Agenda Item 8.b.

MEMORANDUM

TO: Personnel, Legislative and Public Affairs Subcommittee

SUBJECT: LB 577

DATE: February 2, 2009

FROM: John Winkler, General Manager

This legislative session a bill has been introduced by Senator Rogert, LB 577, which changes and rearranges provisions relating to improvement project areas. The Natural Resources Committee conducted a public hearing on LB 577 on February 6, 2009.

I have attached to this memo an analysis conducted by Paul Peters, District Legal Counsel, which outlines the Papio NRD's concerns related to this bill and its effects on existing legislation, as well as, current and future projects and programs of the District.

A basic summary of this bill is that its intent is to destroy Improvement Project Area (IPA) statutes and make it almost impossible for other landowners and an NRD to ever use an IPA to address issues of vital need. The bill strikes all existing law relating to benefits, benefit areas, benefit units and special benefits, geographic areas etc. under the program and creates new definitions for such. The bill also requires for districts that encompass a metropolitan class (Papio NRD); **that owners outside the benefit area would have to approve of a project if they felt they may be impacted.**

The bill further prohibits a project and any cooperation, agreement or financial aid with any person, company, firm, corporation, or any other entity that owns land within the proposed improvement project area at the time the project is proposed **if they have owned the land for less than ten years.**

LB 577 limits the authority of NRD's to cooperate with or enter into agreements with, or to furnish financial or other aid to any person who is in the business of selling or leasing, offering for sale or lease, or advertising for sale or lease, residential or commercial real property, when the cooperation, agreement, or financial or other aid relates to real property taken by the District through the use of eminent domain. The bill further make major changes to the improvement project statutes to limit the District's ability to utilize the act for improvement projects. Specifically, the bill would prohibit the authority for 1) development and management of fish and wildlife habitat and 2) development and management of recreational and park facilities.

Finally, the bill limits the total bonding authority for a project to no more than 12 percent of the taxable value of the property.

At this year's Annual Legislative Conference the NARD voted unanimously to oppose this bill on the grounds that this bill contains no justification to completely rewrite legislation that has well served the citizens of this state.

Therefore, management recommends that the subcommittee recommend to the full Board of Directors that the Papio Missouri River Natural Resources District officially opposes LB 577 and directs the General Manager and Government Relations Consultant to take such appropriate action to indefinitely postpone this bill in the Natural Resources Committee and/or to kill the bill in the full legislature if necessary.

Comments by
Papio-Missouri River Natural Resources District
on LB 577
101st Legislature of Nebraska

Title of LB 577

While LB 577 pretends to be remedial legislation relating to NRD special improvement projects, nothing about existing legislation has been claimed to be so problematic as to mandate intervention by the Legislature in a short session.

Indeed, one has to search very hard for the real purpose and justification for the proposed legislation.

It is submitted that the purpose for LB 577 is only to continue prior efforts of project opponents to tie the hands of the Papio-Missouri River NRD so as to prevent NRD construction of flood control works in Washington County that would protect Douglas and Sarpy Counties.

It also is submitted that an examination of the merits of LB 577 discloses that the bill seeks to accomplish its goal through the use of obfuscation, since justification is absent.

Sec. 1 of LB 577

Sec. 1 of LB 577 would only change cross-references in Sec. 2-3211.01 (applies only in event of merger of districts).

Sec. 2 of LB 577

Sec. 2 of LB 577 would only change cross-references in Sec. 2-3226.03.

Sec. 3 of LB 577

Sec. 3 of LB 577 seeks to add new language in Section 2-3235 to prevent the NRD from entering into agreements or cooperate with a class of person that is poorly defined in the bill, and likely unconstitutional for that reason, but which probably is intended to encompass real estate developers.

Following is the language of Sec. 3 of LB 577:

> "2-3235 (1) Each district shall have the power and authority to cooperate with or to enter into agreements with and, within the limits of appropriations available, to furnish financial or other aid to any cooperator, any agency, governmental or otherwise, or any owner or occupier of lands within the district for the carrying out of projects for benefit of the district as authorized by law, subject to such conditions as the board may deem necessary. <u>This section shall not be construed to give a district the power or authority to cooperate with or enter into agreements with, or to furnish financial or other aid to, any person who is in the business of selling or leasing, offering for sale or lease, or</u>

advertising for sale or lease, residential or commercial real property, when the cooperation, agreement, or financial or other aid relates to real property taken by the district through the use of eminent domain under section 2-3234.

(2) As a condition to the extending of any benefits to or the performance of work upon any lands not owned or controlled by this state or any of its agencies, the directors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits and may require landowners to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

(3) Each district may make available, on such terms as it shall prescribe, to landowners within the district specialized equipment, materials, and services which are not readily available from other sources and which will assist such landowners to carry on operations upon their lands for the conservation of soil and water resources and for the prevention and control of soil erosion. Whenever reasonably possible, purchases or contracts for such equipment shall be made from retail establishments."

This proposed amendment to Section 2-3235 appears to be an effort to accomplish a back-door reversal of the Nebraska Supreme Court's opinion in the case of Japp v. Papio-Missouri River NRD, 273 Neb. 779, 733 N.W.2d 551 (2007), that had been filed by Washington County residents objecting to flood and erosion control dams that the NRD was constructing on land in Sarpy County in cooperation with the owners of such land, who also were subdivision developers.

In the Japp case, project opponents had argued that Sec. 2-3235 does not allow the District to contract with private developers, either expressly or impliedly.

In the Japp case the Nebraska Supreme Court held that, under § 2-3235(1), the District has express authority to cooperate, enter agreements, and furnish aid to any landowners to carry out projects that benefit the District.[i]

The thrust of the sought after amendment that would be made by Sec. 3 of LB 557, would be to prevent the NRD from cooperating with a vaguely defined sub-class of landowners with respect to any project where eminent domain is used, or could possibly be needed to acquire any of the land required for the project. Thus, the amendment would enable objectors to easily prevent developer cooperation in every NRD project, since no NRD public project can be achieved when the use of eminent domain is publicly known to be prohibited from the inception, and where, therefore, any owner of land rights needed for the project would have the power to veto the project, simply by refusing to voluntarily negotiate, forcing a condemnation.

Clearly, also, the amendment that would be made by Sec. 3 of LB 557 would create a constitutionally-suspect, sub-classification of landowners, without any rational basis.

Section 4 of LB 557

Section 4 of LB 557 is a collection of vague definitions that would subtly change the meaning of many of the terms used in NRD special improvement project legislation.

The goal of Section 4 of LB 557 appears to be to change the definition of words used in the existing NRD special improvement project area legislation so as to frustrate the funding for construction of Washington County reservoirs.

Papio-Missouri River NRD has vowed that it has no intent to fund Washington County reservoirs using special assessments in an NRD special improvement project, however, that avowal seems to have spurred project opponents to increase their efforts to scramble the NRD special improvement project statutes to such an extent as to make them unintelligible and useless for any purpose, notwithstanding the fact that the Papio-Missouri River NRD and many other NRDs statewide use and depend on such legislation to fund many worthwhile projects that specially benefit a certain neighborhood, and have the backing of those affected.

The principal change that Section 4 of LB 557 seeks to make appears to be a re-definition of the concept of "special benefit," a term that is the foundation for the concept of general obligation/special assessment funding.

The courts of Nebraska consider "special benefits" the foundation for special assessments - as opposed to general benefits that are benefits that are enjoyed by the public at large, the achievement of which justifies general fund financing.

The concept of "special benefit" was discussed by the Nebraska Supreme Court in Bennett v. Board of Education, 245 Neb. 838 (1994):

> "Special assessments are charges imposed by law on land to defray the expense of a local municipal improvement on the theory that the property has received special benefits from the improvements in excess of the benefits accruing to property or people in general. North Platte, Neb. Hosp. Corp. v. City of North Platte, 232 Neb. 373, 440 N.W.2d 485 (1989); Nebco, Inc. v. Speedlin, 198 Neb. 34, 251 N.W.2d 710 (1977).
>
> The foundation for a local assessment lies in the special benefits conferred by the improvement upon the property assessed, and an assessment beyond the benefit so conferred is a taking of property for public use without compensation and, therefore, illegal. Briar West, Inc. v. City of Lincoln, 206 Neb. 172, 291 N.W.2d 730 (1980).
>
> The amount of the special assessment cannot exceed the amount of benefit conferred. See Neb. Rev. Stat. §§ 15-701 [842] through 15-701.02 (Reissue 1991) (authorizing cities of the primary class, such as Lincoln, to pave and improve streets and to assess the cost of such improvements, proportionate to the benefits conferred, on the property benefited).
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> An assessment may not be arbitrary, capricious, or unreasonable but the law does not require that a special assessment correspond exactly to the benefits received. . . . The most any officer or any tribunal can do in this regard is to estimate the benefits to each tract of real estate upon as uniform a plan as may be in the light afforded by available information.
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> Bitter v. City of Lincoln, 165 Neb. 201, 208-09, 85 N.W.2d 302, 307-08 (1957).
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> Absent evidence to the contrary, it will be presumed that a special assessment was arrived at with reference only to the benefits which accrued to the property affected. Brown v. City of York, 227 Neb. 183, 416 N.W.2d 574 (1987). The validity of an assessment is further aided by the presumption of law that all real estate is benefited to some degree from the improvement of a street or alley on which it abuts or from a like improvement made in a district of which the property assessed is a part. Bitter, supra.
>
> A party challenging a special assessment has the burden of establishing its invalidity. See, Brown, supra; Bitter, supra. It is a question of fact whether a property which has been specially assessed has or will benefit from an improvement project. See, Purdy v. City of York, 243 Neb. 593, 500 N.W.2d 841 (1993); North Platte, Neb. Hosp. Corp., supra; Nebco, Inc., supra."

It is easily deducible from a reading of Section 4 of LB 557 that that the author of Section 4 of LB 557, the section containing the terms that LB 557 seeks to re-define, has little understanding of the concept of special benefits, and apparently is unaware of the fact that a change of name cannot change the substance of a legal concept, any more than a horse can be made a cow by re-naming it.

Section 4 of LB 557 provides:

"Sec. 4. For purposes of section 4 to 16 of this act:

(1) Benefit means increase, or potential for increase, in (a) the monetary value of property, (b) the financial position of persons or their business, or (c) general safety to property, persons, or their businesses;

(2) Benefit unit means a representative portion of the total benefit of a project as determined and established by the board. All benefit units shall have an equal value;

(3) General benefit means benefit that accrues from a project in the district that is not a special benefit;

(4) Improvement project means a project, the undertaking for which an improvement project area is created by the board, that provides special benefit;

(5) Improvement project area means a geographic area, specified by the board, within a district within which special benefits will accrue to property, persons, or businesses within the specified geographic area as a result of an improvement project;

(6) Project or projects means an undertaking by the board to carry out one or more purposes of the district established in section 2-3229 or the powers of the district as provided in sections 2-3241, 2-3242, and 2-3243;

(7) Revenue-producing continuing service means a service provided by the district that (a) produces revenue to the district and (b) is established by the district with the expectation the service will be provided indefinitely or for the foreseeable future;

(8) Special benefit means benefit that accrues from a project predominately to property within a specifically identifiable geographic area in the district, the area of which represents less than twenty-five percent of the total geographic area of the district; and

(9) Total benefit means the accumulated general benefit or accumulated special benefit determined by the board to accrue as a result of a project."

By comparing the re-definitions that would be made by Section 4 of LB 577 with the concepts discussed in Bennett v. Board of Education, *supra*, it seems apparent that the author of LB 577 has no understanding of the chaos that his re-definitions of vitally important terms with long-standing meanings would create for NRDs who depend upon existing NRD improvement project area legislation for much of their project funding.

In addition, besides NRDs, there are many other Nebraska local governmental units whose projects are dependent on special assessments,[ii] who would find their legal lexicons and project plans turned upside down by the re-definitions of terms that would be made by Section 4 of LB 577.

Sec. 5 of LB 577

Sec. 5 of LB 577 would (a) change cross-references; (b) reiterate what is already the clear intent of present law that improvement project areas "shall have specified geographical boundaries"; and, (c) would layer-on another constitutionally-suspect companion to the anti-developer language in Sec. 3 of LB 577, discussed above, that would prevent the NRD from cooperating in any project with any developers or other real estate professionals, the relevant prohibition that would be made by Sec. 5 of LB 577 providing as follows:

> "(3) No project may be proposed or initiated by and no district may cooperate with or enter into agreements with or furnish financial or other aid to any person, company, firm, corporation, or other entity whose primary business is the development, selling or leasing, offering for sale or lease, or advertising for sale or lease residential or commercial property unless such person, company, firm, corporation, or other entity also owns land within the proposed improvement project area at the time the project is proposed and has owned such land for a period of not less than ten years."

It would be hard to imagine a more irrational and constitutionally suspect set of prohibitions and classifications than the ones found in the language of Secs. 3 and 5 of LB 577.

It clearly would be far beyond the constitutional power of the Legislature to say that citizens who are in the real estate business cannot enter into agreements with a natural resources districts.

Sec. 6 of LB 577

Sec. 6 of LB 577 would require that petitioners for establishment of an NRD improvement project area reside within the proposed project area. This amendment would appear to jump the gun in that it would conflict with common sense and pre-empt what is now an NRD Board's authority to set improvement project area boundaries after the Board has considered the merits and support for a project. The present statutory sequence calls for the Board to consider the merits of the project before it decides what the appropriate boundaries should be. Sec. 6 of LB 577 would reverse that order and put the cart before the horse. Another effort to hamstring natural resources districts.

Sec. 7 of LB 577

Sec. 7 of LB 577 would re-arrange, without essentially changing, several provisions governing the Board's hearing on an improvement project area petition and on other governing rules; and also would insert the following:

> "(2) In any district encompassing a city of the metropolitan class, any portion of an improvement project affecting land outside the boundaries of an improvement project area shall, in addition to the requirements of sections 4 to 16 of this act, be approved by a majority vote of the owners of land whose land would be affected by that portion of the proposed improvement project."

In this provision of LB 577, the intended meaning and rationality of the terms "affecting" and "affected" are key and are completely undefined and unknown. The uncertainty about what is intended would paralyze all activity within the ambient of the statute.

In addition, giving a veto to one class of "affected" landowners and denying it to others creates an incomprehensible and irrational sub-classification.

Nevertheless, it is clear from Nebraska case law that the legislative classification "natural resources district encompassing a city of the metropolitan class" is a constitutionally-valid classification. [iii]

Therefore, it appears that the provision of Sec. 7 of LB 577 in question is terminally vague and an unconstitutional sub-classification of what is clearly a constitutionally-valid classification.

Sec. 8 of LB 577

Sec. 8 of LB 577 is not new legislation, as the legislative underlining within Sec. 8 of LB 577 would seem to indicate, but instead appears to be the language of present Section 2-3254(2), with inconsequential changes thereto not worthy of the Legislature's time.

Following is the bill-modified language of present Section 2-3254(2) that is incorporated in Sec. 8 of LB 577:

> **"~~2-3254. Improvement project areas; petition; hearing; notice; findings of board; apportionment of benefits; lien.~~**
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> ****.
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> Sec. 8 (~~2~~1) When any ~~such special~~ improvement project would result in the provision of revenue-producing continuing services, the board shall, prior to commencement of construction of such improvement project, determine, by circulation of petitions or by some other appropriate method, if such improvement project can be reasonably expected to generate sufficient revenue to recover the reimbursable costs thereof. If it is determined that the improvement project cannot be reasonably expected to generate sufficient revenue, the improvement project and all work in connection therewith shall be suspended. If it is determined that the improvement project can be reasonably expected to generate sufficient revenue, the board shall divide the total benefits of the improvement project as provided ~~in sections 2-3252 to 2-3254~~this section. (2) If the proposed project involves the supply of water for any beneficial use, all plans and specifications for the improvement project shall be filed with the secretary of the district and the Director of Natural Resources, except that if such improvement project involves a public water system as defined in section 71-5301, the filing of the information shall be with the Department of Health and Human Services rather than the Director of Natural Resources. No construction of any such ~~special~~ improvement project shall begin until the plans and specifications for such improvement have been approved by the Director of Natural Resources and the Department of Health and Human Services, if applicable, except that if such ~~special~~ improvement project involves a public water system as defined in section 71-5301, only the Department of Health and Human Services shall be required to review such plans and specifications and approve the same if in compliance with the Nebraska Safe Drinking Water Act and departmental rules and regulations adopted and promulgated under the act. (3)~~All prescribed conditions having been complied with~~After establishment of an improvement project area, each landowner within the improvement project area shall, within any limits otherwise prescribed by law, subscribe to a number of benefit units in proportion to the extent he or she desires to participate in the benefits of the ~~special~~ improvement project. As long as the capacity of the district's facilities permit, participating landowners may subscribe to additional

benefit units, within any limits otherwise prescribed by law, upon payment of a unit fee for each such benefit unit. The unit fees made and charged pursuant to this section shall be levied and fixed by rules and regulations of the district. ~~The service provided may be withheld during the time such charges levied upon such parcel of land are delinquent and unpaid. Such charges shall be cumulative, and the service provided by the project may be withheld until all delinquent charges for the operation and maintenance of such works of improvement are paid for past years as well as for the current year. All such charges, due and delinquent according to the rules and regulations of such district and unpaid on June 1 after becoming due and delinquent, may be certified by the governing authority of such district to the county clerk of such county in which are situated the lands against which such charges have been levied, and when so certified such charges shall be entered upon the tax list and spread upon the tax roll the same as other special assessment taxes are levied and assessed upon real estate, shall become a lien upon such real estate along with other real estate taxes, and shall be collectible at the same time, in the same manner, and in the same proceeding as other real estate taxes are levied.~~"

[The final sentences of Section 2-3254(2), deleted as above when the language of Section 2-3254(2) was moved to Sec. 8 of LB 577, were re-inserted ("rearranged") in Sec. 15 of LB 577, as discussed, below.]

It is unknown what, other than trickery or sabotage of NRD programs, the drafters of LB 577 intended by their inconsequential amendments and seemingly mindless, proposed re-arrangement of the provisions of Section 2-3254(2) and other NRD special improvement project statutes.

Sec. 9 of LB 577

Sec. 9 of LB 577 is not new legislation, as the legislative underlining within LB 577, taken in combination with the "outright repealer" language of Sec. 18 of LB 577 would infer. Instead, this section and most of the remaining sections of LB 577 are, as the title to the bill correctly states, generally are a mere "rearrangement" of statutes applicable to NRD special improvement projects. Here, Secs. 9(1), 9(3), 9(4) and 9(5) of LB 577 consist of the language of present Section 2-3254(2), with mainly inconsequential changes, and with Sec. 9(2) of LB 577 consisting of language that now is found in existing Sec. 2-3452.01.

This section is a good example of how LB 577 deceitfully leads the reader to erroneously conclude that LB 577, Sec. 18 would "outright repeal" present Sec. 2-3452.01, when, instead, as the title to LB 577 correctly predicts, the bill is a mere rearrangement of Sec. 2-3452.01.

The Legislature does not have the time to merely re-arrange statutes to satisfy the whimsy of a pressure group, particularly at such a critical time in history.

Following is the bill-modified language of present Section 2-3254(3) and (4) that is incorporated in Sec. 9(2) of LB 577, with the addition in Sec. 9(2) of LB 577 of the language of present Sec. 2-3452.01:

"~~**2-3254. Improvement project areas; petition; hearing; notice; findings of board; apportionment of benefits; lien.**~~

~~****~~.

"~~(3)~~ Sec. 9. When the special project would not result in the provision of revenue-producing continuing services~~;~~:

(1) ~~the~~ The board shall apportion the benefits ~~thereof~~ of the improvement project accruing to the several tracts of land within the ~~district which will be benefited thereby~~ improvement project area~~,~~ on a system of units. ~~The land least benefited shall be apportioned one unit of assessment, and each tract receiving a greater benefit shall be apportioned a greater number of units or fraction thereof, according to the benefits received~~ Units shall be assigned to parcels of land proportionate with the benefit accruing to parcels of land. Nothing contained in this section shall prevent the district from establishing separate areas within the improvement project area so as to permit future allocation of costs for particular portions of the work on the basis of benefits accruing to specific subareas in the improvement project area. This subarea method of allocation shall not be used in any improvement project area which has heretofore made a final apportionment of units of benefits and shall not thereafter be changed except by compliance with the procedure prescribed in this section.

(2) When determining the apportionment of benefits, the board shall also make a determination as to what portion of the project will result in special benefits to lands and property and such determination, if not appealed as provided in section 2-3255, shall be conclusive as establishing the authority of the district to levy special assessments and issue bonds and warrants for such project.

(~~4~~3) A notice shall be inserted for at least one week in a newspaper published or of general circulation in the improvement project area stating the time when and the place where the directors shall meet for the purpose of hearing all parties interested in the apportionment of benefits by reason of the improvement project, at which time and place such parties may appear in person or by counsel or may file written objections thereto. The directors shall then proceed to hear and consider the same and shall make the apportionments fair and just according to benefits received from the improvement project. The directors, having completed the apportionment of benefits, shall make a detailed report of the same and file such report with the county clerk. The board of directors shall include in such report a statement of the actual expenses incurred by the district to that time which relate to the ~~proposed~~ improvement project and the actual cost per benefit unit thereof. Thereupon the board of directors shall cause to be published, once each week for three consecutive weeks in a newspaper published or of general circulation in the improvement project area, a notice that the report required in this subsection has been filed and notice shall also be sent to each party appearing to have a direct legal interest in such apportionment as provided by Sections 25-520.01 to 25-520.03, which notice shall include the description of the lands in which each party notified appears to have such interest, the units of benefit assigned to such lands, the amount of actual costs assessable to date to such lands, and the estimated total costs of the improvement project assessable to such lands upon completion thereof~~, as provided by sections 25-520.01 to 25-520.03~~.

(4) If the owners of record title representing more than fifty percent of the estimated total assessments for the improvement project area file with the board within thirty days of the final publication of such notice written objections to the project proposed, such project and work in connection therewith shall be suspended, such project shall not be done in such project area, and all expenses relating to such project incurred by and accrued to the district may, at the direction of the board of directors, be assessed upon the lands which were to have been benefited by the completion of such improvement project in accordance with the apportionment of benefits determined and procedures established in this section.

(5) Upon completing the establishment of an improvement project area or altering the boundaries of an existing improvement project area as provided in this ~~sub~~section and upon determining the reimbursable cost of the improvement project and the period of time over which such cost shall be assessed, the board of directors shall determine the amount of money necessary to raise each year by special assessment within such improvement project area and apportion the same in dollars and cents to each tract benefited according to the apportionment of benefits as determined by this section. The board of directors shall also, from time to time as it deems necessary, order an additional assessment upon the lands and property benefited by the improvement project, using the original apportionment of benefits as a basis to ascertain the assessment to each tract of land benefited, to carry out a reasonable program of operation and maintenance upon the construction or capital improvements involved in such improvement project. The chairperson and secretary shall thereupon return lists of such tracts with the amounts chargeable to each of the county clerks of each county in which assessed lands are located, who shall place the same on duplicate tax lists against the lands and lots so assessed. Such assessments shall be collected and accounted for by the county treasurer at the same time as general real estate taxes, and such assessments shall be and remain a perpetual lien against such real estate until paid. All provisions of law for the sale, redemption, and foreclosure in ordinary tax matters shall apply to such special assessments."

None of these amendments appear to have sufficient substance to waste the Legislature's time.

Sec. 10 of LB 577

Sec. 10 of LB 577 likewise is not new legislation, as the legislative underlining within LB 577 infers, but instead, Sec. 10 of LB 577 is the language of present Section 2-3254.04, with exception that Section 2-3254.04, providing for collection of special assessments, for some reason is moved to Sec. 15(2) of LB 577.

Following is the language of Sec. 10 of LB 577, that incorporates and modifies portion of present Section 2-3254.04 and excepts the provisions of Section 2-3254.04:

~~"2-3254.04. Improvement project areas; issuance of bonds; special assessment levy; hearing; notice; delinquent; interest.~~

Sec. 10. Before issuing any improvement project area bonds pursuant to section ~~2-3254.02~~ 12 of this act, special assessments shall be levied by resolution of the board for the improvement project area. Such levy of special assessments shall be made after the holding of a hearing by the board for which notice shall be published at least once a week for three weeks in a newspaper of general circulation in the improvement project area. Such notice shall state the time and place for such meeting and that such meeting shall be held for the purpose of hearing all parties interested in the levying of assessments for special benefits by reason of the improvements. ~~All special assessments shall become due within fifty days after the date of levy and may be paid within that time without interest. If not paid within the fifty days, they shall bear interest therefrom at the rate established by the board. Such assessment shall become delinquent in equal annual installments over a period of years which the board may determine at the time of making the levy. Delinquent installments shall bear interest until paid at the rate established by the board. If three or more installments shall become delinquent, the board may declare all of the remaining installments to be delinquent and such installments shall bear interest~~

~~at the rate established by the board for delinquent installments and may be collected in the same manner as other delinquent installments.~~"

None of these amendments appear to be substantial enough to waste the Legislature's time.

Sec. 11 of LB 577 [1]

Sec. 11 of LB 577 likewise is not new legislation, as the legislative underlining within LB 577 infers, but instead, Sec. 11 of LB 577 is the language of present Section 2-3254.05, with exception of the new provision that would require an NRD to repay within one year any NRD general funds used to prevent insolvency of the special assessment sinking fund.

Following is the language of Sec. 11 of LB 577 that incorporates and modifies present Section 2-3254.05:

> "~~**2-3254.05. Improvement project; special assessment proceeds; sinking fund; use.**~~
> Sec. 11. The proceeds of all special assessments for an improvement project area shall constitute a sinking fund for the purposes of paying the cost of the ~~special benefit portion of the~~ improvement project and for paying warrants and bonds issued pursuant to sections ~~2-3252 and 2-3254.01 to 2-3254.07~~ 9 to 14 of this act and shall, together with the interest payable upon such special assessments, be set aside and used to pay such costs, bonds, and warrants. Any money remaining in the sinking fund after fully discharging such costs, bonds, and warrants may be applied by the board for operation and maintenance expenses relating to such improvement project or may be transferred to the general fund of the district. In any resolution authorizing the issuance of bonds or warrants, the board may provide that general funds of the district, including the proceeds from such district's tax levied pursuant to section 2-3225, shall be transferred and paid into the sinking fund to provide for the prompt payment of principal and interest on any bonds and warrants of the district which are to be paid from such sinking fund, as they become due, if such general funds of the district are replaced, within one year from the date of any such payments, with the proceeds of special assessments for which the sinking fund is created."

The new provision that would be added by LB 577 to the end of former Section 2-3254.05, in creating Sec. 11 of LB 577, essentially provides that general funds used to keep the sinking fund solvent would have to be repaid to the general fund within one year. This is the one real change in law that would be accomplished by Sec. 11 of LB 577. The purpose for the existing provisions of Section 2-3254.05 was to allow general funds to be used for this purpose in order to make the NRD's special assessment bonds as marketable as possible. To deny the NRD this ability is to potentially increase debt service costs for all NRD special assessment improvement projects. This is another obvious instance of the bill's purpose to hamstring NRDs wherever possible.

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[1] Sec. 18 of LB 577 states that Section 2-3254.01, Sections 2-3254.04, Sections 2-3254.05, and Sections 2-3254.06 are "outright repealed", however it appears that for the most part they have been merely "re-arranged," i.e., moved to the other sections of LB 577 indicated below, in slightly amended form as indicated below, without any apparent reason for amending or moving them.

The other modifications to Section 2-3254.05 that are proposed by Sec. 11 of LB 577 are inconsequential and a true waste of the valuable time of the Legislature.

Sec. 12 of LB 577

The modifications to Section 2-3254.02 that are proposed to be made by Sec. 12 of LB 577 would call for an NRD to use improvement project bonds funded by the sinking fund (which according to Sec. 11 of LB 577 is funded by special assessments), to pay the entire cost of a project, including any general benefit portion thereof. Existing Section 2-3254.02 says that such bonds should fund the special benefit portion of a project. The LB 577 amendment to Section 2-3254.02 makes no sense in either the present scheme or in the confusing statutory scheme that LB 577 would institute.

Sec. 13 of LB 577

The substantial modification to Sec. 2-3254.02 that would be made by Sec. 13 of LB 577 is in the same vein as the amendment, discussed in regard to Sec. 11 of LB 577, that would be made by the proposed LB 577 modification to present Section 2-3254.05.

Such amendments would essentially degrade the present marketability of NRD improvement project bonds that now, by reason of present Section 2-3254.05, can be claimed to be permanently backed by the credit of the NRD. Sec. 11 of LB 577 would say that they are only temporarily backed by the credit of the NRD, which likely is a useless characteristic to an investor in bonds who is worried about safety of his investment.

Sec. 14 of LB 577

Section 14 of LB 577 would put a wholly unnecessary 12% of NRD total valuation limitation on the combined principal amount of an NRD's river-flow enhancement bonds and special improvement project area bonds (possibly also including revenue bonds that fund water supply projects).

It is unknown how the amount of the limitation was computed. There is no real or logical relationship between an NRD's total valuation (relevant to general fund taxation) and the amount of an NRD's special improvement project area bonds (no relevance to general fund taxation) that would justify any such limitation. Therefore, there is no logic to the amendment that would be made by LB 577.

This is another obvious demonstration of the proponents' purpose to hamstring NRDs wherever possible by multiple and irrational restrictions.

Sec. 15 of LB 577

- Sec. 15(1) of LB 577 consists of the collection language that was removed from Sec. 2-3254 when the rest of that section was purposelessly carried over into Sec. 8 of LB 577, i.e.:

> "~~2-3254. Improvement project areas; petition; hearing; notice; findings of board; apportionment of benefits; lien.~~
> ~~****~~.
> The service provided may be withheld during the time such charges levied upon such parcel of land are delinquent and unpaid. Such charges shall be cumulative, and the

service provided by the project may be withheld until all delinquent charges for the operation and maintenance of such works of improvement are paid for past years as well as for the current year. All such charges, due and delinquent according to the rules and regulations of such district and unpaid on June 1 after becoming due and delinquent, may be certified by the governing authority of such district to the county clerk of such county in which are situated the lands against which such charges have been levied, and when so certified such charges shall be entered upon the tax list and spread upon the tax roll the same as other special assessment taxes are levied and assessed upon real estate, shall become a lien upon such real estate along with other real estate taxes, and shall be collectible at the same time, in the same manner, and in the same proceeding as other real estate taxes are levied."

- Sec. 15(2) of LB 577 consists of the collection language that would be carried over from Sec. 2-3254.04 into Section 15 of LB 577, i.e.:

"~~2-3254.04. Improvement project areas; issuance of bonds; special assessment levy; hearing; notice; delinquent; interest.~~

~~****~~.

All special assessments shall become due within fifty days after the date of levy and may be paid within that time without interest. If not paid within the fifty days, they shall bear interest therefrom at the rate established by the board. Such assessment shall become delinquent in equal annual installments over a period of years which the board may determine at the time of making the levy. Delinquent installments shall bear interest until paid at the rate established by the board. If three or more installments shall become delinquent, the board may declare all of the remaining installments to be delinquent and such installments shall bear interest at the rate established by the board for delinquent installments and may be collected in the same manner as other delinquent installments."

- Secs. 15(3) and (4) of LB 577 consist of the language of present Sec. 2-3254.06, modified as follows, i.e.:

"~~2-3254.06. Improvement project; special assessments; lien; delinquency; foreclosure; sale final; when.~~

~~****~~.

(~~1~~3) The natural resources district shall have a lien upon the real estate that is within ~~its boundaries~~ an improvement project area for all special assessments for improvement project areas which are due. Such lien shall be inferior only to general taxes levied by political subdivisions of the state. When such special assessments have become delinquent and the real property against which they are assessed has not been offered at any tax sale, the district may proceed in the district court in the county in which the real estate is situated to foreclose in its own name upon the lien in the same manner and with like effect as a foreclosure of a real estate mortgage, except that sections 77-1903 to 77-1917, shall govern in every case when applicable.

(~~2~~4) Final confirmation of sale in such foreclosure proceedings and the issuance of a deed of sale to the district, or its assignee, cannot be had until two years have expired from the date of the sale held by the sheriff and until personal notice has been served on the occupants of the real property after such two-year period. The remedy granted in this section to a natural resources district for the collection of delinquent special assessments shall be cumulative and in addition to other existing methods."

Sec. 16 of LB 577

Sec. 16 of LB 577 clearly is another example of changes that are sought by LB 577 with no evident purpose other than to throw sand in the NRD's gears.

Sec. 16 of LB 577 clearly epitomizes the frivolous tinkering that permeates LB 577. Use of the undefined term "affects" would inject absolute and irreconcilable confusion in the appeal process; i.e., confusion about what is intended by that term.

Sec. 17 of LB 577

Sec. 18 of LB 577 provides for repeal of amended sections.

Sec. 18 of LB 577

Sec. 18 of LB 577 (the final section of LB 577) provides for repeal of sections that the bill misleadingly characterizes as being "outright repealed," but which sections actually are either re-inserted in essentially original form or with essentially the same meaning, or else are insidiously changed, all as discussed above.

Conclusion

In conclusion, a review of LB 577 discloses that the bill is a sort of shell game, where, through the use of pretended repealer of present statutes, true intentions and directions of the drafter are obfuscated and insidious amendments are made. All of this is instead of the effects the bill being proposed openly, honestly and directly, as would be expected by custom and fair dealing.

Perhaps the principal reasons for concealing the substantive changes proposed by the bill is that, as a review discloses, their purposes are principally to hamstring NRDs and impede their programs, rather than advance the public good.

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[i] "The appellants contend that the District lacks statutory authority to enter development agreements with private developers. They argue that § 2-3235 does not allow the District to contract with private developers, either expressly or impliedly.

Regarding the power of a natural resources district (NRD) to contract with outside parties, § 2-3235(1) provides:

Each district shall have the power and authority to cooperate with or to enter into agreements with and, within the limits of appropriations available, to furnish financial or other aid to any cooperator, any agency, governmental or otherwise, or any owner or occupier of lands within the district for the carrying out of projects for benefit of the [784] district as authorized by law, subject to such conditions as the board may deem necessary.

An NRD, as a political subdivision, has only that power delegated to it by the Legislature,(fn2) and we strictly construe a grant of power to a political subdivision.(fn3)

An NRD possesses and can exercise the following powers and no others: (1) those granted in express words; (2) those implied in or incident to the powers expressly granted; and (3) those essential to the declared objects and purposes of the district, not simply convenient, but indispensable.(fn4)

Neb. Rev. Stat. § 2-3229 (Reissue 1997) lists the purposes of NRD's. Under this section, NRD's may develop and execute plans, facilities, works, and programs relating to

(1) erosion prevention and control, (2) prevention of dam-ages from flood water and sediment, (3) flood prevention and control, (4) soil conservation, (5) water supply for any beneficial uses, (6) development, management, utilization, and conservation of ground water and surface water, (7) pollution control, (8) solid waste disposal and sanitary drainage, (9) drainage improvement and channel rectification, (10) development and management of fish and wildlife habitat, (11) development and management of recreational and park facilities, and (12) forestry and range management.

The record shows that the Shadow Lake and Midlands Lake projects will achieve several of these purposes. Petermann testified that these projects would provide flood control, sediment and erosion control, recreation, and water quality benefits. The appellants acknowledge that regarding these purposes, the [785] projects are within the District's judgment. Thus, we do not pass on the wisdom of the projects.(fn5)

But the appellants contend that although the projects fulfill the District's statutory purposes, it could not contract with private developers to accomplish these purposes. They argue that § 2-3235(1) does not include "developers" among the parties with which the District may contract and provide financial aid. And they urge us to consider the historical context in construing this statute, citing Allen v. Tobin.(fn6) Historically, NRD's assisted farmers and rural landowners under § 2-3235(1).

In construing a statute, we will give it its plain and ordinary meaning. And we will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.(fn7) Here, we need not look to history for the meaning of § 2-3235(1) because its language is clear. It applies to any "owner or occupier of lands within the district." An "owner" is "[o]ne who has the right to possess, use, and convey something. .. ."(fn8) However transient their ownership may be, SLD and 370 LLC are the owners of the project lands. Thus, under § 2-3235(1), the District has express authority to cooperate, enter agreements, and furnish aid to them to carry out projects that benefit the District." Japp v. Papio-Missouri River NRD, 273 Neb. 779, 733 N.W.2d 551 (2007)

[ii] Chapter 31. Drainage - Drainage by County Authorities. 31-101 to 31-142

"31-113 Drainage improvements; allowance of compensation and assessment of damages; when and how made.

Special benefit is increased market value due to drainage. Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901).

Chapter 19. Cities and Villages; Particular Classes - Business Improvement Districts. (Applicable to all cities.) 19-4001 to 19-4038

"19-4034 Business improvement district; special assessment or business tax; maintenance, repair, or reconstruction; levy; procedure. A city may levy a general business occupation tax, or a special assessment against the real estate located in a district to the extent of **special benefit** to such real estate, for the purpose of paying all or any part of the cost of maintenance, repair, and reconstruction, including utility costs of any improvement or facility in the district."

Chapter 19. Cities and Villages; Particular Classes - Business Improvement Districts. (Applicable to all cities.) 19-4001 to 19-4038

"19-4030 Business improvement district; special assessment; purpose; notice; appeal; lien. A city may levy a special assessment against the real estate located in such district, to the extent of the **special benefit** thereto, for the purpose of paying all or any part of the total costs and expenses of performing any authorized work, except maintenance, repair, and reconstruction costs, within such district."

Chapter 19. Cities and Villages; Particular Classes - Offstreet Parking. (Applicable to cities of the primary, first, or second class.) 19-3301 to 19-3327.

"19-3315 Taxes and assessments; purpose; procedure; notice; hearing. The mayor and city council may by resolution levy and assess taxes and assessments as follows:

****

(2) A special assessment against the real property located in such district to the extent of the **special benefit** thereto for the purpose of paying all or any part of the total costs and expenses of acquisition, including construction, of an offstreet parking facility in such district. The special assessment shall be levied as provided in section 19-3314. In the event that subsequent to the levy of assessments the use of any parcel of land changes so that, had the new use existed at the time of making such levy, the assessment on such parcel would have been higher than the assessment actually made, an additional assessment may be made on such parcel by the mayor and city council taking into consideration the new and changed use of the property. The total amount of assessments levied under this subdivision shall not exceed the total costs and expenses of acquiring a facility defined in section 19-3313. The levy of an additional assessment shall not reduce or affect in any manner the assessments previously levied. Additional assessments shall be levied as provided in section 19-3314, except that published notice may be omitted if notice is personally served on the owner at least twenty days prior to the date of hearing. All assessments levied under this subdivision shall constitute a sinking fund for the payment of principal and interest on bonds issued for such facility as provided by section 19-3317 until such bonds and interest are fully paid; and

(3) A special assessment against the real property located in such district to the extent of **special benefit** thereto for the purpose of paying all or any part of the costs of maintenance, repair, and reconstruction of such offstreet parking facility in the district. ****."

Chapter 19. Cities and Villages; Particular Classes - Offstreet Parking. (Applicable to cities of the primary, first, or second class.) 19-3301 to 19-3327.

"**19-3314 Costs; special assessment; notice; contents; appeal.** In the ordinance creating the district, the mayor and city council shall provide that in addition to the levy of taxes and pledge of revenue all or a portion of the cost of acquisition, including construction, maintenance, repair, and reconstruction of any offstreet parking facility may be paid for by special assessment against the real estate located in such district in proportion to the **special benefit** of each parcel of real estate."

Chapter 19. Cities and Villages; Particular Classes - Municipal Improvements. (Applicable to cities of the first or second class and villages.) 19-2401 to 19-2431.

"**19-2402 Water service; sanitary sewer service; extension districts; ordinance; contents.**

****.

(5) Upon creation of an extension district, whether by vote of the governing body or by petition, the council or board shall order the sewer extension main or water extension main laid and, to the extent of **special benefit**, assess the cost thereof against the property which abuts upon the street, avenue, or alley, or part thereof, which is located in the district."

Chapter 17. Cities of the Second Class and Villages - Laws Applicable Only to Villages. 17-201 to 17-231.

"**17-229 Street improvement program; authorization; tax levy.** If the board of trustees of a village in the State of Nebraska by a three-fourths vote of the members elected to the board determines by ordinance the necessity of initiating a street improvements program within the village, which improvements are in the nature of a general benefit to the whole community and not of **special benefit** to adjoining or to abutting property and which consists of graveling, base stabilization, oiling, or other improvements to the streets, but which improvements do not consist of curb and gutter or asphalt or concrete pavings, the chairperson and board of trustees may, by such ordinance, provide for the levy and collection of a special tax not exceeding seventeen and five-tenths cents on each one hundred dollars on the taxable value of all the taxable property in the village for a period of not to exceed five years to create a fund for the payment of such improvements."

Chapter 16. Cities of the First Class - Fiscal Management, Revenue, and Finances. 16-701 to 16-731.

"**16-707 Board of equalization; meetings; notice; hearings; special assessments; grounds for review.** The mayor and council shall meet as a board of equalization on the first Monday in June of each year and at such other times as they shall determine to be necessary, giving notice of any such sitting at least ten days prior thereto by publication in a newspaper having general circulation in the city. When so assembled they shall have power to equalize all special assessments, not herein otherwise provided for, and to supply any omissions in the same; and at such meeting the assessments shall be finally levied by them. A majority of all the members elected to the council shall constitute a quorum for the transaction of any business properly brought before them, but a less number may adjourn from time to time and compel the attendance of absent members. When sitting as a board of

equalization on special taxes, the council may adopt such reasonable rules as to the manner of presenting complaints and applying for remedies and relief as shall seem just. It shall not invalidate or prejudice the proceedings of the board that a majority of the members thereof do not, after organization by a majority, continue present during the advertised hours of sitting, provided the city clerk or some member of the board shall be present to receive complaints and applications, and give information; provided, no final action shall be taken by the board except by a majority of all the members elected to the city council comprising the same, and in open session. All the special taxes herein authorized shall be levied and assessed on all lots, parts of lots, lands, and real estate to the extent of the **special benefit** to such lots, parts of lots, lands and real estate, by reason of such improvement, such benefits to be determined by the council sitting as a board of equalization, or as otherwise herein provided, after publication and notice to property owners herein provided. In cases where the council sitting as a board of equalization shall find such benefits to be equal and uniform, such assessments may be according to the feet frontage and may be prorated and scaled back from the line of such improvement according to such rules as the board of equalization may consider fair and equitable; and all such assessments and findings of benefits shall not be subject to review in any equitable or legal action except for fraud, injustice or mistake."

Chapter 16. Cities of the First Class - Public Improvements. 16-601 to 16-6,116.

"16-667.02 Districts; formation; sewer or water mains; special assessments; use of other funds. Upon formation of a district as provided in section 16-667.01, the mayor and council may order sewer or water mains to be laid in such district and the costs, to the extent of the **special benefit**, assessed against the lots and parcels of real estate in such district. The cost of sewer or water mains in excess of collections from special assessments under this section may be paid out of the sewer fund or water fund, or, if money in such fund is insufficient, out of the general fund of the city."

Chapter 15. Cities of the Primary Class - Public Improvements. 15-701 to 15-759.

"15-725 Public improvements; special tax assessments. Special tax assessments to pay cost of local improvements, except special assessments for sidewalk purposes or as herein otherwise provided, shall be made in the manner following: (1) Assessment shall be made on the district by resolution of the council at any meeting, stating cost of the improvement and benefit accruing to the property in the district to be taxed, which, with the vote by yeas and nays, shall be recorded in the minutes. Therewith shall be submitted a proposed distribution of the tax on each separate property to be taxed subject to action of the board of equalization as prescribed therein; and (2) notice of time of assessment shall be published in some newspaper published and of general circulation in the city ten days before the assessment, and that the council will sit as a board of equalization to distribute the tax at a time in such notice fixed, not less than five days after such assessment, and the proper distribution of such special tax shall be open to examination of all persons interested. Property shall not be specially taxed for more than the total cost of the improvement nor more than the **special benefit** accruing thereto by the improvement. If the aggregate tax be less than the cost of improvement the excess shall be paid from the general fund. Special taxes may be assessed as the

improvement progresses and as soon as completed in front of or along property taxed, or when the whole is complete, as the council shall determine. Special assessments for local benefits shall be a lien on all property so specially benefited superior and prior to all other liens save general taxes or other special assessments and equal therewith. If any special assessment be declared void, or doubt of its validity exist, the mayor and council, to pay the cost of improvement, may make a reassessment thereof on the original estate within the district, and any sums paid on the original assessment shall be credited to the property on which it was paid and any excess refunded to the owner paying it, with lawful interest. Taxes reassessed and not paid shall be enforced and collected as other special taxes. No special tax or assessment which the mayor and council acquire jurisdiction to make shall be void for any irregularity, defect, error or informality in procedure, in levy or equalization thereof."

iii The classification "natural resources district encompassing a city of the metropolitan class" does not violate Neb. Const. Art. III, § 18, which prohibits the passage of any law "making any irrevocable grant of special privileges or immunities," Neb. Const. Art. III, § 18, provides:

> "The Legislature shall not pass local or special laws . . . Granting to any corporation, association, or individual any special or exclusive privileges, immunity, or franchise whatever . . . In all other cases where a general law can be made applicable, no special law shall be enacted."

The case law governing this subject is found in Hamon v. Marsh, 237 Neb. 699, 716, 467 N.W.2d 836, 848 (1991) where the Court, quoting from City of Scottsbluff v. Tiemann, 285 Neb. 256, 262, 175 N.W.2d 74, 79 (1970), held that:

> "[a] legislative act can violate Neb. Const. art. III, § 18, as special legislation in one of two ways: (1) by creating a totally arbitrary and unreasonable method of classification or (2) by creating a permanently closed class.'"

For more recent decisions see: MAPCO Ammonia Pipeline v. State Bd. of Equal., 238 Neb. 565, 471 N.W.2d 734 (1991) ("A legislative act can violate this provision as special legislation (1) by creating a totally arbitrary and unreasonable method of classification or (2) by creating a permanently closed class"); and, City of Ralston v. Balka, 247 Neb. 773, 530 N.W.2d 594 (1995) ("A legislative act constitutes special legislation, violative of this provision [Neb. Const. Art. III, § 18], if it (1) creates an arbitrary and unreasonable method of classification or (2) creates a permanently closed class.")

For past relevant decisions of the Nebraska Supreme Court on legislative classifications having a population nexus, see: Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972) (limiting application of building commission act and tax levy power to cities of the metropolitan class and the counties in which they are located was not a classification that was clearly arbitrary and without substantial basis founded upon real differences); Campbell v. City of Lincoln, 182 Neb. 459, 155 N.W.2d 444 (1968) (act of Legislature authorizing cities of primary class to

annex contiguous or adjacent lands was not local or special law); Metropolitan Utilities Dist. v. City of Omaha, 171 Neb. 609, 107 N.W.2d 397 (1961) (statute providing for sewer use charge in metropolitan cities did not violate this section); Omaha Parking Authority v. City of Omaha, 163 Neb. 97, 77 N.W.2d 862 (1956) (Parking Authority Law did not violate constitutional prohibition against special legislation); Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940) (acts creating housing authorities was not special legislation); Cunningham v. Douglas County, 104 Neb. 405, 177 N.W. 742 (1920) (law authorizing counties of 150,000 or more to issue bonds and levy tax to rebuild courthouse destroyed by fire or riot was valid); and, State ex rel. Prout v. Aitken, 62 Neb. 428, 87 N.W. 153 (1901) (act providing for Tax Commissioner in city of specified class was valid).

TWIN PLATTE
NATURAL RESOURCES DISTRICT

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February 2, 2009

Senator Chris Langemeier
Chairman of the Natural Resources Committee
Room 1210
P.O. Box 94604
State Capitol
Lincoln, NE 68509

Re: LB 577

Dear Senator Langemeier

The Twin Platte Natural Resources District would like to submit this letter in opposition to LB 577. Please make this letter a part of the record at the hearing for LB 577 on February 6, 2009.

It has come to our attention the bill was drafted to address the concerns a few individuals have with addressing stormwater issues. However, this bill would severely harm the Improvement Project Area (IPA) statutes to the point that it would be impossible for landowners and the Natural Resources District to use an IPA to address other local needs. Destroying laws that currently work for other local districts is not a better solution to assist Nebraskans with stormwater, water quality and flood control needs.

Rather, we support LB 160 as a way to address these needs. There are many limitations on the bond process and projects that have been included in this bill to address the issues and concerns.

Thus, the Twin Platte Natural Resources District encourages the Legislature to indefinitely postpone LB 577 and to enact LB 160.

Respectfully Submitted

Kent O. Miller, P.E.
General Manager

Cc: Senator Tom Hansen
Senator Deb Fischer
Senator Ken Schilz
Dean Edson, NARD

Winkler, John

From: Dean Edson [dedson@nrdnet.org]
Sent: Monday, February 02, 2009 6:59 PM
To: dsmith@mrnrd.org
Cc: Winkler, John; David N. Wolf
Subject: RE: LB 577

Thanks Dan.

From: Dan Smith [mailto:dsmith@mrnrd.org]
Sent: Monday, February 02, 2009 4:25 PM
To: clangemeier@leg.ne.gov
Cc: Senator Christensen ; Dean Edson
Subject: LB 577

Senator Langmeier,

The Middle Republican NRD endorsed the position of opposition to LB 577 taken by the Nebraska Association of Resources Districts. The Improvement Project Area statutes as they currently exist are one of the few tools available to NRDs that can actually work as they are. They could be improved but not with the erosive proposed language in LB 577. This bill seems to be another one of those attempts to minimize the authority of the NRDs to function within our statutory authority.

LB 160 is the solution that best meets the needs of Nebraska and specifically the PMRNRD. LB 160 is the culmination of several years of negotiations about how to fund the projects that are needed to protect that district from the ravages of storm waters. For anyone to claim that LB 577 also meets this need is a far stretch from their real agenda of stopping these projects all together.

Please consider these comments in opposition to LB 577 and include them in the hearing record.

<>

Dan Smith, Manager
Middle Republican Natural Resources District
800-873-5613 308-367-4281
dsmith@mrnrd.org

Winkler, John

From: John Thorburn [jthorburn@tribasinnrd.org]
Sent: Thursday, January 22, 2009 2:37 PM
To: dedson@nrdnet.org; 'John Miyoshi'; Petermann, Marlin; Winkler, John
Subject: RE: Improvement Project Revisions- LB 577

Dean
This is a BAD bill for a lot of reasons, not least of which because it haphazardly muddles up the entire IPA process. It is hard to tell what some of the changes are, the way this bill is written. Entire sections of existing law are shown to be struck, but then are re-written with new language inserted here and there, but with everything underlined. It seems like it might have been intentionally written this way to conceal some of the changes. Furthermore, there is no "grandfather clause" for existing IPAs that I can find. Tri-Basin NRD has six existing IPAs for drainage improvement, all of which would apparently have to be reconstituted to conform with this proposed new process, at great expense to taxpayers, if this bill is enacted. I am confident that Tri-Basin NRD would STRONGLY oppose this bill and I would be directed to testify against this bill in committee hearings. Please keep me informed about this bill.

Thanks,

John Thorburn

From: Dean E. Edson [mailto:dedson@nrdnet.org]
Sent: Wednesday, January 21, 2009 5:31 PM
To: John Thorburn; John Miyoshi; Marlin Petermann; John Winkler
Subject: Improvement Project Revisions- LB 577

The lobbyist for Washington County – Papio Valley Preservation (Andy Pollack) society gave me a heads up that their group is going to offer a simple solution to the dam issue by clarifying the IPA statutes with LB 577

In his argument for the bill was to "simplify a process" to help a developer he represents in the LPNNRD on a rural water project. Does this ring a bell for anyone?

I started to read the bill and did not notice the "simplified process" to help the developer.

Dean E. Edson
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Check out the NRDs at www.nrdnet.org.