

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 31, 2019

HUGHES: Get this show on the road. Are you ready, Ms. Mizerski? Perfect. Welcome to the Natural Resources Committee. I'm Senator Dan Hughes. I am from Venango, Nebraska, and I represent the 44th Legislative District. I serve, say it along with me if you'd like, I serve as the Chair of the committee. Committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members might come and go during the hearing. This is just part of the process as we have bills to introduce in other committees. I ask you to abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Introducers will make initial statements followed by proponents, opponents and neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up the 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 out the form in its entirety. When it is your turn to testify, give the sign-in sheet to the page or the committee clerk. This will help us make a more accurate public record. If you do not wish to testify today but would like to record your name as being present at the hearing, there is a separate white sheet on the tables that you can sign in for that purpose. This will be part of the official record of the hearing. If you have handouts, please make sure you have 12 copies, and give them to a page when you come up to testify so that they will be distributed to the committee. When you come up to testify, please speak clearly into the microphone. Tell us your name. Please spell your first and last name, so we can have an accurate record. Probably don't need to use the lights today. No displays of support or opposition to a bill, vocal or otherwise, is allowed at a public hearing. The committee members with us today will introduce themselves, beginning on my left.

MOSER: Is this your left?

HUGHES: This is my left.

MOSER: Yeah, I'm trying to be funny, sorry. Mike Moser, District 22. I represent Platte County, Colfax County, part of Colfax County, and most of Stanton County.

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HALLORAN: Steve Halloran, S-t-e-v-e H-a-l-l-o-r-a-n, representing District 33, Adams and Hall County.

QUICK: Dan Quick, District 35, Grand Island.

GEIST: Suzanne Geist, District 25, the east side of Lincoln, Walton, and Waverly.

HUGHES: And on my right.

ALBRECHT: Senator Joni Albrecht from District 17 representing Thurston, Dakota, and Wayne Counties.

BOSTELMAN: Bruce Bostelman, District 23, Saunders County, Butler County, and the big part of Colfax County.

MOSER: Yeah.

HUGHES: To my left is committee counsel, Laurie Lage, and to my far right is committee clerk, Mandy Mizerski. Our pages for the committee today are Noah Boger. He's a freshman at UNL with a double major in political science and French. Hunter Tesarek is a sophomore at UNL with a double major in history and political science. So with that, we will open the hearing on LB307. Senator Albrecht, welcome to the Natural Resources Committee.

ALBRECHT: Thank you, sir. Good afternoon, Chairman Hughes and members of the Natural Resource Committee. My name is Senator Joni Albrecht, it's J-o-n-i A-l-b-r-e-c-h-t. And I do proudly represent Legislative District 17 including Wayne, Thurston, and Dakota Counties. Today I am presenting LB307 which I introduced on behalf of the Department of Environmental Quality. LB307 updates state revolving fund statutes to be consistent with federal laws that allow states additional flexibility to administer the Wastewater Treatment Facilities Construction Loan Fund and the Drinking Water Facilities Loan Fund. The ability to transfer funds will provide the state with flexibility to allocate the funds where the demand for community infrastructure improvement is greatest. The Department of Environmental Quality Director, Jim Macy, is here and will follow me with testimony to discuss the specifics of the bill. I ask your support of LB307, and I would be happy to answer any questions you might have.

HUGHES: Thank you, Senator Albrecht. Are there any questions? Seeing none, you'll stay for closing?

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ALBRECHT: Yes, sir.

HUGHES: OK. We'll begin with proponents to LB307. Welcome back, Director Macy.

JIM MACY: Thank you. Good afternoon, Senator Hughes and members of the Natural Resource Committee. My name is Jim Macy, spelled J-i-m M-a-c-y. I'm the Director of the Nebraska Department of Environmental Quality. I'm here today to testify in support of LB307. Before we begin, I would like to thank Senator Albrecht for her supporting and introducing LB307 on behalf of the department. The Department of Environmental Quality administers the drinking water and clean water state revolving loan programs which we will term SRF to avoid language in the future here. These programs provide below-market interest loans, grants, and loan forgiveness to eligible Nebraska communities, developing projects to address current and future drinking water and wastewater infrastructure needs. Since the inception of the SRF programs, approx-- approximately \$867 million have been invested in 540 projects throughout Nebraska. This results in public health-- pub-- public health and environmental quality improvements to 282 communities statewide. LB307 updates state revolving fund statutes to be consistent with federal program features that allow states additional flexibility to administer clean water and drinking water loan funds. LB307 strikes an obsolete sunset date in the Drinking Water State Revolving Fund Act which updates the department's authority to transfer funds between the two loan programs so they can be used for projects in communities where need and demand are the greatest. States are allowed to reserve the authority to transfer up to 33 percent of federal grants between the SRF programs. States can also transfer funds collected from the repayment of loans and investment earnings between the SRF programs. Over the next few years, we anticipate a high demand in wastewater infrastructure projects across the state, while Drinking Water State Revolving Fund demands have not used all their available funds. DEQ may soon have to turn down clean water SRF projects for wastewater at the same time that EPA may question the unobligated funds in our Drinking Water State Revolving Fund. This change to match federal flexibility will ensure that the available funds are effectively used to meet as many needs as possible with us and as much as low-market financing as we can make available. Likewise, money can be moved to the Drinking Water State Revolving Fund for future projects that protect public health. In addition, we are proposing to add new language requiring that any intent to transfer funds will be included in the Intended Use Plan.

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The Intended Use Plan is a document prepared annually that outlines the funding availability and how funds are planned on being used. The Intended Use Plan is presented to the Environmental Quality Council for review and approval each year. The final amendment we're proposing with this bill is to adjust the loan term for drinking water loans to match federal language. Currently, the state language only allows drinking water programs to be set for a maximum of 20 years for communities and 30 years for disadvantaged communities. In 2018, federal authority extended this limit for 30 years for communities and 40 years for disadvantaged communities. In closing, the department is looking forward to assisting the needs of as many communities as possible with their drinking water and wastewater infrastructure needs in order to protect public health and the environment. We believe by having this flexibility allowed under federal law to transfer money between our SRF programs, we can maximize our resources to assist as many communities as possible. This concludes my testimony. I want to thank you for your consideration of this bill, and I'd be happy to answer any questions you might have.

HUGHES: Thank you, Director Macy. Are there questions? Senator Moser.

MOSER: Are the applications for wastewater treatment more common than for drinking water?

JIM MACY: Currently, we have more applications for the clean water, the-- the-- the wastewater, in our Intended Use Plan than we do for drinking water.

MOSER: And does the money come to us from the federal government as a grant or is it appropriated from the state or?

JIM MACY: Initially, the money comes in the form of a capitalization grant for the drinking water program and another capitalization grant for the wastewater program. And last year, the combined two was about \$8 million in the clean water fund and about \$12 million in-- in the drinking water fund. As that money is loaned to communities, it revolves when commun-- communities pay that money back in interest and principal payments. And then that goes back into the state revolving fund where we can loan out that recycled money then to more communities. And that grows the fund for-- for the future of the program.

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MOSER: So how much money do we have in the fund or how much have we got loaned out?

JIM MACY: Well, there's-- there's a capacity of about \$110 million in the drinking water fund that currently is not obligated for projects. And that's the-- the reason that we would like to have the flexibility to be able to transfer this to the clean water funds, not all of it but 33 percent.

MOSER: The cities, and or I suppose some of them could be counties even, that apply?

JIM MACY: It could be in like an SID district or rural water could apply for the drinking water side. Typically, it's the municipalities that-- that apply for clean water projects on the clean water-- sewer side. And then also municipalities and-- and-- and it could be a multitude of communities that are served by a rural water line.

MOSER: Well, that amount of money you have would be a pretty small percentage of the total water projects out there in the state. So I assume there must be some qualifications, that they need to have more need than other applicants? Or do you grade those applications?

JIM MACY: They are graded. They are listed. They are scored on the Intended Use Plan. There is a matrix of different qualifications that we use that are outlined in-- in the Intended Use Plan. It's a very technical document that we-- we abide by each and every year to list those communities and applicants that intend to use this program. There are federal requirements to the program that are different than just going out on a private activity bond to borrow money on a private scale. You have to abide by the Davis-Bacon wage issue and the American Iron and Steel. You have to have a engineering contract that is approved and ready. And you have to have your bond at the community level to be ready to proceed.

MOSER: Would typically the cities get prior-- or bond financing as well as financing from your agency?

JIM MACY: The cities have to obligate money, and typically, that's done through a bond. And then they have to pass an ordinance that allows them to spend money into the future for-- for these loans. So there is a lot of community, on-the-ground discussion, and--

MOSER: They've got a lot of skin in the game, you're saying.

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JIM MACY: --they've got a lot of skin in the game.

MOSER: But some of the money could come to them from bond sales and some comes from you? Or is your sale-- or your loan to them considered to be a bond?

JIM MACY: The community-- the way the program works, the community has to obligate itself for future spending and that is done through a bond. And-- and-- and-- and that's part of the federal requirement and our state requirement.

MOSER: OK, thank you.

JIM MACY: Thank you.

HUGHES: Additional questions? Senator Geist.

GEIST: Thank you. Do you know the-- the purpose originally of the sunset because it's-- it-- was that so that you would have to re-evaluate the progress or its effectiveness or was it intended to go away at a certain point?

JIM MACY: The original statute set a duration of a transfer authority from '98 to 2002. And then there were federals-- and that matched federal statutes, as I understand. The-- the federal statute then changed. This-- this issue wasn't revisited. There was some activity on both sides of drinking water and clean water. We're at a point now that we need to look at this because we have so many unobligated funds.

GEIST: Um-hum. OK. Does that have to-- does the extension of the sunset have to mirror the federal guidelines or is that simply a sunset that we're looking to extend for our benefit, as you referenced.

JIM MACY: Originally, the-- the federal statute had a similar sunset and recently that sunset was removed, allowing flexibility between the funds.

GEIST: OK. Thank you.

HUGHES: Other questions? Senator Halloran.

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HALLORAN: Just a quick question. I'm curious. Thank you for your test-- testimony, Director Macy. What's the interest rate? I assume it's not fixed. It's a floating with a prime or something.

JIM MACY: I may have to get back with you, but it's between 2 and 3 percent.

HALLORAN: OK.

JIM MACY: And there is a difference in the interest rate on one side of the money and the other side of the money, and we're looking to look at that also.

HALLORAN: Explain that.

JIM MACY: The two funds were set up at different time periods, and one was-- had an interest rate that is about a half a point higher than the other.

HALLORAN: So it is a fixed-- it is a fixed interest rate? It doesn't float with the?

JIM MACY: It is a fixed interest rate. Yes.

HALLORAN: Thank you.

HUGHES: Any other questions? Senator Moser.

MOSER: Fixed over the length of the repayment or just fixed for a certain length of time?

JIM MACY: It is fixed over the length of that repayment, and typically, that has been fixed at signing.

MOSER: Thank you.

HUGHES: Any other questions? Senator Bostelman.

BOSTELMAN: Yeah, thank you. Thank you, Director Macy. I guess I want to go back to a question-- does the extension from 20 years to 30 years and 30 years to 40 years on the loans, is that because historically, communities or whoever's had those loans are having a problem now paying those back? Or do you know, is there a specific-- what's the purpose for that extension?

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JIM MACY: It is-- it is because some disadvantaged communities have difficulty with the-- with the payments for a 30-year time frame. If you're in the business, that-- that ultimately is more money, you know, a longer-term loan. But that-- that availability is available through the federal statute change in the last couple of years to extend a lower annual payment or monthly payment for communities that have problems.

BOSTELMAN: Thank you.

HUGHES: Any other questions? I have a couple. So kind of [INAUDIBLE] said you had a \$110 million in the drinking fund currently that's kind of sitting idle?

JIM MACY: Yes.

HUGHES: What-- what percentage normally do you have unencumbered? Just a ballpark.

JIM MACY: It depends on the year and how many loans. We could get you that information. And-- but it does change over time because of the amount of use of the programs. Both-- both sides will have a different level of participation over the last ten years.

HUGHES: So roughly how many communities or-- or loans would you have out on each one at a time? Are they 10 or 50 or?

JIM MACY: I could get you some more specific information on that. It again depends on the listing in the Intended Use Plan. Let's-- let's take this last year for just a quick example. The clean water program was capitalized about \$8 million and the drinking water was capitalized about \$12 million from this EPA initial capitalization grant. We-- we don't have much problem revolving that federal money, but then, as interest and principal payments come back into the program, that is called recycled money. And it's recycled both on the clean water side and the drinking water side. The clean water side, we've had sufficient activity and interest in the program to where we actually have a bit of a waiting list. In the drinking water side, we've had some activity, but we don't have that drinking-- that waiting list. And that's the-- the-- the needs of being able to use this on both sides of the money.

HUGHES: OK. Last question. Is there someone or a division within your department that helps cities and SIDs filling out the application and

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making sure that it's always done correctly before it shows up for grading?

JIM MACY: Absolutely. We have a great team, both on the drinking water side and on the clean water side, that assists communities and going through project review and making applications.

HUGHES: OK. But-- I'm sorry, one more. Who-- who makes the ultimate decision? Is that your responsibility or who-- who's the [INAUDIBLE]?

JIM MACY: It's the agency's responsibility and I sign the ultimate loan program products almost daily.

HUGHES: OK. Very good. Any other questions? Senator Moser.

MOSER: Can I get three, five minutes each?

HUGHES: Sure.

MOSER: No, I'm just kidding. How much-- how does the \$100 million you have on hand compare to your total amount you have loaned out? I mean, is it 10 percent or?

JIM MACY: Oh, I'd have to get back to you on that. It's-- it's probably a third of the drinking water fund in total. I'd have to get you back on-- on that for specifics.

MOSER: Yeah. Well, I'd almost have guessed that it would have been more with how much those projects cost. Okay. Thank you.

HUGHES: Any others? Thank you, Director Macy.

JIM MACY: Thank you.

HUGHES: Additional proponents. Welcome.

LASH CHAFFIN: Good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I represent the League of Nebraska Municipalities, and I would also like to thank the senator for introducing this bill. And a very brief history. The league was integral in-- in the development of both of these funds. The wastewater fund came long before the water fund. And there was-- there is a little history. That was a transition that the federal government put in place. The federal government used to give grants for wastewater facilities because come along the '80s, there were a lot of places that didn't even have any form of

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wastewater treatment. It was very rudimentary at best. And so it was a transition from the grant program into a-- into a loan program which was a little difficult pill to swallow for a lot of places because it's not quite the same animal. And so the writing of the regulations in the initial program, that was-- that was a carefully put-together package. And it-- and it was a little bit controversial at the time. And so-- so the league was very, very active in that program. And then, a decade or so, the water program came along a little later, and that was a little less controversial at the time. But the one thing I have learned over the-- over the 20-some years that these have been in place is to make the funds work effectively, flexibility becomes paramount. And it's something that, you know, as a nonfinancial person, I didn't always predict. Sometimes when interest rates are high or changing, the funds needed flexibility to turn the money over fast. And then when they-- when interest rates dropped, domestic or not, they're not that much below-- below market rate at this point in time. But they're still very effective lending tools in that the state has grant writers and staff on hand who can manipulate the terms of the loan to match the project. So there-- there-- the more flexibility you can put in the program, the more effectively you can get the dollars on the ground and the more effectively you can address the environmental concerns of the-- of the-- of whatever the loan is going towards on both sides. And interestingly the-- I didn't really think about it until this morning, but the moving from fund to fund is actually probably a great idea. And it's a-- it's a little frustrating that the federal government even sort of limits it. Federal regulations come in waves, and-- and for a while, there was a wave of drinking water regulations dealing as EPA enhanced their lead and copper rules. And so everybody was spending money to try to enhance their-- whatever treatment they were using on their drinking water system. And then prior-- just prior to that, there was a wave of hundreds of millions of dollars when EPA asked the state of Nebraska to start regulating ammonia and wastewater which would-- prior-- prior to that had sort of been-- which affects all the treatment plants at almost every senator on this table. That was something that really hadn't been-- spent money on, so everybody was rushing to get money to upgrade their facilities for that. And there have been a couple offshoots of the loan programs that have actually been quite, quite valuable over time. And I think, you know, if you're dealing with it every day, you probably don't even see how valuable they've become. When the wastewater program first came into place, nobody knew where the money was going to go. Nobody had any idea. You would have to go talk to, at the time, 535 municipalities to see if they needed money.

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As a part of-- as a result of the wastewater program, and now this has subsequently been expanded to the water, the state does a very comprehensive annual needs survey, an infrastructure needs survey, for at least water and wastewater. That didn't exist prior to these funds being in place. And the staff that worked on the funds at the time, they-- they needed that information. So they worked with the league, and I believe at the time the NRD association, to try to develop some form of simple yet comprehensive way of getting this data back. And now it's taken a life of its own and it's far more sophisticated. And then secondly, what's happened is, and this is probably even more important, this-- this-- through the leadership of the state over the last decade, the DEQ and HHS at the time and-- have started to coordinate with the federal government with-- through-- who have various funding opportunities in these areas in applications. When you're making an application, and I'm oversimplifying this a little bit, when you're making an application, you come all at once to all of the funding agencies. And then the funding agencies sit down and figure out what's the best package of private financing, public financing from USDA, or they sit down and figure it out. Before it was it was often left to the poor city clerk who works 12 hours a month in their village. And now there's-- there's been a lot of help and I think these have been kind of offshoots of the program that have been extremely valuable. But if anybody has any questions, I would certainly answer them.

HUGHES: Thank you, Mr. Chaffin. Are there questions? Seeing none, thank you for your testimony. Next proponent. Welcome.

LANCE HEDQUIST: Chairman Hughes, members of the Natural Resource Committee, and I do-- I'm Lance Hedquist, L-a-n-c-e H-e-d-q-u-i-s-t. And we certainly appreciate Senator Albrecht, our wonderful senator, for introducing this bill. Our city is in strong support of LB307. It provides the ability to transfer fund to the priorities of the state and extend repayment plans for communities. South Sioux City has long been part of a three-state regional sewer system that was actually built, as-- as Lash talked about, with federal grants that came in. The more cities that belong to the association, the more grant funds came in to build the sewer plant back in the 1960s. Recently, without warning, we were notified by Sioux City, Iowa, that Sergeant Bluff, Iowa, North Sioux City, South Dakota, and South Sioux City, Nebraska, were going to be terminated from that agreement and that we need to find our own sewer treatment plant. And as you might suspect, finding a location for a sewer plant is not, as everybody knows, it's needed

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but just don't put it in my backyard, is a issue that we have to-- have to deal with. It does take a lot of citizen input, a lot of citizen education, and obviously, it takes a great deal of money to get that done. The estimated cost for our sewer plant is \$40 to \$50 million. We don't know the exact cost yet, so we've got engineers that are involved in-- in that discussion. Extending the repayment of those plant-- paybacks for that new plant would be greatly beneficial to the ratepayers of our community. Allowing the transfer of funds between the accounts also increases the ability for the state to respond to needs of their local governments and the rural water districts that are run by NRDs and various community connections across the state. LB307 updates state statutes with current federal statutes, allowing transfer of money to take place between those two funds. The drinking water SRF is used for public water supply. The clean water SRF is used for wastewater treatment systems. Both these types of infrastructure are critical for Nebraska communities. It is imperative that NDEQ maximize that flexibility allowed by federal law to utilize the SRF funds to the benefit of the needs of the Nebraska community, provides flexibility in the program so that funds may be available where needed, and allow the program to maximize its-- its resources to assist as many communities as possible. Obviously, the-- the amount of demand for the money changes. Different federal rules that can come about can make changes. Phosphorus rules can make a difference in your sewer plant. Copper rules can make a difference. The Flint, Michigan, issue and what that meant in terms of the demands for water systems can all make a difference. So we believe that this is a positive move forward for the state of Nebraska and provides the best use of the scarce resources that we have in the state. With that, Mr. Chairman, I'd be glad to answer any questions.

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

BOSTELMAN: Thank you, Mr. Hedquist, for being here. Could you explain to me the-- on that loan that you get, how is that money broken out? Is it administrative, engineering, is it environmental, is it-- how is that-- how is that-- how are those funds used?

LANCE HEDQUIST: The funds, if you do receive the funds through the Intended Use Plan, could be used for the land and the engineering and actual construction of the plant. It would not pay for any operational cost in the plant.

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BOSTELMAN: OK. Thank you.

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

LANCE HEDQUIST: Thank you.

HUGHES: Additional proponents of LB307. Welcome.

DEAN EDSON: Thank you. Senator Hughes and members of the Natural Resources Committee, my name is Dean Edson, D-e-a-n E-d-s-o-n. And I'm the executive director of the Nebraska Association of Resources Districts, presenting testimony on behalf of the association in support of LB307. Nine of the 23 natural resource districts operate 15 rural water systems. I've provided a handout that provides a summary of the systems and the populations served. The rural water systems are very, very beneficial to rural customers and small communities. By hooking up several communities and rural customers in-between, we can gain some economies of scale to provide clean, potable water at a reasonable cost. The systems are paid by fees on rural water customers, not by the general property taxes. The systems do need upgrades at times and the programs of the bill have been very beneficial to assist the districts as such. In addition, we've had several districts been approached in recent past that want to expand their-- the systems or create new systems. The loan extensions as proposed would be very beneficial toward accomplishing those goals. In addition, providing the flexibility for the director to move funds between the programs would be beneficial as demand shifts from year to year. This would provide a better cash management-- cash management option for the department. As we encourage you to advance LB307 to General File, thank you for the opportunity. I'd be happy to answer any questions you may have.

HUGHES: Thank you, Mr. Edson. Are there questions? I guess I do have one, on-- on the rural water [INAUDIBLE]. Since they're-- they're not-- they don't have access to property taxes, can they bond? I mean, how do they-- how do they generate the matching funds to?

DEAN EDSON: Well, there's various different grants that they can get as well.

HUGHES: OK.

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DEAN EDSON: There's some-- there's some money available with the USDA Rural Development. They can get some money from that.

HUGHES: So that's where they're source--

DEAN EDSON: Yeah.

HUGHES: --they're not asking their customers to front the money--

DEAN EDSON: No.

HUGHES: --if they want to expand in order to?

DEAN EDSON: Yeah, we'll pursue some other grants and other funds to try to get that front money.

HUGHES: OK. Thank you. Any other questions? Seeing none, thank you for your testimony. Additional proponents to LB307? Any opponents of LB307? Anyone then wishing to testify in the neutral capacity to LB307? Seeing none, we have a couple of letters in support: one from Al Schoemaker from the city of Blair; and Tim Burke from Omaha Public Power District. Senator Albrecht, do you wish to close?

ALBRECHT: Yes. Well, I appreciate everyone's listening and I hope all of you have received one of these in your office. This is the Nebraska State Revolving Fund. It really helped me to understand what this program is all about. Serving on a city council and a county board, I realize that some cities don't have the funding to do a lot of these things, so to have these funds available is great. But what I also appreciated when you asked, Senator Moser, about, you know, how do you decide who. It's kind of like the One and Six Year Road Plan. The Department of Environmental Quality has put out a list of all these different municipalities, if you will, that are looking to do something in the near future when they are able to gather enough funds to work with, with these fun-- federal funds as well. So I think it's a great program. I think it's nice of us to be able to move some funds around so that they can capitalize on the right projects that they need to look at. So appreciate your support.

HUGHES: OK. Any questions for Senator Albrecht? Seeing none, that will close our hearing today on LB307.