste collection events, and would replace the current waste reduction and recycling grant funds that have been utilized for operational expenses at the state's household hazardous waste facilities and collection events. I've been working on this legislation with a group called Heartland 2050 solid waste working group, and they have had conversations with stakeholders who are affected by the Nebraska Integrated Solid Waste Management Act. There have been several questions and concerns raised with LB580 and as a result, I feel that this may be better suited at this time for an interim study. To sum it up, I think it would be best to place the LB508 [SIC] on the back burner. Let us work it out over the interim, and if we are ready, we'll revisit it in the future. So I would respectfully ask the committee to hold the bill at this time.

HUGHES: OK. Thank you, Senator Hilkemann. Are there any questions? Seeing none, thank you. Oh, wait.

MOSER: Can I ask one quick one?

HUGHES: Oh, shoot. Senator Moser. You're in the dark.

MOSER: Without going into a two-hour discussion of the objections, what's the negative feedback that you're getting?

HILKEMANN: Some of the cities are not ready-- city's and county landfills are not quite ready for this yet and how to handle it. That's where the-- the conflict came in on this thing.

MOSER: OK.

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HILKEMANN: And we want to-- I could get consensus of everybody together before we bring the bill.

MOSER: Great. Thank you.

HUGHES: So are you planning on introducing a--

HILKEMANN: We're going to introduce an interim study.

HUGHES: --interim study for--

HILKEMANN: Uh-huh.

HUGHES: OK. Very good. Anything else? Senator Bostelman.

BOSTELMAN: Thank you, Senator Hughes. One thing I'd ask you include in your interim study, this problem we have. We have 20 counties and one from out of state coming into Butler County to landfill. There is a large amount of waste that's falling on our roads and in our ditches.

HILKEMANN: Ah.

BOSTELMAN: How are we going to address that? If there's something you could address in that, that would be great.

HILKEMANN: OK.

BOSTELMAN: Also look at, since we're receiving waste from out of state, if you're going to have a fee in there, is there a way to have a higher fee for out-of-state versus in-state? Thank you.

HILKEMANN: Thank you very much. We'll certainly take those and note those. You bet.

HUGHES: OK. Anything else?

HILKEMANN: See, what I was going to tell you is that I had a bus full of-- of about 35 people as proponents, and the bus got delayed. [LAUGHTER] [INAUDIBLE]

HUGHES: Is there anyone wishing to speak as a proponent to LB580? Anyone wishing to speak in opposition to LB580? Anyone wishing to speak in the neutral capacity to LB580? Welcome.

MEAGAN DEICHERT: Good afternoon, Senators. My name is Meagan Deichert, M-e-a-g-a-n D-e-i-c-h-e-r-t, and I'm here from Keep Nebraska

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Beautiful. And given the testimony from Senator Hilkemann, I think it might make sense for me to address most of my questions to him during the interim study. But I work with a lot of our local affiliates across the state who run a lot of the household hazardous waste special collection events, and they had a few just questions and concerns to make sure got addressed in the bill. So I wanted to make sure to address those today, but I think it'll probably make more sense for me to talk to Senator Hilkemann about those as the interim study goes forward. One of the main concerns they had is that there are some municipalities in western Nebraska that don't handle solid waste at all. All of that is contracted out privately. They don't deal with the household hazardous waste or solid waste collection, and they don't have much of an appetite to get involved in that. So as a result, some of our local affiliate nonprofits handle all of the household hazardous waste collection, get the funding for it, do all of that themselves without involving the municipalities except for to the extent they need to get a permit or anything like that. So it looks like, as the bill is reading now, they-- those nonprofits wouldn't be able to apply for that rebate directly, and they would have to involve the municipalities. And just wanted to be able to see if there's any other way to have those nonprofits be able to apply for the rebate directly to handle those household hazardous waste events. And for the ones who would send their trash out of state instead of sending them to local state landfills, are they still going to be able to access that rebate and how-- and hold household hazardous waste collection events in their location? That was a question that I got from some of the local affiliates. And the last question that they had, that they wanted to make sure got addressed, is how is the rebate fund going to be handled if there is excess, if not everybody applies and gets the rebate. Will that be redistributed across the state or will that hold over for the next year or will that go into the rest of the waste grant funds after those rebates have gone through? So just a couple of questions. Nobody's really opposed to the bill or anything like that. But they just want to make sure that this is handled appropriately in western Nebraska and that they're considered.

HUGHES: OK. Thank you very much. Are there questions? I guess I have one. You said you have local affiliates that are doing this now.

MEAGAN DEICHERT: Yes.

HUGHES: How are they funded? Do they do it up front and then ask for the rebate back from--

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MEAGAN DEICHERT: They're mostly funded through the waste grant now so--

HUGHES: OK.

MEAGAN DEICHERT: --they usually apply for it ahead of time and then the waste grant is-- they pay that as the events occur.

HUGHES: So is it so much a ton? How do they determine what the amount is that they need and how is that balanced out?

MEAGAN DEICHERT: Yeah. They get bids from the people who are collecting them, and then it's usually, I think, by weight that they determine how much money they're going to need. I spoke to our affiliate in Keith County, and she said that it's, you know, they've done this so many years that they have a pretty consistent idea of how much it's going to cost. And it sounded like it would be a little bit less than what they would get for their rebate from their landfill when she priced that out. She said that about \$8,500 would be going to their landfill through this rebate program and they spend \$6,500 every year doing their household hazardous waste collection so.

HUGHES: OK. Very good. Thank you. Any additional questions? Seeing none, anyone else wishing to testify, OK, in the neutral position? Seeing no one, Senator Hilkemann, you're welcome to close. Senator Hilkemann waives closing. We do have one letter proponent from Greg Youell from Metropolitan Area Planning Agency and three opponent letters: Jim Macy, Department of Environmental Quality; Donna Garden, City of Lincoln; and Scott Holmes, Lancaster County Health Department. With that, we will close our hearing on LB580 and open the hearing on LB632.

HALLORAN: Chairman Hughes, I heard that there's-- a bus did just pull up on the west side.

HUGHES: Too late. Too late. Too late. We keep the trains running on time in Natural Resources. Welcome, Ms. Lage.

LAURIE LAGE: Thank you. Members of the Natural Resources Committee, I'm Laurie Lage, L-a-u-r-i-e- L-a-g-e, legal counsel for the committee, here to introduce LB632. It's been a really long day. This bill is a shell bill. It does nothing substantive and it's meant to be a placeholder in case an issue comes up later in session for which we

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need a vehicle to address something under the Natural Resources Committee's jurisdiction. So that's all there is.

HUGHES: OK. Thank you, Ms. Lage.

LAURIE LAGE: Yep.

HUGHES: Is there anyone wishing to testify as a proponent to LB632? Anyone wishing to testify as an opponent of LB632? Anybody wishing to testify as the neutral capacity to LB632? Seeing none, we have no letters. That will close our hearing on LB632, and we are finished for today.