

January 19, 1981

LB 357-388

Journal a motion he is submitting pursuant to Rule 6, Section 2, to rerefer LB 245.

Mr. President, new bills: (Read title to LB 357-388 as found on pages 261-268 of the Legislative Journal.)

SPEAKER MARVEL: Your agenda for tomorrow will show that we will adjourn until 9:30 a.m. There will be a chairmen's meeting at nine o'clock and Exec Board at eleven o'clock. Those two latter meetings will be in Room 1520. Senator Haberman, would you like to adjourn us until nine-thirty tomorrow.

SENATOR HABERMAN: Mr. President, I move that we adjourn sine die until nine-thirty tomorrow morning.

SPEAKER MARVEL: Leave out the sine die.

SENATOR HABERMAN: Move we adjourn until nine-thirty tomorrow morning.

SPEAKER MARVEL: All those in favor say aye, opposed no. We are adjourned until nine-thirty tomorrow morning.

Edited by:

  
Mary A. Turner

March 19, 1981

LB 138, 202, 205, 344, 375,  
401, 466, 503, 504, 531

Mr. President, Senator DeCamp to print amendments to LB 531; Senator DeCamp to LB 138 and Senator Hoagland and Beutler to 205, all to be printed in the Journal. (See pages 1044-1048 of the Legislative Journal.)

Your committee on Judiciary whose chairman is Senator Nichol reports 202 to General File; 503 indefinitely postponed; 504 indefinitely postponed.

Mr. President, Senator Koch asks unanimous consent to add his name to LB 344, 375, 401; Senator Cullan to 466.

SPEAKER MARVEL: Hearing no objections, so ordered.

CLERK: I believe that is all that I have, Mr. President.

SPEAKER MARVEL: Senator Fowler, would you like to adjourn us until nine-thirty.

SENATOR FOWLER: I move we adjourn until Monday at nine-thirty.

SPEAKER MARVEL: All in favor of adjourning until Monday, March 23, 1981, at nine-thirty say aye, opposed no. The motion is carried. We are adjourned.

Edited by

Arleen McCrory  
Arleen McCrory

May 5, 1981

LB 70, 163, 172, 184, 242, 250,  
285, 302, 310, 324, 369, 375, 494,  
497, 527, 557, 558, 559, 560, 561, 562.

aye, opposed vote no. Have you all voted? Senator Burrows.

SENATOR BURROWS: I would like a Call of the House and a roll call vote.

SPEAKER MARVEL: The first motion is, shall the House go under Call? All those in favor of that motion vote aye, opposed vote no. Record.

CLERK: 16 ayes, 1 nay to go under Call, Mr. President.

SPEAKER MARVEL: The Legislature is under Call. Please return to your seats. Record your presence. Senator Burrows, do you want to record....Senator Kahle, Senator Hefner, Senator Goodrich, Senator Wagner, Senator Landis, Senator Newell, Senator Chambers, Senator Pirsch, Senator Labedz, Senator Higgins. While we are waiting, under the north balcony Mr. Jack Fletcher and his son, Monte, Jack is a former resident of Lincoln County, Nebraska, and now lives in Upland, California, and they are guests and friends of Myron Rumery. And from Senator Remmers' District, 14 students from Tablerock, Nebraska, Mrs. Griffith, teacher. Should be in the north balcony. Are they?

CLERK: Mr. President, while we are waiting, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 163 and find the same correctly engrossed, 557, 558, 559 and 560, 561, 562, all correctly engrossed. (Signed) Senator Kilgarin. Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 242 and recommend that same be placed on Select File, 494 Select File with amendments, 369 Select File, 310 Select File with amendments, 497 Select File with amendments, 250 Select File, 302 Select File with amendments, 70 Select File with amendments, 285 Select File with amendments, 324 Select File with amendments. (See pages 1771 through 1773 of the Legislative Journal.) Mr. President, Senator Schmit, Kremer, Chronister and VonMinden move to place LB 375 and 377 on General File pursuant to Rule 3, Section 18(b). Senator Carsten would like to print amendments to LB 172, and Senator Lamb to LB 285. (See pages 1769 through 1771 of the Legislative Journal.)

SPEAKER MARVEL: Senator Labedz, Senator Higgins, Senator Chambers, Senator Goodrich. Senator Burrows, do you want to start the roll call? We have four that still are unaccounted for.

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PRESIDENT: The motion carries and LR 75 is adopted. We will then go to agenda item #5, motions. We have two motions. The first one, Mr. Clerk, LB 375.

CLERK: Mr. President, Senators Von Minden, Schmit, Kremer and Chronister move to place LB 375 on General File pursuant to Rule 3, Section 18(b).

PRESIDENT: Senator Schmit, the Chair recognizes you for presenting the motion.

SENATOR SCHMIT: Mr. President and members of the Legislature, I rise this morning to do something which has not happened very often in my career and that is to ask for the bill to be brought from the committee notwithstanding the inaction of the committee. I think most of you are aware of the fact that we were discussing two bills here this morning, but the first bill I am going to address myself to is LB 375. The bill was introduced by myself and by Senator Kremer. The bill was heard many, many weeks ago. The bill had strong support from a wide range of business, industry, Natural Resource District people, farmers and agricultural people. To my knowledge there were some questions about the bill but there was no opposition to the bill at the committee hearing. The Public Works Committee chose to make it a priority bill of the committee. The bill has been in committee hands now since the early days of the session. There have been numerous attempts to amend the bill and at the present time the Public Works Committee is apparently equally split about the merits of the bill. This is not unusual on pieces of legislation that deal with substantive issues. The record is clear and very well documented. There has been many instances where significant legislation is introduced where people of good intention on both sides of an issue have differences as to the manner in which it should be presented to the floor, but the point is that almost always when a substantive issue is discussed, the bills are advanced to the floor to allow the entire body to deliberate that bill. I'll give you an example yesterday of LB 184, Senator Bill Burrows' bill, a bill which a number of members of the Ag Committee had serious doubts about, but because it is recognized as a major issue and a substantive one and because Senator Burrows has worked long and hard on that and there are people on the floor who think as he does about the bill, the committee advanced the bill to the floor to allow it to be debated. On a number of issues over the years I have voted to advance bills to the floor with which I did not personally agree

because it was I felt unfair for me to use the vote that I have in the committee to deny the entire membership of the body the opportunity to discuss and debate and deliberate a bill. Last year, for example, Senator Marst had a bill in the Urban Affairs Committee about which the City of Lincoln and Lancaster County felt very strongly. The bill had been held up in committee for a long while. I voted to advance the bill. I did not vote for the bill on the floor, but the bill became law. The City of Lincoln and Lancaster County felt very strongly about the bill. I outlined my objections to the bill and my concern with it. They are part of the record. The day may come when my concerns will be vindicated, but at least at the present time Lincoln and Lancaster County have the opportunity to work with a piece of legislation which they felt it was necessary to have. The bill that is introduced by Senator Kremer and myself was not drafted on the spur of the moment. It was not something we drafted casually. It was a bill which reflects compromises on the parts of both of us, a bill which reflects the interests of the Natural Resource Districts, reflects the interests of the cities and the counties and many other groups, and it is a bill which I think gives the Natural Resource Districts another tool and some additional responsibility to use to meet the needs of the State of Nebraska. We have heard for a long period of time the many complaints that nothing has been done about water in Nebraska. Let me tell you that this bill will do something. Now Senator....some of the Senators in this body feel the bill doesn't do as much as they would like to have it do. Others feel it goes farther than they would like to have it go. But that is not unusual in many other instances. You heard me stand on this floor and debate LB 146. It was described by one of my colleagues as a major piece of legislation. I do not feel that it is a major piece of legislation. I do not feel it will make any substantive change in the manner in which we deal with underground water pollution, but if 25 members of this body feel that it will, then they ought to have a right to debate the bill, discuss it on the floor, perhaps amend it to make it a more amenable piece of legislation and something with which we can work in the State of Nebraska. The committee system is a good system and it has worked well. But the committee system when it does not work, should not be allowed to frustrate the entire wishes of this body. There are those who have said both privately and publicly that the bill is not a good bill. Well, I do not take any particular credit for my own efforts in that area, but I think that Senator Kremer would not have put

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his name on a bill which did not make a substantial contribution to the water law for the State of Nebraska. I am not here this morning to debate the merits of the bill. I do not intend to even bring up the subject matter of the bill. What I am asking you for this morning is the right to debate the bill on the floor. I think it is important that this be done. I think it is also equally important and I hope the Chair will not allow the discussion of whether the bill should be raised to degenerate itself into a debate of the bill. It is not fair to those Senators who have bills on Select File this morning which should be heard. This should not take a great deal of time and in effect I am arguing for the advancement of both bills at this time. I intend to take even less time when it comes to LB 527. At this time, ladies and gentlemen, I am asking you to advance to the floor, LB 375 and give the entire body a chance to look at the bill and debate it this session. I do not think you should be misled by those who say we do not have the time. The time is late but the responsibility is substantial. The fact that the bill is still in committee is true because of this reason. Week after week members of the committee assured me that they would attempt to bring the bill to the floor. I did not willfully or enthusiastically offer the motion which bears my name and Senator Kremer's name this morning. It was only after deep consideration that I did so. There are those who suggested we should have an interim study and interim studies are fine, but we do not need to have an interim study on the subject matter of LB 375. That issue is there. It is available for us. The bill can be debated if it gets to the floor. It is, as I said before, a priority bill of the committee on Public Works. The committee chose to make it a priority bill. It is unusual, at the very least, that a bill which the committee chose to make a priority bill cannot secure five votes to get to the floor. As a matter of courtesy to the committee I would think even if members have strong feelings against the bill that they would advance the bill to the floor to allow it to be discussed. I have not categorized it as major legislation but it has been categorized in that manner, and I would hope that you would advance the bill. I am going to ask Senator Kremer to close on the motion....

PRESIDENT: One minute, Senator.

SENATOR SCHMIT: ....so unless there are questions of me, this will be my last word on the motion and I would hope that you will give us the opportunity to discuss the bill

this session. I know that if the motion fails the bill is indefinitely postponed. So I ask you to consider that carefully before you vote on the bill. Thank you, members of this body.

PRESIDENT: The Chair recognizes Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, I would very....I would like to very strongly urge that you respect the committee position on this bill. I don't think this year yet we have had a bill raised out of committee. We have been very good about respecting our committees and the conclusions they come to, and in my three years in the Public Works Committee there has never been a bill successfully raised out of Public Works Committee, and I think part of the reason for that is that the Public Works Committee under Senator Kremer's leadership has generally worked very long and very hard on the problems that are brought to it. This bill, LB 375, is no exception to that. We have been through five drafts of this bill, five different sets of amendments and still the committee is confused by the complexity of the problems and fearful of the implications of the bill. I suggest to you that it is a possibility that this bill may set back water legislation in this state five to ten years. That is a pretty strong statement but Senator Schmit is right when he says the bill will do something. The question is whether it will do something beneficial for this state or whether the actual mechanics of this bill will only serve to confuse Natural Resource Districts in trying to fulfill their statutory obligations, or whether it will, in fact, help them. You know, generally speaking, the overall thrust in this Legislature is for too many bad bills to get out of committee because it is easy to say to somebody, okay, I will help you get it out of committee even though I can't vote for it on the floor. And much of that goes on as you and I know, probably too much of it. In addition to that, it is possible to amend bills in committee and we let bad bills get out of committee with one or two small amendments. But this bill is difficult to amend because it contains a radical new concept, and either you accept the concept or you don't, and there are not a lot of compromise positions. In addition, it has been easy for water bills to get out of the Public Works Committee because the members of the Public Works Committee have been falling all over themselves to try to get some reasonable, responsible, progressive water legislation. So I hope you all understand that most certainly on the part of everybody in

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the Public Works Committee it is not because we do not want water legislation, but it is because we want to be sure that water legislation that we pass takes us forward even if it is a half a step forward like LB 146 and not two steps backwards. In summary, what I am trying to say to you is that when a water bill doesn't get out of Public Works, you can be sure that it is seriously flawed or that a considerable body on that committee who have worked with the complex issue believe it to be seriously flawed. I might point out before I go any further that the Public Works Committee has passed a resolution to study that bill this summer and this fall. That bill will stay as a priority bill and if the study has a reasonable...a favorable conclusion to LB 375, it will be up early next year and it will be passed and there will be no delay. But the central question, the central question on this bill is whether this radical new concept, this management area concept, promotes or hinders the reasonable management of groundwater.

PRESIDENT: One minute, Senator.

SENATOR BEUTLER: I am expressing the opinion, I think, of three or four members of the Public Works Committee, and, of course, my own opinion. But if you think I am too young, if you think I am too inexperienced, if you think I am too suspiciously urban on this issue, then I ask you to ask yourself, what group of people is experienced in the area, has expertise in the area and is primarily, predominantly rural in orientation who would have an opinion on this issue. I suggest to you that those hundreds and hundreds of locally elected farmers who sit on the local NRD boards, who have been grappling with the water problem for a dozen years now, I suggest to you that you ask what they think, and the answer is that these experienced people dealing with the problem....

PRESIDENT: Time is up.

SENATOR BEUTLER: ....are against LB 375.

PRESIDENT: Time is up.

SENATOR BEUTLER: They do not think that the bill would work. Thank you.

PRESIDENT: The Chair recognizes Senator Wesely.

SENATOR WESELY: Mr. President and members of the Legislature, as a Public Works Committee member I, of course,



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will have to oppose this motion to lift the bill from committee onto the floor. I think Senator Beutler has gone through a number of points and I think that it might be helpful to emphasize some of those again and to raise some others. First off, I think it is quite clear the committee is not against the bill. First off, I think you can see by the fact that we named it as a committee priority bill that we were very interested in the fact that this bill be passed this session if at all possible. We recognize its importance and its validity and we were supportive of the concept. The problem was, as we have seen so often on the floor, when a bill comes out of committee without full consensus, without full consideration, it takes so much time on General File, so much time on Select File, and then Final Reading and we have seen in this session what that means in terms of lost legislative days that we felt we wanted to work out this bill to the Nth degree so that we won't have any problems on the floor and could move the bill across. Unfortunately, we couldn't come to a resolution of a number of key issues and feeling that the time pressures were here in this session and so many other bills needed to be discussed, that it was a far better decision to make not to bring the bill out of committee, put it on the floor and have all of you try to discuss it and try to come to some resolution. The feeling was that that job should be done by the committee and we were ready to accept that responsibility. Unfortunately, the time is just not with us at this point to do that job and so we have agreed to in committee to hold the bill, to conduct an interim study, to take the time we need to do the job right and to come back with whatever necessary amendments are needed to the bill to have a bill that we can all live with and agree to and I think prosper by. Unfortunately again, we just are not able to do that this session. We have met several times. We have tried to meet, I would say, at least a half dozen times to sit down specifically on this bill, and one time we spent at least three or four hours going over the bill, and have come to a fairly close consensus on it, and after that the outside interest came in and they didn't like this and they didn't like that, so we revised it. Well, then the outside interest didn't like this and they didn't like that so we revised it again, and this process went through until finally we decided, well, I don't know what they will like and what the different groups and individuals interested in water are going to like and the time isn't there to spend the time to find out. So let's hold the bill and study it over the interim and take the time. Now why is that a step that is necessary

in this case and not the case in say some other bills? Well, as you should know, we did study water this last interim. We spent a great deal of time going across the state, but never did the idea of a water management area come before the committee until this bill was introduced this session. That is to say we studied all kinds of issues on water but never did we study the one embodied in this bill until the bill was introduced, and so I think it is quite evident in the case of other water legislation, we took an interim period to look at the issue, we spent the time on the bill and we came back with some legislation that we felt was solid and we have seen some move through the process. But this is a new concept, one which we haven't had a chance to study and debate and analyze, so to hold this bill for interim study is not an unreasonable thing to do, and I think with the results of the interim study you will see amendments to the bill in committee and you will see the bill come out rather early in the session next year, and there is an excellent chance it will pass in some form next session. Now what is the rush really? What is the reason the bill has to be coming out this session at this point? We have 15 days left. We have so many bills we still have to process that are already off of General File. We have so many demands on our time and yet we want to take a bill out that hasn't really been fully worked out yet. It doesn't make any sense when we are ready to take the time in committee to study this issue over the interim and come up with the amendments and the conclusions that we need to really do a good job next session. So I think quite logically there is no sense at this point to lift the bill out of committee with the time constraints, with the committee's commitment to do something about the bill, and the fact that we are going to work on the problem over the interim period. I strongly oppose the motion to lift this bill out of committee. I think you ought to as well, and I think that all of you that have committees that have had this sort of a problem where you haven't been able to resolve an issue realize the fact that that is a committee responsibility, that's not a responsibility to make legislation on the floor. When you do that, you make mistakes, and I think that we don't want to see that happen any more this session. I want to give the rest of my time to Senator Beutler.

PRESIDENT: Before we go on to the next speaker, the Chair would like to introduce two more visitors from Papillion, guests of Senator Beyer, Bob Elks and Andy Elks, his son. Will Bob and Andy stand and be recognized? Welcome to the Legislature to the Elks. The

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Chair recognizes Senator Kremer.

SENATOR KREMER: Mr. Chairman, did Senator Wesely yield his remaining time to Senator Beutler? Was that his last statement? I understood he was.

PRESIDENT: I didn't hear it but if he did why.....

SENATOR KREMER: I did not want to....

PRESIDENT: There is only about 45 seconds left so it wouldn't give him much time I am afraid. So proceed, Senator Kremer.

SENATOR KREMER: Thank you, Mr. Chairman and members of the Legislature. I rise to speak in support of the motion to bring LB 375 out on the floor notwithstanding the inaction of the committee. I committed myself to do this quite some time ago. I have always supported advancing LB 375. I have also supported to the best of my ability giving time to the members of the Public Works Committee to look at the bill, to try to satisfy the various interests that took an active interest in this proposed legislation and that included a lot of people. A lot of people worked on the bill as it was being drafted throughout the interim, including industry, agriculture, environmental interests, which again reminds us of the tremendous interests in the State of Nebraska in this resource that means so much to our state, namely water. LB 375 is an alternative that is provided for us under the bill as to how the Natural Resource Districts especially who are primarily involved could do a good job of managing this resource. Nebraska is going to continue to develop. This is brought out so clearly in the High Plains study that has been submitted to Congress and will conclude in about a year. We can well believe that Nebraska will continue to develop to the extent that we probably will be irrigating as one aspect of the use of water, not only 7 million acres or close to it, but probably close to 11 or 12, which means the demand of water is going to continue not only by agriculture but by industry, by instream uses and what-not. This means we are going to have to do something in the way of doing a good job of management. I have strongly said in times past we are going to have to use two tools if Nebraska is going to be what we think she can be and will be, one of them is further development and the building of reservoirs and this is why I was so strong the other day in support of bringing more dollars into the development fund. If we do not do that, management

will not work by itself. On the other hand, development will not work by itself. We are going to need management tools. Now LB 375 and LB 577 are somewhat alike in nature. One of them we call going under a control and providing management. The other way is a management program. That is 375, where we look at what we have, determine what we can do with it in the various areas of the State of Nebraska and then set up a program to get to that goal. Now there are areas in the State of Nebraska that say we have got enough water and this is why I have been arguing with you people north of the Platte River you do have enough water, and I think you can maintain the use of water an indefinite period of time. Those of us living south of the Platte River outside of a tri-county area are facing some real problems and we will have to have a good program of management and that is what LB 375 does. They are somewhat alike. Both of them give management tools to a Natural Resource District. Let me go on to say that in my opinion that in the length of time I have been here there has been no perfect bill. About every piece of legislation that has ever passed all the provisions are in the statutes of the State of Nebraska are reviewed and they are altered, they are changed by legislation as the years go by.

PRESIDENT: One minute, Senator Kremer.

SENATOR KREMER: Thank you, sir. I am sure this will be true with this bill. I think it is only fair that we bring the bill out for full discussion even though we may not get it passed this year. At least all of you 49 people in the Legislature are going to have a chance to share in the development of management in the State of Nebraska. It is true, the committee could have had... and I went for a... I think I proposed the motion the other day that since we couldn't get the bill out that we would go for a study, and maybe it is only fair that all of us become involved and I am sure that all of us will be before everything is said and done. Well, my time is almost up. I reserve any further comments that I have until my closing. Thank you, Mr. Chairman.

PRESIDENT: All right. The Chair recognizes Senator Lamb.

SENATOR LAMB: Mr. President and members of the Legislature, I rise to support the motion to advance LB 375. As a member of the Public Works Committee I have been involved in the torturous trail that this bill has carved during this session. I guess I am a little bit

mystified by the opposition to the bill in that some of the members of the committee who profess to want to help solve the water problems are not willing to advance the bill because this is a vehicle by which they can through the amendment process put the bill into a shape that they would prefer. The bill has been amended a number of times. The amendments have been, some of the amendments have been retracted, they have been taken off. It has been thoroughly discussed by the committee. I think it is a situation where there has been a great deal of effort in order to come to a meeting of the minds, but that just has not been possible. And while I do not support generally overriding committee action and bringing bills to the floor, this is a case I think where the committee is definitely hung up. There is no chance at this point to come to a meeting of the minds and so the only reasonable solution is to bring the bill to the floor where the whole Legislature can participate in the debate. I support the motion.

PRESIDENT: The Chair recognizes Senator Koch.

SENATOR KOCH: Mr. President and members of the body, the background on this bill I think is important. The committee worked diligently on this legislation and spent many hours contrary to what Senator Schmit advised in his opening remarks. It was not inaction. I have never spent so many hours on a piece of legislation in my lifetime...in the committee, at nights and you name it, even during noon hours. In fact, the background is this. This bill was placed on General File very early at the time priority bills were supposed to be placed there. At the request then of Senator Schmit, as I understand it, the bill was withdrawn because there were obviously some amendments to the bill that Senator Schmit at that time did not seem to want on the floor. The committee brought the bill back to the committee itself and again we spent considerable hours under the direction of Senator Kremer and all members present. Contrary to what Senator Lamb said there were amendments offered even yet the other day in an effort to bring this bill but again there was not even a consent to adopt several committees that might satisfy the committee members, and so that is why the bill is locked, and the Chairman has even stated and stated very correctly that the bill would go to a study of the committee and that we would study it diligently and we would bring in outside people and others to help us. But the thing that interests me about 375, it has so many directors on it that no one really know what the direction is. The outside forces have been

constant outside directions and I don't think that is appropriate. Therefore, I am not going to support bringing that bill out of committee. The committee itself has spent so many hours on that bill we deserve a right to study it and try to come back in the best interests of this body and the State of Nebraska on water legislation which is meaningful, not something that may only mislead the public as to what we think we are going to get in better water law. When that bill came to the floor originally it was a tough piece of legislation. It really did do something. The way the bill is now, I don't think it does very little what we cannot get along with in terms of water law presently on the books and water law adopted this session. Therefore, I oppose the motion to bring it from the committee.

PRESIDENT: The Chair recognizes Senator Cope.

SENATOR COPE: Mr. President and members, I certainly am going to support bringing this bill on the floor. Every weekend I go home people say, what are you doing about water legislation? And it is a little hard to answer when we can't even get legislation on the floor to discuss. I don't know too much about the bill. I want to know. I am not sure I favor it or don't favor it, but I think that we should discuss water legislation. Everyone on the floor say that's the most important thing that we face and yet we dodge it at every instance, and I would like to see this be out, looked at, maybe turned down, maybe moved on. I don't know, but let's look at it.

PRESIDENT: The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature....okay, I will call the question, what the heck.

PRESIDENT: What was that, Senator DeCamp?

SENATOR DeCAMP: Well, I started out with a profound noise and then I said I will call the question.

PRESIDENT: Senator Beutler, for what purpose do you rise?

SENATOR BEUTLER: Mr. Speaker, I would like to request that the motion be rejected by the Speaker on the basis there has not been a full debate on a subject of major importance to the Legislature.

SENATOR DeCAMP: Well, I will withdraw the motion. I don't

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want to make anybody unhappy and I will just jabber here for a while.

PRESIDENT: All right, motion to withdraw and will jabber a little while longer. All right. Okay, do you want to go ahead and jabber then?

SENATOR DeCAMP: Yes.

PRESIDENT: Okay, go ahead and jabber.

SENATOR DeCAMP: Mr. President and members of the Legislature, let me tell you a little bit about the history of this bill. At one time in the committee the bill was dramatically amended and had the total support I think of all eight members of the Public Works Committee and was, in fact, voted to the floor of the Legislature with those amendments. Controversy developed later because of input or whatever from people on the outside and the bill was brought back to committee and began the process of changing it kind of on a weekly basis, draft one, draft two, draft three, draft four, draft five, etcetera. I am going to vote to bring the bill out. I don't know whether there are enough votes or enough time this session to really deal in depth with this issue, but you see if we don't bring the bill out because of what has developed so far, the motion, the bill is automatically dead or killed. I do think the bill should be kept alive. I do think the bill may be a vehicle whether it is this year or next year for the resolution of many of our water problems. Now that is not to say that I support the present form of the bill or that I will support the present form, and it is not to say that our original draft or close to it might not be the way we will end up with. But I guess I am saying we have to from a political standpoint maybe put this bill out to show good faith that we are not ducking the water issue and we have to do it if we want to keep the bill alive at all. My perusal of the body indicates that there probably are enough people that feel this sentiment at least to bring it out and so I think the sooner we can get a vote and get some direction on it maybe the better it would be.

PRESIDENT: The Chair recognizes Senator Howard Peterson.

SENATOR H. PETERSON: Mr. Chairman and members of the body, I, too, rise to support the move to bring the bill out of committee. I served this year as Chairman of the Program Planning Committee of our area Chamber

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of Commerce and as we surveyed our members, some thousand members in that area, most of them in the city, the number one problem that they wanted the Grand Island area Chamber of Commerce to work on this year was water. It seems to me if an urban area like Grand Island feels that water is the most important problem, it certainly must be the most important problem for the State of Nebraska, for Lincoln and for Omaha and for all the cities in this state. For that reason it seems to me we ought to discuss this bill and the following bill on this floor, have input from those of us who have been interested in water for many, many years and rather than just limiting that input at this point to those Senators who represent only city areas who have apparently, it appears to me as I hear the discussion on this floor, have kept this bill from coming to the floor. I would urge your support to move the bill to the floor.

PRESIDENT: The Chair recognizes Senator Vickers.

SENATOR VICKERS: Mr. President and members, I rise to oppose this motion and I agree with Senator Schmit that I think the discussion this morning should be based on the motion and not on the bill, but I can't believe that the Chairman of a committee or some of the committee members would indicate the committee structure is not... shouldn't be strengthened and instead should be weakened, and it seems to me that that is what we are doing on this floor of this Legislature. You know, at the start of this session we had a long discussion about limitation of bills, whether or not we should be limited to X number of bills that each member should introduce. Part of that discussion was based on the fact that we had too much to do. There are too many bills that get out here on the floor and too little time to discuss it. Obviously, one of the reasons that that happens is because there are not enough bills killed in committees or kept in committee. The committee structure many times works in a fashion that...and I am sure you are all aware of this, there is no need in hiding about it behind anybody's back, we are not going to kill good old so and so's bill in committee, we will go and advance it for him, we will let him discuss it on the floor. Well, I don't think that is the way this body should operate. The committee structure should be strengthened, not weakened, and if eight members of a committee cannot agree, the majority of eight members cannot agree on a piece of legislation, I don't think it is asking....I think it is asking too much to ask the majority of 49 of us to agree, particularly when it is a major piece of legislation that the committee



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is trying to deal with. Also, I think it needs to be pointed out that this is a major piece of legislation, a radical idea, a new idea. Several people have mentioned it was worked on over the interim by a number of people, by large groups. Well, I happened to be a member of the Public Works Committee over the last interim and this was never discussed by the Public Works Committee. If it was discussed by a large group it was not discussed by that committee. It was not discussed by the committee of the Legislature that has to deal with it. Also, I would like to point out that the four....half of the members of that committee, this is the first year they were on that committee and water legislation is a tough, complicated, complex issue. Now I think another thing needs to be pointed out. There are a lot of groups, several people that have been involved with the drafting of this bill, be it good, bad or indifferent, and a lot of those people feel strong that it's doing something. I think it needs to be pointed out that the Natural Resources Districts of this state are not in love with this piece of legislation. Who controls the Natural Resource Districts of this state? Senator Kremer and people that were in the Legislature back in the time when the Water Management Act was enacted were very knowledgeable, very farsighted, they had the Natural Resources Districts controlled by elected members of boards of directors, in most cases they were farmers, irrigators, if you will, out there in western and rural Nebraska. Now, I know a lot of those people in my area and I have talked to them, and they are not enamored with LB 375. They think there is a lot of problems with it. The Natural Resources Districts that have to implement it think there is a lot of problems with it. Now, I don't think it is too much to ask the committee to go ahead and study the situation over another interim. This is a new committee. This issue hadn't been studied last year, certainly we have studied water issues over the past, but we have not studied a management control area concept, and I don't care how many people out in back of those glass doors tell you you have....

PRESIDENT: One minute, Senator.

SENATOR VICKERS: ....the committee has not. So I think the bottom line is this. If this body wants to have 500 bills out here on General File to deal with, then let's do away with the committees. Let's just bring them out here and let everybody deal with everything. But if you want the committee structures to be stronger and each of us are on committees, if you want those committees to be strengthened so that we can deal with the issue in a

committee, do away with those issues that we don't want to deal with or study those issues that we think are complex and come out with something the committee can agree with, then I think you should oppose this motion and strengthen the committee structure and not weaken it.

PRESIDENT: The Chair recognizes Senator Hoagland.

SENATOR HOAGLAND: Mr. President and colleagues, I rise also to oppose this motion to raise LB 375 from committee. Now let me try and state the issues as simply as I can as I see them in terms of LB 375 and 146 which we will be discussing later today and most other issues in the water area. I think the ultimate goal that most of us have is to get more authority to the Natural Resource Districts to do their job, to get more authority to the Natural Resource Districts to conserve our soil and to conserve our water for future generations, the same issues that we talked about yesterday when Senator Burrows' bill was being debated by us. Now that's simply what we are trying to do on the Public Works Committee is to get legislation through that is going to get more authority to the Natural Resource Districts, and I really don't think that you can seriously think that people like Beutler and Wesely and Koch and Vickers and Hoagland believe anything differently, because I think our track record demonstrates that. For three years now that has been our single aim. Now the problem with the green copy of LB 375 is that simply it does not do that. As Senator Beutler has indicated, if the green copy of LB 375 were to pass it would be a serious setback, because it would take away from the Natural Resource Districts a lot of the current authorities they have right now and it would tie up the Natural Resource Districts in red tape for years, for years before they could even exercise their current authority which is to initiate the designation of a control area. Now, let me talk about three provisions of the green copy as succinctly as I can that represent among other provisions what I talk about when I say this would be a serious setback for the authorities of current NRDs, the NRDs currently have. And, believe me, if the green copy of LB 375 comes out of committee, brace yourselves because it is going to take a lot of work on the floor to make it a progressive piece of water legislation. It simply is not that right now. Now let me talk about those three elements. First, take a look at section three of the green copy. Now section three of the green copy indicates that in order to initiate the designation of a control area which the NRDs are free

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to do at any time right now, they have to undertake and prepare a management plan and they have to develop management objectives. Now the plan that they have to prepare has been set out in the subsequent language in section three, and it requires the NRDs to do a great deal of data compilation and a great deal of investigation to determine what the aquifer life goal ought to be and to determine what the water resources are in their particular area. Now we could take one year, two years, three years, or even longer to get that job done, and again they can't even designate, they cannot even initiate control area proceedings until they have completed that job. So you can see that is a serious setback. Now, secondly, once the so-called management area is set up, their powers are very limited. They have very few tools that they can use to effectively deal with water problems. There is no moratorium authority in a management area. There is no well spacing authority in a management area. There is only very restricted allocation authority. They can allocate but only according to very restricted limits that are set out in Section 13 of the green copy and I would urge you to take a look at that. Now, finally, the third major thing, and there are other major things the green copy does as well in terms of tying up the NRDs and taking away existing authorities, but the third thing it does is it takes away their existing moratorium authority. Now, it really is unwise in my opinion to take away the present control area authority to require a moratorium in limited cases. Now, that present authority is contained in Section 46-666 and is very carefully circumscribed. NRDs, once a control area is set up, can impose a moratorium only for one calendar year, only after finding that "depletion of the water supply....

PRESIDENT: Half a minute left, Senator.

SENATOR HOAGLAND: Thank you, Mr. President. Only after finding that depletion is so excessive that the public interest cannot be protected solely through implementation of reasonable controls and finally it requires approval of the Director of the Department of Water Resources. Now we've had three control areas in this state for a considerable period of time. No NRD has even imposed a moratorium. It is hard to envision where one would be imposed except where it is absolutely necessary, and in that situation it ought to be available.

PRESIDENT: Time is up.

SENATOR HOAGLAND: Thank you, Mr. President.

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PRESIDENT: Thank you. The Chair recognizes Senator Higgins.

SENATOR HIGGINS: Mr. President and fellow Senators, I really got a lesson this morning. I just called the President and I said, Mr. President, are we debating this till or are we debating bringing it to the floor? And he said, well, I guess they feel that if they don't get a chance to explain their positions, they will feel that they aren't being heard properly. Now, on 375, you know, I haven't made up my mind one way or the other whether I want to hear it or not, but I wasn't given a choice. I heard the arguments for it this morning and I think Senator Schmit or whoever it was that put this on the agenda to bring it out of committee has given us the advantage of hearing part of the arguments for and against LB 375. So I find it hilarious that those who said, don't let's bring it to the floor have done that, and I would hope that so that we could get on with the rest of the legislation, both sides have now been heard and maybe somebody could call the question and everybody would feel that we have heard both sides and now we will decide if we want to bring it to the floor. But I really appreciate all the knowledge I have gained in the last half hour or so on the bill that wasn't going to be discussed. Thank you, Mr. President.

PRESIDENT: The Chair recognizes Senator Kahle. Is Senator Kahle in the Chamber? We will go on then to Senator Warner. Senator Warner waives his discussion. Senator Beutler, I guess we are back going around the second time. We have several that want to speak the second time so we are going around the second time.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, I understand that some of you will make your decision on this based on how you feel about the committee system, whether you are comfortable with the committee system or whether you are not, and that will be the sole basis for your deciding whether to raise this out of committee or not to. But others of you will make your decision based on what you think is in the bill and whether you think there is something in the bill that should be discussed as Senator Cope indicated, and, therefore, I feel the necessity to discuss what is in the bill and whether there is any point at this point in time to spending the Legislature's time on the material contained in the bill. I think, as Senator Hoagland has explained, that this bill takes away from the Natural Resource Districts some of their current tools for dealing

with water problems. He has talked some about that. Let me tell you what else I think it would do...think it does. I think that it undermines the political backbone that the legal structure provides for the Natural Resource Directors. Let me tell you what I mean. We have opted for local control and everybody in this Legislature so far I think has supported the concept of local control of trying to deal with water through the individual controlled Natural Resource Districts. The beauty of this system is that they respond to the people in the district, but that beauty is also its drawback and that is that it is so close to the people in trying to deal with a very hot issue that the danger is and I think that it's happened that in many places they have not been able to get up the political gumption to do what needs to be done. This bill in a very subtle way undermines what little support there is for NRD Directors to take action, and let me tell you a couple of ways it does that. It says, for example, that before you...it says...it gives you the alternative first of all of having a management area instead of a control area. A management area has a lot less controls than a control area. Therefore, politically speaking, they are going to be encouraged to do and they will have really no practical choice but to try a management area before they can try a control area despite the fact that the situation may be very serious right now in their area, and, therefore, the political encouragement to construct a control area or to get a control area, if necessary, is undermined. Secondly, when you set up a management area before you ever set it up you have to have an elaborate plan and in that plan you have to announce what controls you are going to impose on the people in the district. Well, this is nice on the surface but let me give you an analogy. If you are sick and you go in for an operation and you ask the doctor if you need an operation, and he says, yes, you are sick you need an operation, but the doctor doesn't tell you before he tells you that, he doesn't say, this is how we do it, we have a little knife here and it is very sharp and we cut you and then we have these little scissors and they are very sharp and we use this to cut nerve ends and little pieces of muscle, and he doesn't describe to you all the tools he is going to use and then ask you, do you still feel like the operation? Because you are going to say, no, my God, no, I don't want to be operated on, this sounds horrible. It is very, very important politically that we keep the goal and the means of reaching the goal separate in the political process, otherwise the means of reaching the goal will undermine the decision

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as to whether or not we should have the goal, and that is a basic flaw with LB 375 whether by design or whether by accident. You will probably not have very many management areas because the people won't like hearing about the controls that are going to be imposed.

PRESIDENT: One minute, Senator Beutler.

SENATOR BEUTLER: Additionally, 375, even after you have established a management area, says that you can have a referendum by the people to vote out the management area if they don't like what you have done. There is another intimidation for the NRD Directors. Imagine yourself sitting there and trying to decide whether to have a management area. You don't want to mention too many controls because they're not going to like that, and once you have mentioned the minimum number of controls that you are going to have, then you're further subject and you are thinking about the fact that you are going to have a referendum by those who are going to be regulated. And another problem with the bill is that it is not clear as to who can vote, who a qualified voter is. For example, if you have a water quality problem that the people in the city are concerned about but which takes control action in the rural areas....

PRESIDENT: Time is up, Senator.

SENATOR BEUTLER: ....it is not clear that the people in the city would be able to vote on that question. These are just a few of the additional political problems I see with LB 375 that need to be ironed out before we get on the floor of the Legislature. Thank you, Mr. Speaker.

PRESIDENT: Motion on the desk.

CLERK: Mr. President, Senator Hoagland would move to amend the Schmit motion to bring the bill out with committee amendments that were adopted by the committee attached to the bill when it is brought out. I know I didn't say that very well, Senator, but that's the gist.

PRESIDENT: I will listen to you for the argument as to why this amendment....the Chair is of the opinion right now, Senator Hoagland, I will be fair with you and tell you that I don't think it is in order...the motion is in order because of the nature of Rule 3, Section 18(c), which seems to indicate that that bill is brought up in its raw form on the floor and you would have to take it as it arrives. I don't think there is any way you can

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amend this because it kills the bill. The nature of this thing is that the bill is dead if it doesn't get a majority vote. You can overrule me if you want to but I just tell you that so you can...if you want to debate the point with me and then I will let Senator Schmit also reply.

SENATOR HOAGLAND: Would it be in order, Mr. President, to move to suspend the rules so that the bill could be brought out of committee with the latest draft for the committee amendments?

PRESIDENT: Well, I suppose you would have to suspend the rules. I don't know whether.....

SENATOR HOAGLAND: Well, if that would be in order, Mr. President, let me move to suspend the rules for purposes of bringing the bill out with the latest set of committee amendments.

PRESIDENT: If you suspend the rules, then you can do anything and that is...if you start that I am sure the Speaker is going to be very unhappy.

SENATOR HOAGLAND: Well, perhaps I could argue the merits of this.

PRESIDENT: Why don't you just keep it to the....go ahead and argue the reasons you think this should be the way we should go. Let Senator Schmit reply and then let's.... I will make a ruling.

SENATOR HOAGLAND: Let me just state the....just make a couple of quick arguments on the merits, Mr. President, for doing it this way. Now, as Senator Beutler and myself and Senator Koch and Senator Vickers and others have indicated, this is a very dangerous bill and it is a very dangerous bill because there are a lot of low visibility provisions that seriously threaten our current control area system. Now, as written, the green copy of the bill is a serious setback in my opinion. Now, we have been working this over in committee, as Senator Koch has indicated, and others, and we are in our fourth draft right now, and my feeling is that we are seventy-five percent of the way in taking away the dangerous low visibility provisions and making this a good bill, and, frankly, I think it would expedite debate on the floor of the Legislature considerably if we could start with a committee bill rather than the green copy, because, believe me, if we start with the green copy on this bill,

it is going to be "Katy, bar the door." It is going to take so many amendments and so much discussion even to bring it up to the level that the committee has brought it to this point, that I think in the interest of time and economy if the body is serious about bringing this thing out, let's bring it out with the committee amendments because then at least we will have the benefit of the dozens and dozens of legislator hours and staff hours that have already gone into refining this bill which as others have indicated today, we all saw for the very first time in late January or early February. So let's not lose all that work. Let's bring it out with draft four of the committee amendments which is a product as I indicated of hours and hours of work. So that is my argument on the merits, Mr. President. I think it really would make sense if we are serious about raising this thing from committee to raise it with those committee amendments. Thank you.

PRESIDENT: Senator Schmit, if you would briefly reply because I can....(interruption).

SENATOR SCHMIT: Mr. President and members of the Legislature, I had told you I would not speak twice and I did not do so even though some others have. I think the Hoagland motion is ridiculous. It is not the first time I have thought some of the proposals might have been a little bit out of line but it is totally out of line. There isn't any way unless you suspend the rules which I know Senator Beutler is always opposed and would not support to do this sort of thing. The rules need to be followed when a bill is brought from a committee, it's brought not in its raw form but in its pure form as it went into the committee, just like a newborn babe it comes on the floor and then we begin there. Now the committee has had more than two months to agree upon those amendments. The reason they have not come to the floor as committee amendments is because they were not agreed upon, they were not sustained. Now I think that to try at this late date to hopscotch the issue by tacking on the very amendments which, of course, I oppose, and it's not only the amendments I oppose, would be ridiculous. Senator Hoagland is apparently taking a little count. I haven't counted any votes, but maybe Senator Hoagland feels the bill will come to the floor and he doesn't want to lose and I don't like to lose, but I would rather lose than to ruin the system that we have provided for redress. I want to point out once again the committee is a four and four committee. The committee in the next session is going to be the same committee



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we have now barring someone going to some other reward. So there isn't any reason in the world to support the Hoagland amendment. The committee has had a lot of time to do that but they didn't do it. Senator Kremer and I agree that the bill should come to the floor as it went into the committee and I would ask that you oppose the Hoagland motion vigorously.

PRESIDENT: Okay, Senator Hoagland.

SENATOR HOAGLAND: In view of the discussion, Mr. President, I will withdraw the motion but I would like to alert the body that perhaps if this bill does come out, out first attempt on the floor will be to adopt draft four of the committee amendments, but I think the body...(interruption).

PRESIDENT: That would be....Senator, that would be proper anyway. That is what we would have to do anyway. So....

SENATOR HOAGLAND: Well, with that in mind then I will withdraw the.....thank you.

PRESIDENT: All right, fine, thank you. Withdrawn. We are back to the speaking order then. Did Senator Kahle return? I don't see him. We will go ahead then with Senator Sieck.

SENATOR SIECK: I call the question.

PRESIDENT: Senator Sieck calls the question. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. Have you all voted? The question is, shall debate cease? Record the vote.

CLERK: 26 ayes, 2 nays to cease debate, Mr. President.

PRESIDENT: The motion carries, debate ceases. The Chair calls upon Senator Kremer, I believe, was Kremer going to close on this? Senator Schmit.

SENATOR SCHMIT: Mr. President, I do want to allow Senator Kremer to have the majority of the time to close, but I want to remind the members of this body that the committee was not able to agree upon amendments. They were not able to agree to send the bill to the floor. The committee in the next session will be the same committee. The bill is going to be tied up in the same

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procedure. The reason that we couldn't get the bill to the floor is for the same reason that we saw just a moment ago when Senator Hoagland chose to tack on the committee amendments, one procrastination after another. I think it is time to send the bill to the floor. I hope you support myself and Senator Kremer. I defer to Senator Kremer.

PRESIDENT: Senator Kremer.

SENATOR KREMER: Thank you, Senator Schmit. Mr. Chairman, and members of the Legislature, I am not going to be long in closing. I would like to say this at the outstart, the comments have been made that this is a dangerous bill, it's a horrible bill, and on the other hand there has been some suggestions, at least, this is one of the most tremendous that has ever hit this Legislature. Somewhere in between it has to take its place. I have always said that no bill is as good as the proponents say it is and no bill is as bad as the opponents say that it is. We operate some place in between. Each one of us try to emphasize our points. The last draft of the bill does provide for a number of amendments to the original copy. Some of them are my own, some of them are amendments suggested by other members of the Legislature. Some amendments have been adopted. Some amendments have not been adopted. When this bill comes to the floor, it is not going to be easy, I know. What is happening here this morning is really a suggestion of what will happen when the bill gets up for discussion, and that's not all bad. I believe that what is indicated by your interest this morning indicates that we all have an interest in the managing of this tremendous resource that means so much to our state, and the reason that I am strongly supporting bringing the bill to the floor, let's all take a look at it and if it comes up for discussion we are all going to get a chance to do this. It may pass, it may not. I am sure it will be amended, that's good, that's proper. I do want to compliment all the members of the Public Works Committee. I am proud of everyone of them. Someone has once said that there is no major piece of legislation ever passed without controversy. It's always that way. What Nebraska is going to be doing in the next number of years is really undetermined. Whatever comes up, it's going to be tough going, just like it has been in the past. I believe in the number of bills introduced this year there has been something like 25 or 30, there has been about 15 or 16 to 18 Senators involved, which again demonstrates a deep interest. Therefore, I continue to believe we should all have the chance to look at what is happening and have an input in it.

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The amendments as they now stand in committee, the bill will not come out with them, but it has provided that the concept of control remains as it is, and I will fight for that. If there is another concept that would allow the NRDs to go either way in order to defend the motion to bring it out, I would have to go into the bill itself, the proposed amendments which would take more than the time that we have today or even tomorrow. So we won't go into that. I do hope you cast your vote in support of bringing the bill out. Let's have a look at it and no doubt there will be continued legislation in years to come, maybe even some study. But I think this body deserves the right to have a look at a concept that is going to help Nebraska do what is going to have to be done even when the going is tough. This is a new concept, it's another one, and we want to keep it separated from LB 577 and I think we can. Therefore, I am going to close with that statement. I think it is important that all of us have a look at what's happening today. We have all got a share in it. We have all got an interest in it and it is going to affect all of our lives, I don't care what our occupation is, what our profession is, what our interest is, what happens to water in Nebraska is going to affect all of our lives and affect it in a dramatical way. With that, Mr. Chairman, I close my motion to bring LB 375 to the floor at this time.

PRESIDENT: The question before the House is the motion to raise from the committee LB 375. I draw it to your attention that this is pursuant to Rule 3, Section 18(c), the effect of which is if it is not raised, the bill is indefinitely postponed. So the question then for the House is the taking of the bill, raising the bill from the committee. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 30 ayes, 13 nays to raise LB 375, Mr. President.

PRESIDENT: The motion carries and the bill is raised from committee. Go on then to the next motion which affects LB 527. Before we do, the Chair would like to introduce from Senator Dworak's District twenty-six 4th Grade students and five adults from Westpark Elementary School from Columbus, Miss Arlene Schumacher, teacher, and four mothers, are up here in the north balcony. Would the members of the Westpart Elementary School wave to us so we know where they are seated up there? Welcome to your Legislature. We also have from Senator Dworak's District thirty students, 7th and 8th Graders from District 9 from Columbus, Steve John is the teacher. They are up there too. Do they want to wave to

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LR 204

LB 375, 417, 772-774

CLERK: Mr. President, a new resolution, LR 204, offered by Senators Vickers and Barrett. (Read. See page 232, Legislative Journal.) That will be laid over, Mr. President, pursuant to our rules.

Mr. President, Senator Schmit would like to print amendments to LB 375 in the Legislative Journal.

Mr. President, new bills, LB 772 (read title); LB 773 (read title); and finally, Mr. President, LB 774 (read title). (See pages 232 and 233, Legislative Journal.)

PRESIDENT: Ready then for agenda item #7, General File, commencing with LB 75, Mr. Clerk.

CLERK: Mr. President, I have a request from Senator Labeledz to pass over LB 75 and 75A.

PRESIDENT: Any objection, so ordered to be passed over. Then we will be ready for LB 417.

CLERK: Mr. President, LB 417, (read title). The bill was first read on January 20 of last year, referred to the Public Works Committee for public hearing. The bill was advanced to General File, Mr. President. There are committee amendments pending by the Public Works Committee.

PRESIDENT: The Chair recognizes Senator Kremer for the committee amendments.

SENATOR KREMER: Mr. Chairman, members, the committee report is in your book. I will read it verbatim because it is exactly what the committee amendments amount to. Would allow the transportation of any object up to sixteen feet in width if proceeded by a pilot vehicle or a flag person. It treats storage and the stockpiling of grain in the same way as from the field directly to the market. It goes on and limits the movement of combines in excess of fifteen feet to trips of twenty-five miles on our public highways. I move the adoption of the committee amendments.

PRESIDENT: Senator Cullan, do you wish to speak to the committee amendments? Senator Cullan.

SENATOR CULLAN: Yes, Mr. President, Senator Kremer, thank you very much for speaking to the committee amendments. I would like to request of the Chair that two of the committee amendments be...that the issue be divided or perhaps two of the committee amendments can be withdrawn. They are

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PRESIDENT: We are ready now for agenda item #5, General File, priority bill according to the Speaker's order, LB 375. Mr. Clerk, go ahead.

CLERK: Mr. President, LB 375 was a bill introduced by Senators Loran Schmit and Maurice Kremer. (Read title.) The bill was first read on January 19 of last year. It was referred to the Public Works Committee for a public hearing, Mr. President. There was a motion made on, I believe it was...there was a motion made and adopted by the membership on May 6 to bring the bill from committee. I now have pending, Mr. President, a series of amendments from the bill.

PRESIDENT: The Chair recognizes Senator Kremer then to begin with the amendments. Are these first ones committee amendments, Senator Kremer? So there are no committee amendments, you just have some amendments. So the first amendment is by you, Senator Kremer, so go ahead. Do you know which one?

SENATOR KREMER: Mr. Chairman, members of the Legislature, at this point I hardly know how to handle this, only this, that we have chosen rather than to explain the amendments to put the bill in the white copy form and that actually is the bill as we are proposing it. We discussed this morning, I think you have a copy in your book. It is in the white form and that is the bill as we are proposing it be submitted for discussion this morning and I don't know how to proceed from here on out. I'll leave that to your judgement.

PRESIDENT: Senator Kremer, then the Clerk advises me then Senator Hoagland has one that probably should come ahead of that. So, is Senator Hoagland here? He's not here, Pat.

CLERK: Mr. President, I had a request from Senator Hoagland to amend the bill. It is request #240... That was offered last year.

PRESIDENT: Alright, Senator Kremer, since Senator Hoagland is not here go right ahead and explain that amendment. That's probably the only way we can get into it so go ahead.

SENATOR KREMER: Mr. Chairman, I'm going to yield to Senator Schmit. He is the first name on the bill and he has more ability than I have.

PRESIDENT: Alright, we'll let Senator Schmit do it then. Senator Schmit, you are on.

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SENATOR CLARK: The motion lost. The next amendment is amendment number two of Senator Vickers to Section one. He wants to read a few things in first.

CLERK: Mr. President, very quickly, new bills: (Read by title for the first time, LBs 895-914 as found on pages 343-347 of the Legislative Journal.)

Mr. President, I have a hearing notice from the Public Works Committee for January 29, February 10, 11 and 17. That is signed by Senator Kremer as Chair.

Mr. President, Retirement sets hearings for Wednesday, January 7 and Revenue sets hearings for January 25, 26 and 27, signed by the respective chairmen.

I have a reference report referring LBs 848 through 880.

Mr. President, your committee on Enrollment and Review reports that 511 be reported to Select File with amendments, 192 Select File with amendments, 231 Select File with amendments, 454 Select File, 304 Select File, 69 Select File with amendments, 139 Select File, 139A Select File, 305 Select File, 239 Select File with amendments, 410 Select File with amendments, 278 Select File with amendments, 126 Select File with amendments, all signed by Senator Kilgarin.

SENATOR CLARK: We are now ready for the second Vickers amendment to Section one.

CLERK: Mr. President, the amendment reads as follows: On page 2, line 13, strike the word "life" and insert "safe yield."

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President, since that is more of a technical one there the following amendment on Section two would be more applicable to take up and I think the Clerk has other amendments on Section one so if you would want to skip over this and go to the other amendments that are on Section one, that would be fine with me. You have other amendments and I think Senator Beutler and some other people might have amendments on Section one if you want to go ahead and take those up at this time.

CLERK: So are you withdrawing. . .you don't want this one then, Senator?

SENATOR VICKERS: That one is more of a technical one. It

would be brought about as a result of if Section two, if the amendment on Section two is adopted.

CLERK: Okay, I see.

SENATOR CLARK: The next amendment to Section one. That one is withdrawn. We are taking these amendments up section by section so we'll take all the amendments on Section one first before we go to Section two.

CLERK: Mr. President, the next amendment I have to Section one is from Senator Beutler: By adding after the word "life" in line 21, page 1 the words "indefinitely, in the case of recharging aquifers or; in the case of non-charging aquifers." Is that right, Senator?

SENATOR CLARK: Senator Beutler.

CLERK: Mr. President, I read the wrong amendment, my fault. I apologize. The amendment offered by Senator Beutler is in Section one, by striking the sentence beginning in line 14 and ending in line 19 of page 1.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, again we're in the intent section of the bill and the sentence that I want to strike is the sentence that says, "Every landowner shall be entitled to a reasonable and beneficial use of the ground water underlying his or her land, subject to the provisions of Chapter 26 (sic) article 6, and the correlative rights of other landowners when the ground water supply is insufficient for all users." I want to strike that sentence from the intent language and the reason that I want to do that is not necessarily that I disagree with the beneficial use doctrine because by and large I do agree with it, but I want to strike it because it serves no useful purpose here and it may serve a very bad purpose. The doctrine of beneficial use does not come to us from the Nebraska statutes. It comes to us from the courts. The courts established long ago that Nebraska was going to operate with regard to ground water under the doctrine of beneficial use. Down through the years and through the decades the court has interpreted case by case what beneficial use means and it means different things depending on the question asked and the situation involved. Interpreting the doctrine of beneficial use recently, the court came down with the decision that the water was basically the property of the public subject to beneficial use. My main concern is that I don't know what effect putting

language like this in an intent section of a bill would have on judicial interpretations to date of what beneficial use means and I think far the wiser policy unless there is some specific purpose to putting it in, is to delete it from the bill and to proceed with our present structure as it is in place as we have taken it from our courts with regard to the interpretation of beneficial use in specific instances, rather than to throw a broad general statement in a statute like this and create confusion and problems. I'm sure that Senator Schmit will go along with this since he has long been an opponent of lawyer relief measures and if there is anything that is going to create business for lawyers it is this one because it will confuse the meaning and interpretation of the phrase "beneficial use." So I would ask you to delete it entirely from the intent section. Thank you.

SENATOR CLARK: Senator Kremer.

SENATOR KREMER: I expect this is a comment more than anything else but as I read this section, Senator Beutler, we are in the intent language just reaffirming what our law states today. Is this not right? It is a reaffirmation of Nebraska's actual water policy and our courts have long said about what we are saying here that...and then we get right back to ownership again. We discussed this many, many times but our courts have generally said, have they not, that the water below your land is there and you have a right to use it as long as you use it reasonably. That is the doctrine of reasonable use. Is that right?

SENATOR BEUTLER: That is right, Senator Kremer, and I am saying what is the point of putting it here in case some lawyer is going to get up and argue that it has a little different meaning based upon what the statute says.

SENATOR KREMER: I guess I just can't see the problem. We just thought we were reaffirming what our courts have said in the intent language.

SENATOR BEUTLER: Is this phrase, for example, does this do anything to the preference statutes that we have in place? This statement, for example, says that all will share equally. It doesn't say anything about preferences.

SENATOR KREMER: I think I addressed that point in my comments several moments ago when I said the...in the preference of use doctrine, I think we have reasonable assurance, more than reasonable assurance that domestic is always going to come first.



SENATOR BEUTLER: This statute, Senator Kremer, is coming subsequent to the preference statute and in terms of interpretation it is possible to argue that since this statute is subsequent to the preference statute that this statute should dictate and that the preference section of the statute would be affected and that is the kind of lawyer's argument which is a very possible argument that I think we should avoid.

SENATOR KREMER: Well as I understand Chapter 46, Article 6, that is a preference statute, is it not?

SENATOR BEUTLER: A different section of it is, yes. Not this section of it. Not Section 656.

SENATOR KREMER: Chapter 46, Article 6.

SENATOR BEUTLER: Chapter 46, Article 6, part of it is, yes. Part of it we put in place years ago. Right?

SENATOR KREMER: Yes.

SENATOR BEUTLER: But this section is being amended and it comes subsequent to that section. So the question arises whether it is intended to affect or amend that section is the point I am trying to make.

SENATOR KREMER: Well the only answer I can give is what I believe it to mean, that we're not interfering, in no way do we wish to change that, no way.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Well, Senator Beutler, I agree with Senator Kremer. The language is designed to state emphatically the concern and the intent of the Legislature, that every landowner shall be entitled to a reasonable and beneficial use. It is intended to narrow down the area of disagreement. I am consistent with my concern about attorneys at this time yet, Senator Beutler. It will narrow the area of disagreement. It will outline for the courts, for anyone else who is concerned that is subject to the provisions of Chapter 46, Article 6 which outlines the well spacing, transfer across state lines, the ability to transfer water, the Industrial Ground Water Regulatory Act, Senator Cullan's bill and the preferences. It also outlines the principle of correlative rights which is established, which is accepted, which has been looked upon with some favor by the courts. It reaffirms the intentions of this Legislature in that direction. To remove that language would be to leave an area

of doubt. In this way we state positively that we feel that way about it and you may disagree but hopefully 25 members will agree that it is better to have a positive statement in there relative to that than to leave the issue vague, undefined or up in the air.

SENATOR CLARK: Senator Beutler, do you wish to close on your amendment?

SENATOR BEUTLER: Mr. Speaker, let me give you an example of where I think that this kind of broad policy statement would lead us down the wrong path. Let's talk about two different industrial uses and let's say that we have a plant in Grand Island that uses so much water and that plant is extremely valuable to the community and to the State of Nebraska and let's say we have another plant somewhere near that community and it uses the same amount of water, same amount of water but that plant isn't nearly as valuable to the community. Maybe it's just getting along. Maybe it doesn't employ, number of reasons, for one reason or another it isn't economically valuable. If you adopt a broad statement of correlative rights, someone is going to come in and argue when water gets short, they're going to say the less valuable plant gets the same water as the more valuable plant regardless of value to the community. And I'm not sure that we want to make an across the board statement like that. I'm not sure we don't want to devise some system for getting water to the industries or to the elements of industries which are most valuable to the community and for that reason I don't like to see broad statements about correlative rights. Most of you in here tend to think of it in terms of farmers or in terms of use as between agricultural units but it has a lot of other implications and I don't think it is wise to make a big, broad statement. If it serves some purpose in this bill, then I would say put it in but no one has said to me what purpose it serves other than to make some sort of broad policy statement and I just suggest to you that that kind of broad statement is unwise. Thank you.

SENATOR CLARK: The question before the House is the adoption of the Beutler amendment to the Kremer amendments. Once again, this only takes a simple majority. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Once more, have you all voted? Record the vote.

CLERK: 5 ayes, 21 nays, Mr. President, on adoption of the amendment.

SENATOR CLARK: The motion lost. The next amendment.

CLERK: Mr. President, the next amendment is from Senator Beutler.

SENATOR CLARK: On Section one.

CLERK: On Section one, it would add the following language. After the word "insufficient" in line 19 of page 1: "or may become insufficient in the reasonably foreseeable future."

SENATOR CLARK: Senator Beutler.

CLERK: Is that the one you wanted, Senator?

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, this language is added to a sentence that you just refused to strike. The sentence again insures every landowner reasonable and beneficial use of the ground water and the correlative rights of other landowners and it says when the ground water supply is insufficient for all users, when it is insufficient for all users. Now back later in the same section of statutes we allow management areas and control areas to be set up, not only when the water is insufficient but when it is reasonably anticipated that the water will be insufficient in the reasonably foreseeable future. So we allow a management area or a control area where the water is insufficient or where it is believed that it will be insufficient in the future. So what my amendment does is to take out the contradiction that exists in that sentence which only... because the sentence only applies to when the water is insufficient and it adds to the sentence the language, "or may become insufficient in the reasonably foreseeable future." So it makes that sentence correspond to what we do, in fact, to the statutory framework that is in existence later on in the bill. It is more technical than anything but I don't want to call it technical least it be too suspect. Thank you.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I just want to point out that the language that Senator Beutler is asking for here is, in this case, not necessary. Reasonably foreseeable future. The people

responsible are looking at not just the picture in front of them. They are not looking at a television screen. They're looking at a set of facts. They're looking at history and they're looking into the future. They're not going to base their judgment upon the issue as of January 19, 1982. Now the thing that is disappointing to me is that we take an amendment like this which really has no substance and we spend some time on it and we debate it back and forth and we recognize the inconsequences of it and we say, well what the heck. But the point I want to make is this. It does nothing for the bill. It adds nothing to the bill. It is just a matter of time consumption. Now if you want to adopt that kind of amendment for the purposes of consuming time and eating up the clock, this is not a football game. There is no definite sixty minutes on this. We can go for sixty days. We've already used up a few and I have as much time as the next man but if you proceed along this manner of spending a lot of time on inconsequential amendments you will never deal with the substance of this legislation or any other. With that I ask you to reject the amendment and proceed with the next amendment and deal with it upon its merits.

SENATOR CLARK: Senator Beutler, do you wish to close?

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I don't very much appreciate having my motives impugned. All the amendments I am offering I am offering because I think there is a philosophic or a substantive or a technical problem. One of the techniques that we use in the Legislature when we know there are a lot of problems and we don't want to discuss them long, we start off at the beginning saying, things are technical, things are being stalled, and when people get tired then they don't look at them anymore, then they just start buying that argument but each one of the amendments being offered to you today does make a difference, would make a difference. This particular provision is clearly inconsistent with what we're doing in the rest of the statute. Now Senator Schmit says it is unnecessary but just last year or the year before the Lower Loup NRD was denied the right to create a control area on the basis of the distinction between present insufficiency of water and insufficiency in the future and we amended our statutes to eliminate that distinction and to get the thought about the future into the statutes, to get the ability to act on what is in the reasonably foreseeable future into the statutes. And all I am asking you to do is acknowledge that in this particular statement of intent. If you don't then

the argument can be made that we're proceeding backwards in fact, that two years ago we amended the ground water act so that we could look to the future and now we're amending it again so we can't look to the future anymore. Now we're going to say that beneficial use and correlative rights we can only look at what exists and not at the future and if we're going to go backwards in that regard, we're going to be in a very bad way on this water issue. Thank you.

SENATOR CLARK: I would like to introduce two guests of Senator Lowell Johnson. They're under the North balcony, Mr. Frances Masten, Superintendent of Northbend Central Junior-Senior High School; Mr. Dale Meritt, principal of the Northbend Elementary School. Would you stand and be recognized please. Welcome to the Legislature. The question before the House is the adoption of the Beutler amendment to the Kremer amendment which once again only takes a simple majority. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? One more time, have you all voted? Record the vote.

CLERK: 10 ayes, 20 nays, Mr. President, on adoption of the Beutler amendment.

SENATOR CLARK: The motion lost. The next amendment to Section one.

CLERK: Mr. President, the next amendment to Section one is by Senator Beutler. (Read Beutler amendment as found on page 352 of the Legislative Journal.)

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I'm going to be very quick on this one because it addresses an issue that we just addressed two minutes ago. Senator Vickers had prepared an amendment to the same one that I had. His we took up first. Mine doesn't go as far as his does in language. I want to present it to you briefly. It was a subject that was of interest to people in here and maybe the fact that it doesn't go nearly as far in the direction of Senator Vickers' amendment, it might find acceptance with you. Again it addresses the very important issue of what sort of attitude we're going to have towards ground water reservoirs and their life and I make a distinction between recharging and nonrecharging

aquifers and the sentence as amended would read, "the Legislature determines that the goal shall be to extend ground water reservoirs indefinitely, in the case of recharging aquifers or in the case of nonrecharging aquifers indefinitely consistent with beneficial use of the ground water and best management practices." You have essentially heard all the arguments before and I am essentially presenting to you now the alternative to choose and to make a stronger statement about the legislative need or about Nebraska's need to preserve those aquifers as long as possible. Thank you.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I'm not an attorney and Senator Beutler has a distinct advantage on me in that area but as I read the amendment it reads, "indefinitely in the area of recharging aquifers or in the case of nonrecharging aquifers indefinitely." It sounds to me like an exact rerun of the Vickers amendment. I have not found anyone who disagrees that it is a rerun of the Vickers amendment and it is not intended that way. Both Senator Vickers and Senator Beutler had a concern that way. I think the issue had been resolved with the vote on the Vickers amendment and I would ask that it be opposed.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President, I would oppose this one as completely separate from the other one for a completely separate reason. I think it is totally contradictory and I will try to explain. If you've got a nonrecharging aquifer and you say you're going to preserve it indefinitely, basically aren't you saying you will never take a drop out of it because that is altering it whether it is X number of years to do it and adding language such as "consistent with beneficial use" or whatever. It is just a contradiction of the other part as I read it. I guess I can't understand it, how you can say you're going to have something that is absolutely finite such as this cup and keep it unchanged indefinitely which as I interpret kind of means forever, doesn't it? And then you say you're going to keep that cup full forever, there's nothing coming back into the cup. Then how can you ever get any use whatsoever out of it? So I would oppose this amendment because it is so contradictory as I read it.

SENATOR CLARK: Senator Hoagland.

SENATOR HOAGLAND: Mr. President and members, I would like to rise in support of Senator Beutler's amendment and point out that this is not a rerun of the Vickers' amendment as Senator Schmit has indicated but it is really a nice compromise between what Senator Vickers was trying to do and what the current language of the Kremer amendments do. Now the reason it is really a compromise between the two concepts is that Senator Beutler's amendment indicates that if we have a rechargeable aquifer, you know, one that gets replenished with the annual rainfall every year, why then that is to be extended indefinitely and that makes sense because in that sort of situation we could try very hard to take only that amount each year that roughly approximates that which comes in but then it goes on to say that for nonrechargeable aquifers that are sealed off by a layer of clay or for some other reason are not rechargeable on an annual basis, why then we can draw that down and eventually use it up as Senator Schmit would like. So I think it is really unfair to say this is a rerun. I think it is a very clever and a very workable compromise between Senator Vickers' earlier proposal and the draft of LB 375 and I think if we really think this thing through as Senator Remmers and some others have done who have really concerned themselves with this particular issue, we'll see that we simply cannot just give up and go ahead and use the kind of language that Senator Schmit is advocating because by using Senator Schmit's language we're just throwing our hands up on the air and we're saying, well there is nothing we can do about it we might as well go ahead and run these things right on down to nothing and Senator Vickers and Senator Beutler and Senator Remmers and others are very concerned about this and I think that Senator Beutler's compromise here is a very appropriate one and one that this body should adopt. Thank you, Mr. President.

SENATOR CLARK: Senator Schmit. Senator Lamb, did you want to talk on this amendment? The question before the House then is the Beutler amendment. Would you like to close, Senator Beutler?

SENATOR BEUTLER: No, Mr. Speaker, we've been through all the arguments. I think people understand the arguments.

SENATOR CLARK: The question then is the adoption of the Beutler amendment, the number 2 amendment to Section one of the bill. All those in favor vote aye, opposed vote nay. It takes a simple majority.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Once more, have you all voted please? Record the vote.

CLERK: 9 ayes, 19 nays, Mr. President, on adoption of the Beutler amendment.

SENATOR CLARK: The motion lost. The next amendment to Section one. Are there any further amendments to Section one? We're going to Section two. Are there any amendments to Section two?

CLERK: Mr. President, yes, I do have amendments to Section two. The first is offered by Senator Vickers. Senator Vickers would amend Section two. (Read Vickers amendment as found on page 353 of the Legislative Journal.)

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President, members, I would hope that my good friend Senator Kremer and Senator Schmit would not take this amendment as being a nonsubstantive amendment and as a harassment amendment because I will tell you quite frankly this amendment has quite a bit of substance to it. If you will examine the language on page 5 of Request 2505, lines 2 through 6, it is a definition of what ground water reservoir life goal shall mean. Now as we discussed a little bit earlier, as I pointed out to you, I do not like the term "ground water reservoir life", indicating that it has, in fact, got an end to it at some point in time. I would prefer to insert in place of ground water reservoir life, "ground water reservoir safe yield goal" and as the Clerk read it to you and you all have copies of this amendment on your desk, I attempt with the language to indicate that it is possible to draw water from an aquifer to borrow, if you will, from an aquifer if you have a plan established per artificial replenishment of that aquifer through an augmentation program. Now this is a...it's not the usual definition as some people have used sustained yield. This is not sustained yield language. This is a different concept that it is possible to use that water but again, use it with the idea that we're going to have it there for a longer period of time, for an indefinite period of time and that we're going to have it, we're going to use it in such a fashion that we use it as it can be replenished either naturally or through artificial means. Now again, this is a statement that I think this Legislature needs to make. Again, I need to point out that what we're dealing with here is a management area at the discretion of locally elected boards of directors of natural resources districts that they can use, excuse me, if they so desire. But it seems to me that leaving the language in there that



they shall establish the ground water reservoir life goal is the wrong attitude for us to give to those natural resources districts, that we do expect that reservoir to have a life and be used up at some point in time. I would urge your careful consideration of this amendment and again I would point out to you, it is a substantive amendment. It makes a change and I suggest to you that it is a change that this Legislature needs to make.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Mr. President, again we have a choice of words and we can rewrite the bill line by line, section by section, page by page, if we choose to do that. I think that I would have to borrow some of Senator Hoagland's language in describing the previous amendment. It is a very clever method whereby you attempt to amend the bill and it is sort of like shooting into a flock of ducks. You shoot into a flock of ducks and you don't really need to aim at anything but you get one once in a while. Now if that is the theory we're going to pursue here and I'm not saying that is true in this particular amendment, Senator Vickers, I'm not challenging your integrity or your concern about it but I really do not agree that your choice of words are any more definitive, any more illustrative than the present wording which Senator Kremer and I and others have agreed upon. I would suggest that if today we adopted the amendment, tomorrow we might look at it again and we'll find someone else who would say, well it ought to read this way. But at some point in time I can assure you we have to decide what concept we're going to use, what direction we're going to go. The language which is included in the amendment that Senator Kremer and I have presented to you was not off the cuff language. It was language that was carefully thought out which was very definitely explored for all its impact and consideration and I suggest we stay with that language. We are once again doing the thing on this floor which we have many times fought against and that is, we are trying to draft a bill on this floor. Now there were plenty of opportunities within the committee prior to that time and as I have pointed out, I have accepted all reasonable amendments. In fact, I have accepted most amendments that have been offered to me prior to the time that we printed this copy of the bill. In fact, I have not rejected a one that was suggested to me. Now I ask you how much more cooperative you can become? But I suggest that it is time to become sincere and decide what you really want to do. I have to oppose the amendment. I ask that you oppose the amendment. I ask that you read it carefully and ask yourself why this language

is so much superior to the language that Senator Kremer and I have agreed upon. I oppose the amendment. I ask that it be defeated.

SENATOR CLARK: Senator Vickers, do you wish to close?

SENATOR VICKERS: Mr. President, members, I think this issue is very similar to the one we discussed earlier in the intent language section. Senator Schmit indicates it is a matter of semantics. I don't quite agree with that. I think it is a matter of our intentions. I think what we're talking about here is whether or not our goal shall mean that the reservoir has a life and that it will be run out of that life of that reservoir at a certain point in time or if we want to put into statutes language that indicates that it should be withdrawn under a plan as hopefully we're all able to withdraw from our bank accounts which unfortunately as a farmer in the past year I've not been able to do, but hopefully we're putting in statutes the plan whereby they can withdraw based on a plan to recharge both naturally or artificially. Development of irrigation in the State of Nebraska is going to continue and should continue but I think this Legislature, I think it is this Legislature's job and prerogative to set down broad policy statements indicating that that development should continue under some semblance of order and that order should be based on whether or not that aquifer is going to be used up twenty years from now or a hundred years from now. Now I suggest to you that if you...

SENATOR CLARK: You have one minute left.

SENATOR VICKERS: ...turn down this amendment and you don't like the term "safe yield", you don't like the language that indicates that they should not exceed the amount of natural recharge or artificial recharge that they can put in plan, then maybe we need to put a minimum number of years that the life should be and I suggest that that is going to be quite a difficult thing to do too. Is it twenty years, forty years, a hundred years, fifteen years? I urge your adoption of this amendment.

SENATOR CLARK: The question before the House is the adoption of the Beutler amendment to Section...I mean the Vickers amendment to Section two. It takes a simple majority. All of those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Once more, have you all voted? Record the vote.

CLERK: 11 ayes, 21 nays, Mr. President, on the adoption of the Vickers amendment.

SENATOR CLARK: The amendment lost. The next amendment to Section two.

CLERK: Mr. President, Senator Vickers would move to amend Section two: "Page 5, strike lines 9 through 13."

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President and members, another amendment that has a considerable impact and I would suggest to you that this probably has as much impact in my opinion of any of the other amendments that at least I have introduced or plan to introduce as it relates to LB 375 or as it relates to water legislation in the State of Nebraska. You all should have on your desk a copy of a couple of letters from two natural resources districts in this state, one the Upper Republican and one the Twin Platte. They are under my initials and I'm sure you've probably all got copies of this letter in your offices also. If you will notice in both of these letters, in the one from the Upper Republican Natural Resources District on the first page it indicates that this Board of Directors is opposed to the allocation per irrigated acre being put in the statutes. Even though they've got a control area in that area in that district and they are allocating on the basis of irrigated acre but they are indicating that it would vary across the state and that the local board should be the one that should make that determination as to how they allocate those waters. Twin Platte, the letter from Twin Platte indicates basically the same thing. Also, and I don't know whether you all got copies of the letter or not but I got a copy of a letter from Gerald Apts the President of Lindsay Manufacturing Company who happens to manufacture Zoomatic sprinklers and I quote from this letter. He urges my support for the irrigated concept and he says, "the requiring the water to be allocated on the basis of an irrigated acre will assure that our water users take advantage of available water conservation practices and equipment." Well I don't think and I understand his reasoning for doing this. It's very clear. If we allocate, if we put into the statutes that the only way you are going to allocate that water is by the irrigated acre concept and we, certain areas of this state then decide that they are going to allocate water based, maybe fifteen inches per year and

you've got two farmers side by side, one of them irrigating with a center pivot and the other irrigating with flood irrigation. Under center pivot fifteen inches per year might be enough to get you by pretty good. Under flood irrigation in the same year it probably wouldn't be anywhere near enough. So the one farmer is going to look at his neighbor across the road and he says, "You know if I am going to continue to irrigate the same number of acres I've been irrigating I'm going to have to get me a center pivot." So what we're doing is putting in the statute a reason to promote certain people's products. Now I'm not sure that that is our place or our prerogative to do that. Let me point out another thing to you. It's the job of the natural resources districts and it should be their concern the total number of inches of water or the total amount of water withdrawn from a given area. That is the whole idea behind the control areas or the management areas is that they should be concerned about the total amount of water withdrawn. Now as Senator Schmit pointed out in his opening remarks under the irrigated acre concept as opposed to the total acre concept or some other concept it might be possible for an individual, let's say you had a thousand acres of irrigated ground and they allocated ten inches of water per year. You might decide you wanted to raise rice in some corner and put a hundred inches of water on ten acres. And the NRD has the authority to control runoff remember. They have the authority to control pollution. As long as you are not contributing to pollution, as long as you are not contributing to runoff, whose business is it to tell an individual farmer he can't do that? Is it our business to tell individual farmers that they can't put more water and raise perhaps a higher use crop such as alfalfa or something? I don't think so. But even more than that, I don't think it is our business to tell those local natural resources districts exactly what tool they can use when they allocate that water. If the local people in that area want it on an irrigated acre basis, that's fine. They should be able to do that. If they want it on an irrigatable acre basis, that's fine and they should be able to do it. If they want it on total acres, that's fine and they should be able to do it. I don't know why we profess to give them the authority to control their future in the use of this resource and then we say but you can't do it only in the way we tell you you can do it. We're making the determination here today how those local elected boards are going to be able to allocate that resource to those people that they are the most responsible to. Now I further suggest to you that there is a clever reason

for this being drafted this way. If you want a pivot on every quarter section in the Nebraska Sandhills, then tell them this is the only way you can allocate it. You can't allocate it any other way and you'll probably get it but I don't think that is our job to do that today. I don't think it is our job to tell those local people, You can't allocate it any other way except this way. Now obviously I have some problems with irrigated acres and if it was...a control area or a management area was going to be established where I live I would want the authority and the right to go to my locally elected NRD board and argue my case for total acres instead of irrigated acres but I think my neighbor that might want irrigated acres should have that same right to go in and argue his case and let that local elected board make that decision based on what they think would serve the most people in their constituency within that area and I think the letter from the Upper Republican indicates that. Again, a district that has irrigated areas in their control area right now is telling this Legislature, you should not put that only in the statutes. Leave it up to the local elected board of directors and I cannot understand how my good friend, Senator Kremer and Senator Schmit, can promote only one type if they, in fact, trust the local elected boards to make that determination. So I would urge the body's adoption of this amendment to remove that language and then I have a subsequent amendment later on to other sections to hopefully address the allocations based on correlative rights and I would suggest to you further that irrigated acres only is not necessarily correlative rights but I will touch that a little bit in my closing. Thank you, Mr. President.

SENATOR CLARK: Senator Kremer.

SENATOR KREMER: First of all, the particular philosophical question that Senator Vickers is addressing right now was discussed long and in detail by those of us that were interested in the bill that is before us, irrigated acres versus totally owned acres. Now we talk about totally owned acres. It can be interpreted several ways and I will try to explain it. The board, as I understand, could take a look at it in two different directions. They say, "We're going to give you for example, ten inches of water for the acres that you are going to irrigate and you own a lot more than that or you are irrigating and we'll also give you ten acres for every acre that you bring under irrigation in the future." Maybe it's another quarter of a section, maybe it's a half section, maybe it's two sections depending on the ownership

of land how much they own. Okay, they could go this direction then we're going to talk about acre feet of water and there is a difference. They could say we're going to give you fifty acre feet of water per year. Then if you go on and develop more land you're going to get fifty acre feet and if you irrigate a hundred acres you're only going to get six inches. Then if you own another half section and you irrigate that too you're only going to get three inches. So what you are doing, you are limiting the water that can be applied to an acre of land as it develops into the area of irrigation. So it can be interpreted either way. If we go Senator Vickers' direction then the board has the authority to provide for less water than the person that does not expand his irrigation program and there is a difference. We need to watch that. So if we're going to go by the Doctrine of Correlative Rights this means that we're all going to share and share alike, we cannot adopt Senator Vickers' proposed amendment to the bill. That is my problem. We've got to go one way or the other. To substitute for the Vickers proposal we have got back in the bill the authority to call a moratorium for one year at a time only. Then the board is to review what is happening, has this been effective? Shall we continue? They can continue for another year. So it is a substitute for what Senator Vickers is trying to put back into the bill the right for a moratorium, therefore, I oppose the Vickers amendment.

SENATOR CLARK: Senator Haberman. Senator Schmit.

SENATOR SCHMIT: Mr. President, members of the Legislature, I think that Senator Kremer has outlined it very definitely and very thoroughly. I just want to point out and I wasn't listening to all of it so I don't know for sure if he mentioned or not, but that in the case of the Upper Republican where they attempted to allocate more inches of water to the ditch irrigator than to the sprinkler irrigator, the court said they couldn't do that. They had to give each irrigator an equal amount. Now if I take, if I understand Senator Vickers correctly, he is saying that there might be a need to allocate more inches of water to one individual than another. I don't believe the courts, based upon what has happened, the courts are not going to allow that. If you're in a single area and you decide that ten inches of water per acre is the maximum for the pivot irrigator then that shall also be the maximum for the ditch irrigator but it does not mean, and here I agree with Senator Vickers and our bill allows this, it does not mean that a ditch irrigator if he chooses to raise rice cannot concentrate the water

from a hundred acres onto twenty-five acres. It gives him that flexibility. It means also that if he wants to plant a quarter section of sorghum which needs six inches of water and a quarter section of corn which might need sixteen, that he can shift the water back and forth. It gives him that flexibility. It is very important. Most important of all is this, that if you put it on the basis of acre feet per acre, and that is what we're getting to, then if you get into areas of large landholdings where you have large amounts of both dry land and irrigated land, you have absolutely no control whatsoever if you base the allocation upon total acres. You cannot do it and have any control whatsoever. It must be only upon irrigated acres. Now someone has said, "Well who is going to determine the irrigated acres? How do you determine that?" We have spelled that out also in the bill and I would just like to suggest that the ASCS offices across the State of Nebraska have for years done that and done an admirable job of it. They have identified to within an acre or so the irrigated acres of a farm and so that is not any problem but to allocate it on any other basis is to defeat the total purpose of allocation. That is one of the reasons why I agreed with Senator Kremer to put the moratorium back in the bill. I think that it is important that, I will point out also that I have some deep concerns with the moratorium, not so much the fact that I think there might not be a need sometime to impose a restriction upon the drilling of wells, but I think that under the present system sometimes a moratorium could actually encourage the development of additional wells. A dead-line is what it has become, not a moratorium.

SENATOR CLARK: You have one minute left.

SENATOR SCHMIT: But I think to adopt the Vickers amendment would be to really move toward less control rather than towards any control so I would oppose the amendment and ask you to support the suggestion by Senator Kremer that the motion be voted down.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, this perhaps is the most important amendment or the most important concept that has come before you today. I mentioned earlier when we dealt with the intent language where we failed to include the phrase about insufficient water supplies in the future that we were moving a step backwards from what we had in our law, in our water law. If we limit management areas, if we're going to start

talking about only irrigated acres and taking away from the natural resource districts the ability to use an owned acres concept, we're going to be taking away from their powers, we're going to be taking away from the substance of what is in the present law. We would be moving another step backwards. The reason, there are a number of reasons why giving the local people control to use one of these two concepts is important but if you have thoughts about the sandhills, if you have questions about the sandhills, if you're wondering whether the people in the sandhills shouldn't be given some tools to deal with their own destiny, then you should be thinking very, very carefully about this amendment because if you take away from the sandhills NRDs the ability to use the owned acres concept, then you are essentially taking away from them one of the few, maybe the only means they have of distinguishing between ranchers and prudential on a large scale grain farmers and you are forcing them all into the same pot. For example, if you had an owned acres concept it would be possible for the rancher who only farms a portion of his property to have enough water for hay, for the grain for his cattle and to continue to live in the way of life he has lived in for decades and decades and at the same time have some controls over the large scale grain operations and the use of land and water by those types of entities. Because if you had an owned acres concept in a limited water situation, for example, it could end up that each unit of six hundred and forty acres would only have enough water for a hundred and sixty acres of grain farming. But if you take away that tool and you insist and insist that they use only an irrigated acres concept, then every time prudential wants to develop more land for grain cropping every additional irrigated acre they put on they get that much more water and there will no be means, no practical means to distinguish...

SENATOR CLARK: You have one minute left.

SENATOR BEUTLER: ...between the rancher and prudential. So this is the kind of choice that you're making here. It is a very important choice and I think you should consider it very carefully. Thank you.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, Senator Beutler said this is one of the most important amendments and I would certainly agree with him. This is probably the single reason above and beyond all else that water legislation failed last year, that we did



not move ahead on 375 or anything else and it was the attempt to write into law that we did put into the bill at one time the concept of owned acres, owned acres being the basis for who got to irrigate, who got to have water, so on and so forth and I'll be very honest with you. I did not understand all of the full implications of what this amendment did then but I certainly have tried to learn them since because this amendment was brought to me by a man named James Wolf from up in, around Albion, Nebraska, and as I say, this probably is the single reason this legislation, the major thing failed last year because when the bill reached the floor and it was discovered just what this would really do, the committee brought the bill back and things bogged down. Now what it gets down to and it's very fundamental rules or sense as I interpret it, Senator Schmit and Senator Kremer are both very bright and knowledgeable in this area and they can say, well, DeCamp, you're wrong if what I am saying is wrong but what it amounts to is he who owns and owns the most controls the irrigation practice or gets to control the water. For example, if you're like the gentleman I mentioned and you happen to own thirty-five thousand acres of land, then if you are allowed to irrigate let's say, one acre for every nine or every ten you own, you might have complete junk land but for all practical purposes you have rights to irrigate three thousand five hundred acres. Now let's take Joe Farmer, Joe Farmer being the guy that owns some of the best land but the rule is you've got to own ten acres for every one you are allowed to irrigate and Joe Farmer may have two or three quarters of the best land but he for all practical purposes with the best land who should be irrigating, just the average family farmer, is basically written out of the right to irrigate. So I would strenuously oppose this amendment. If ever there was a thing that I think would turn it over to the super bigs deciding who lived, died, survived in the area of farming, this amendment is it and I repeat, this is the thing that inadvertently got to the floor and ultimately last year stopped the whole water legislation. If I'm wrong in my interpretation of the owned acres concept, I apologize. It can be explained further. If I'm wrong Senator Schmit or Kremer can correct it. They certainly know it better than anybody else but what it gets down to is, he who owns, controls and the more you own, and it can be junk land or anything else, you have irrigation rights. I think it is maybe the single most horrible concept you could adopt and I think if you do this you kill the bill because I know responsible people are not going to go with this. I quite frankly think prudential would be the first one to jump on and say, "This is the greatest deal we've

got going because we can sure...

SENATOR CLARK: You've got thirty seconds left.

SENATOR DeCAMP: ...we can afford to buy more and own more than anybody else and this is a party for us or the big boys. But the average farmer, I think, is going to be cut out if you go with owned acres.

SENATOR CLARK: I would like to introduce some guests of Senator Richard Peterson, under the South balcony, Mrs. Ronald Roush, Mrs. John Orlowski, Mr. and Mrs. Wendell Muhs. Will you stand and be recognized please. Welcome to the Legislature. Senator Schmit. Senator Vickers, would you wish to close? Senator Schmit, I will give you one minute.

SENATOR SCHMIT: That's fine, I don't need that much. I agree with Senator DeCamp. I agree the concept is totally adverse to the idea of any kind of control. It flies in the face of everything else we have done here. To adopt that amendment would be to mean no control.

SENATOR CLARK: Senator Hoagland, your light came on late.

SENATOR HOAGLAND: Yes, I would just like to rise briefly in support of Senator Vickers' amendment and point out again, it is really important for all of you to recognize that this kind of amendment is going to encourage development. It is going to mean that if someone is to have access to all the water he is entitled to he is going to have to develop and turn his acreage into irrigated acres. I think it was put in the bill specifically with that intent and is really going to have the contrary effect from what I think a lot of us would like to see and there is really no point of writing into the laws of the State of Nebraska additional incentives to develop when there are already plenty of incentives out there and when we don't need to be developing acres on that basis. Thank you, Mr. President.

SENATOR CLARK: Senator Vickers, on closing.

SENATOR VICKERS: Mr. President and members, first of all, let me indicate to this body that Jim Wolf or no other large landowner in the Nebraska Sandhills brought this amendment to me. When Tom Vickers offers amendments to this body it is amendments that Tom Vickers thought of and I will also tell you that I don't own thirty-five

sections or thirty-five thousand acres or anything else. I am a relatively small landowner in my area and I disagree entirely and I know it is a matter of philosophy but I disagree entirely with Senator DeCamp and Senator Schmit, the total acres would mean no regulation. You have got to understand that the total area contributes to recharge. Now if an NRD determines that there should be a total amount of water taken out of that and not any more then they can boil that down to how many acres there are in there. Now if you are a large landowner obviously you get more acres or you get more water. If you are a small landowner you get less. The same thing is true with irrigated acres. What it does mean is that if an NRD chose to do it, chose to have total acres, they could say that if you own a thousand acres you can get four inches of water per acre. Now that tells the farmer he can develop it wherever he wants to. It doesn't have to be in a certain area. It can be any place he wants to on his place. He can use it anywhere he wants to within that area but I think even more fundamental than that, what we're doing is making the decision for everyone of the twenty-four natural resources districts. We're not letting them make the decision themselves. We're making it for them. Sure this is the meat of the bill. This is exactly what the Valmonts and the Lindsays and the people that drafted this bill wanted, it encourages development. We talk about correlative rights. We like to jump on that bandwagon and that soapbox and say that we really believe in correlative rights. We believe in the right of the individual landowner to have the right to the water under his land. What about the individual that might be sixty or approaching retirement age and decides he doesn't want to put any wells in or any more wells in and a management area goes into effect? What we are saying is that the rest of the area around him can go ahead and develop and cut down the amount of water that he would have available or his son or the next generation that might operate the place would have available to them. So they come along five or ten years later and everybody else is developed. The amount is cut down so much because of the irrigated acres that they can't afford to develop anymore. We're taking their right away from them to develop their land. We're making that determination here.

SENATOR CLARK: You have one minute.

SENATOR VICKERS: My main point is that we have no right to be making that determination. If we're giving the local people through the natural resources districts directors the authority to implement the regulations to be out there on the front line, then we should give them

the authority to make those determinations. If Senator Schmit and Senator DeCamp want different mechanisms within their area then let them go to their natural resources districts and make that plea to them. It's the same as I should have the right to do with my NRD but you're taking that right away from me and I think that is wrong. I think that is fundamentally wrong. Why don't we just do away with the NRDs and make all the decisions right here? We'll draw the lines, we'll do the whole works. We'll be the Natural Resources Board for the whole state. That is really what we are doing. Is that what we want to do?

SENATOR CLARK: The question before the House is the adoption of the Vickers amendment to the Kremer amendment on Section two. All those in favor vote aye, opposed vote nay. This also takes a simple majority. A record vote has been requested. Once again, have you all voted? Record the vote.

CLERK: (Read record vote as found on page 353 of the Legislative Journal.) 12 ayes, 21 nays, Mr. President, on adoption of the amendment.

SENATOR CLARK: The motion lost. Senator DeCamp, would you like to adjourn us until nine o'clock tomorrow morning after the Clerk reads in the rest of the bills.

SENATOR DeCAMP: Marvel was saying something about coming back at four-thirty or something. Is that out?

SENATOR CLARK: No, I don't think we need to.

SENATOR DeCAMP: Okay, we're going until nine o'clock tomorrow then.

SENATOR CLARK: No, let's wait until he reads the bills in.

SENATOR DeCAMP: Oh, okay.

SENATOR CLARK: He still has some bills to read in.

CLERK: Mr. President, new bills. (Read by title for the first time, LBs 915-955 as found on pages 354-366 of the Legislative Journal.)

Mr. President, Senator Marsh would like to print amendments to LB 69 in the Legislative Journal. (See page 369 of the Legislative Journal.)

Banking gives notice of cancellation and rescheduling of a hearing. (See page 369.)

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PRESIDENT: A quorum being present, are there any corrections to the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT: The Journal will stand as published. Any messages, reports or announcements?

CLERK: Mr. President, your committee on Administrative Rules and Regulations whose chairman is Senator Vard Johnson reports LB 649 to General File.

Mr. President, I have a gubernatorial appointment letters appointing Mr. Don Stenberg to the Department of Administrative Services; Colonel Elmer Kohmetscher as Superintendent of the Nebraska State Patrol and Mickey Skinner to the Games and Parks Commission. Those will be referred to the Reference Committee.

Mr. President, I have a communication from the Secretary of State regarding a return of LB 376 to the Legislature. I also have an accompanying Attorney General's opinion addressed to Mr. Beerman regarding that matter. It will also be inserted in the Journal.

Mr. President, LR 199, 206 and 207 are ready for your signature. (See pages 373-375 of the Legislative Journal.)

PRESIDENT: While the Legislature is in session and capable of doing business I propose to sign and I do sign LR 199, LR 206 and LR 207. We're ready then for agenda item #4, General File, the priority bill, LB 375. Mr. Clerk, if you will bring us up to where we are.

CLERK: Mr. President, of course, LB 375 is a bill or an act relating to ground water. (Read title). The bill was considered by the Legislature yesterday. At that time there was pending an amendment offered by Senator Schmit and Kremer, Request #2505. Upon a request from Senator Beutler, that amendment was divided into eighteen separate amendments and we were considering amendments to Section 1 of that bill. I believe we are actually on Section 2, Mr. President, but I do have an amendment from yesterday that relates to Section 1 offered by Senator Vickers. Senator, do you still want to offer that amendment to Section 1. It is the one on page 2, line 13 strike "life" and insert "safe yield". No, okay.

PRESIDENT: All the amendments then to Section 1 have been completed. Before we proceed with the debate on Section 2, we should adopt the first section. So does Senator Kremer or someone want to move to...I guess the motion is before us to adopt Section 1 then. Senator Kremer, do you just want to make that motion? All of the amendments are now out of the way so we are going to go section by section.

SENATOR KREMER: Yes, he divided the question yesterday and you are ready for Section 1.

PRESIDENT: That is correct.

SENATOR KREMER: Okay, Mr. Chairman, I move that Section 1 be advanced.

PRESIDENT: All right. Senator Beutler, did you wish to further discuss Section 1 now? We are ready for the vote then. All those in favor of adopting Section 1 to LB 375 vote aye, opposed nay. Have you all voted? We are voting on the adoption of Section 1 of LB 375 so that we can move on to Section 2, proceed with the debate on Section 2. Senator Kremer, I am not sure...I don't want to hold this Board open forever. I think in order to get the members here so we can vote we might have to have a Call of the House and get people in here so we can get going this morning. Record the vote.

CLERK: 26 ayes, 0 nays on the adoption of Section 1, Mr. President.

PRESIDENT: Motion carries. Section 1 is adopted. Now we will proceed, Mr. Clerk, with what? What is pending on Section 2?

CLERK: Mr. President, I now have amendments to the amendment

on Section 2. I believe I have but one amendment and that is offered by Senator Hoagland. (Read Hoagland amendment (1) as found on page 375 of the Legislative Journal.) That is offered by Senator Hoagland.

PRESIDENT: Okay, the Chair recognizes Senator Hoagland.

SENATOR HOAGLAND: Mr. President, colleagues, I don't want to prolong the debate on this particular concept because we have talked about this before. I think we spent quite a bit of time yesterday discussing the problems of the aquifer life goal and the fact that a lot of us would like to have it last a long time. Now the amendments that were presented yesterday were in terms of an aquifer lasting indefinitely. Now indefinitely, of course, is a longer time than any of us can really understand or predict. The body was not interested in that and I am wondering now if it wouldn't make sense to bring it down into a more specific time frame and I would like to address a question to Senator Schmit, one of the cosponsors of this bill, and ask him if he would agree to putting a provision into the law like this that would say that an aquifer has to last at least a hundred years. Senator Schmit, would you care to respond to that?

SENATOR SCHMIT: Sure, I will respond, Senator Hoagland. I would not agree to the amendment, Senator Hoagland. I have agreed to every single amendment that any member of this Legislature brought to myself and Senator...I wish you would listen...to myself and Senator Kremer during the interim period. I have not rejected one. I have accepted every single amendment and so has Senator Kremer. There is not one person who can stand on this floor and say he approached Senator Kremer or myself about an amendment to 375 that we did not accept, and now all of a sudden we have twenty-five amendments. I think the record speaks for itself, Senator Hoagland. Your amendment has no substantive value. It cannot be...it is not workable. It would not be acceptable, it would be less understood than the previous amendment.

SENATOR HOAGLAND: Let me, if I might, Mr. President, let me say two things. I filed a set of amendments with the Clerk at the end of last session, Senator Schmit. We sent a copy of those over to you from our office. Now I don't know, if an amendment has merit and is a good thing to do and is in the interest of the State of Nebraska, I don't know what difference it makes whether it is presented now or earlier. But, Senator Schmit, you did have a copy of those amendments. We sent a whole package over to you and

I got no response from your office at all. So it is certainly not correct to say that you adopted every amendment that was sent to you. Now, Senator Schmit, if a hundred years is unacceptable to you, would you accept 75 years as an aquifer life bill?

PRESIDENT: Senator Schmit.

SENATOR SCHMIT: I would not accept 75 years. It is a totally inoperable kind of amendment and if you knew anything about the irrigation and the aquifer and the reservoir, Senator Hoagland, you would not propose it.

SENATOR HOAGLAND: Senator Schmit, would you accept 30 years as an aquifer life goal. I mean, will you accept their proposition that we want our aquifers in the state to last at least 30 years and we are not going to use them up more quickly than that?

SENATOR SCHMIT: Senator Hoagland, the language which Senator Kremer and I have in the bill extends the reservoir life based upon the existing reservoir, based upon existing information, depending upon the wisdom of the local natural resource district's board. It is absolutely ridiculous to try to read into the law or place into the statute a 30 year life. That would not be acceptable to any of us.

SENATOR HOAGLAND: Well, so, Senator Schmit, you are telling us you are not even willing to tell the members of this body or the people of the State of Nebraska you will accept 30 years as a minimum aquifer life goal for the aquifers in this state. How about 10 years, Senator Schmit? Will you accept 10 years?

SENATOR SCHMIT: Senator Hoagland, well, I am not going to get sarcastic. I am tempted to. The point is this, Senator Hoagland, you obviously don't understand the bill. Even though you have proposed extensive amendments for it, you have failed to recognize the relationship between the reservoir, the replenishment, the recharge, the many other factors that are involved regardless of how diligently, if you pump those wells 24 hours a day during most of the summer months, you couldn't deplete 90 percent of the water in the State of Nebraska in 10 years. You couldn't do it. You would have to pump it into the Platte and the Missouri Rivers. So your amendment makes absolutely no sense, and I am sure you recognize that.

SENATOR HOAGLAND: Mr. President, I think that...I have spent at least a year studying this bill very carefully and



there is nothing inconsistent or this would in no way make the bill inoperable if we were to put in a specific year term for which aquifers must last. Now if Senator Schmit's argument is that it is going to make the bill unworkable if we say that aquifers have to last at least 10 years or 30 years or a 100 years, I respectfully disagree. There is plenty of room in this bill for that provision in the state law. I think Senator Schmit's position evidently is clear that he is not even willing to put into law the fact that these aquifers should last 10 years or 30 years. Now I think that that is an unreasonable position. I think it discloses more than.... as much as anything else what this bill is really about, and I would ask members of this body to go ahead and support a 100 year aquifer life goal concept. Thank you.

PRESIDENT: Senator Schmit, did you wish to pursue the...? Okay. Senator Schmit.

SENATOR SCHMIT: Mr. President, members of the Legislature, of course, I oppose the Hoagland amendment. Senator Hoagland has attempted to ridicule the process whereby the bill has reached the present stage. The bill remained in the Public Works Committee for virtually the entire session last time. Numerous amendments were offered to it. Time after time after time attempts at reconciliation were made. Finally in desperation Senator Kremer and myself brought the bill to the floor. Senator Hoagland proposed some sweeping amendments. I read them and gave them all the consideration that was due to them. Absolutely nothing. The amendments, it so happens, and Senator Hoagland is perfectly entitled to his philosophy but his philosophy is 180 degrees opposed from mine. We recognized that. That doesn't say that his is wrong and mine is right or vice versa. The question at issue here is, what do the majority of the people in this Legislature feel should be the direction for this type of legislation in the State of Nebraska? I think that if Senator Hoagland feels he has a legitimate point, if he can get 25 votes, more power to him. But I want to point out to you that this bill has been the result of some of the most intensive attempts at cooperation of any bill that I have addressed in the 13 years I have been in the Legislature, and although I do not have the record of being the great compromiser that some members may have, I worked with almost everyone at various times on controversial and difficult legislation and I would have to say, Senator Hoagland, that it is not the responsibility of the authors of the bill to pursue 47 other individuals to see if they have any amendments to the bill. It has never been my particular position that I try to stir up

opposition for a bill of mine. I would most certainly not seek you out because of your known position. I did look at your amendments. I did not feel they had substance and so I did not accept them. But you did not ever contact me personally and ask me if I would consider them. Now at this point in time your attempt to place in the statute a goal of 100 years is not acceptable to me and I do not think it is acceptable to the majority of the members of this Legislature if they read the entire bill from cover to cover, because you immediately begin to pick away at the concept of the bill. I would ask the members of this Legislature not to vote for the amendment, to reject the amendment and then to deal with other substantive amendments which may be offered, and I will deal with them one by one or any way you want to. But remember this, remember this, there is always a danger when there is a rash of amendments, 15, 20 or 30 amendments, that the good old boy syndrome comes into play, and we'll say, well, give so and so an amendment. By giving in on a certain issue with thorough knowledge of what it will do to the bill, you stand to jeopardize a very finely tuned piece of legislation. There are other bills on this floor that are going to give you other opportunities to work in the area of water development, and Senator Hoagland has a number of them. I would suggest that if I were to take the approach that sometimes has been taken on 375 with Senator Hoagland's bill or anyone else's bill, that I would not be considered to be in good faith. I am not saying you are not in good faith, Senator Hoagland, but I am saying that this is not the time and this is not the place to redraft the bill which has been around for more than 1 year. There was an opportunity in the Public Works Committee and you sat on that committee. You did not take advantage of it then. You have had all summer long to discuss it with myself and Senator Kremer. It has not been done. Now you suggest....

PRESIDENT: One minute, Senator.

SENATOR SCHMIT: ....that this is the time and the place to place in the statute a definite length for reservoir life. I suggest that it is not proper. It should be rejected. It is not in the best interest of the state, and I ask the members of this body to vote against it.

PRESIDENT: The Chair recognizes Senator Fowler.

SENATOR FOWLER: Mr. President, I would disagree I guess with the tone of Senator Schmit's statements. Yesterday's debate Senator Vickers proposed an amendment that said that

the life span of these aquifers should be indefinite and there was great debate that that was not possible to determine, that it was impractical and so on. So rather than bring in a frivolous amendment, I think what Senator Hoagland is trying to do is find a compromise, a certain definite period of time that for a state policy we could say that we want to protect and preserve water. Now maybe some people think a 100 years is too long. That is probably three generations and maybe we shouldn't make plans for three generations in the area of water. But obviously we must be facing a crisis of at least one generation if we are having this bill in front of us. So someplace between 20 year life span and a 100 year life span I think we should establish a state policy for preservation of water. Now I don't know a lot about the technical areas, but I know that a lot of constituents come to me and say, what are you folks down there going to do about water? This seems to me the sort of thing that we can say that is a state policy we have established, a protection for a definite period of time in the State of Nebraska for underground aquifers. And, again, maybe a 100 years is too long. Maybe we should pick 50, but I think to pass a bill that enables an aquifer to be used up without some minimum guarantee I think would be imprudent on the part of this Legislature. It would be possible under this bill for the water to be used up in 5 years or 10 years and I don't think we want that to be the state policy. So I would hope that Senator Schmit perhaps could look beyond some of the personal considerations and some of the difficulties the bill has had in committee and on the floor and consider what is the wise public policy that this Legislature should establish. It seems to me a statutory minimum for water life in the State of Nebraska is a reasonable thing to do, and I think that Senator Hoagland's proposing a compromise between the Vickers' proposal received substantial support yesterday of an indefinite period. Well if we are willing to accept, some of us indefinite, I think a few more might be able to accept something less than indefinite, like a 100 years or 50 years. So I think that before this bill advances we should decide on a policy in the State of Nebraska for minimum life for an aquifer. And if Senator Hoagland's amendment is defeated, I would hope that we could come up with sort of consensus. I would hope that Senator Schmit would cooperate in this, some sort of consensus for minimum life for aquifers in the State of Nebraska.

PRESIDENT: The Chair recognizes Senator Kahle.

SENATOR KAHLE: Mr. President and members, I guess I am kind of bewildered this morning at those of you that think because we are going to make some sort of decision in this great body about how many years the aquifer is going to last that you are doing something. Good night, it changes every day. We are told now that there is 7 to 8 feet of snow in one of the Rocky Mountains that feed our streams and fill our reservoirs. Just a year ago we had nothing. As a farmer, I have learned a long time ago that the science of farming or the ability to actually plan the minute details often go array and astray because of the different things that can happen, but to pass legislation here saying that we are definitely going to have or even strive for a certain amount of the aquifer left in a 100 years in my estimation is certainly wasting our time. We don't even know what the good Lord is going to do with us in that time and how much rainfall we are going to receive, how much wind we are going to have to dry out our fields. We don't know what the crop production will be. We may have developed crops by then that use half as much water or twice as much. And if there has ever been an amendment that is worthless and useless and nonsense, it is this one. I know that you are going to say, well, we are going to have a goal we are going to shoot for. As I said yesterday, I have been at this a long time and we had people shouting foul some 40 years ago that we were going to pump all the water out of the aquifer and you could point to Texas where they have almost accomplished that. So I think what we are trying to do here in this Legislature is pass some legislation that we could work...as tools to work with. There isn't a one of us that wants that aquifer to be gone in a 100 years or 200 years or 300 years, but we certainly aren't going to guarantee anything by passing legislation in the Nebraska Legislature to do that. It is going to be up to the people and how we handle it and then up to the good Lord how much moisture is going to fall on us. So I oppose this sort of thing. It is just like trying to do something you have no control of. Thank you.

PRESIDENT: The Chair recognizes Senator Kremer.

SENATOR KREMER: What is the question? Is it my turn to speak?

PRESIDENT: Yes.

SENATOR KREMER: Mr. Chairman, I would like to visit with Senator Hoagland in the way of a question, if I may.

PRESIDENT: All right, you have a question then....

SENATOR KREMER: Senator Hoagland, your present proposal is that a life span of 100 years be the goal and that is the minimum, 100 years?

SENATOR HOAGLAND: Yes. What it is, Senator Kremer, is that the NRDs can do whatever they want in terms of regulating water but that has to be consistent with a 100 year life span. In other words, they can't permit 5 percent of an aquifer to be drawn out in one year.

SENATOR KREMER: Okay, thank you, Senator Hoagland.

SENATOR HOAGLAND: It is simply a floor of 100 years.

SENATOR KREMER: As I said yesterday, I only wish that were possible and I would go along with you. I would like to submit to you that about 10 years ago a gentleman by the name of Peter Huntoon, I believe he was with the Conservation and Survey Division, wrote a most excellent paper in the form of a pamphlet. I wish I had it with me. And he looked at the Upper Big Blue. I only use that as an illustration. There are about four areas like this in the state, but he wrote a paper and as I recall, he was pretty conclusive in his summarization of what is happening in the Upper Big Blue and that probably...and that was 10 years ago, and he said in about 40 years we would be out of water practically speaking and leave enough for domestic use and so on. So what would happen in your opinion if the Upper Big Blue NRD would go for a 100 year life goal? What would they have to do in your opinion to reach that?

SENATOR HOAGLAND: Well, Senator Kremer, if this amendment were adopted, why the Upper Big Blue would have to impose regulations so that no more than one-one hundredth of the water could be drawn out of that aquifer in one year. But as I indicated to Senator Schmit, I have another amendment up on 30 years, Senator Kremer. Could you support a 30 year minimum aquifer life goal? And, of course, this would set in only if the NRD set up a management area. What this amendment does, as you know, if the NRDs decide to set up a management area and start allocating water, then the minimum that aquifer has got to last is 30 years in the case of the second amendment. Now would you support a 30 year amendment, Senator Kremer? Could you support that? Now that should give the NRDs as much latitude as they need.

SENATOR KREMER: I am not sure I can answer your question whether I will support it or not at this point. I wish to

pursue it a little bit further. What would happen using as an example the Upper Big Blue if it would impose rules and regulations to extend the life of the aquifer for 100 years? Just a ball park figure, I would believe they would have to cut the application of water as it is being used today in the Upper Big Blue down to from 3 to 4 or 5 inches. That is nothing really. In most years there would be a crop failure on a dry year at least. It certainly would be impractical at that point. Now in order to do that, and I hope we can extend it a 100 years and I think we can, but along with that we are going to have to move some water and we will have to impound some water, and if we do those things, I think it can be done, when we get some kind of a plan worked out where we can restore some water in the State of Nebraska and I think...and I am going to in my closing remarks today, if we ever get to that when we will try to summarize the bill, I am going to show you a map as to what Nebraska has. It's a map put together by the Ogallala study and some of the USDA people showing what Nebraska's water is, how much we have and I will tell you we are pretty lucky people, and if we can do some of the things I have just now suggested, I will go along with you for a 100 years.

SENATOR HOAGLAND: Well, Senator Kremer....

SENATOR KREMER: Not now, until we get some of this water stored and if we get some of this water moved from one place to another.

SENATOR HOAGLAND: Well, Senator Kremer, I would also be willing to consider some friendly amendments to this amendment that we make exceptions for areas like the Big Blue where it would be impossible to do it. But I think in most areas of the state a 100 year life goal is not impossible at this point and there is no harm in putting that into the law.

SENATOR KREMER: I will agree with you in most places there is no problem but there is four or five in others that are developing where it would be a problem, and I think it would be impractical to cut....

PRESIDENT: One minute on your time, Senator Kremer.

SENATOR KREMER: ....the use of water down in my district so that it would last a 100 years unless some of these other things come into play. This is why I will have to oppose the amendment. Thank you.

PRESIDENT: The Chair recognizes Senator Howard Peterson.

SENATOR H. PETERSON: Mr. Speaker and members of the Legislature, I would just rise to oppose the Hoagland amendment. I'd say first of all I think both Senator Kahle and Senator Maurice Kremer have very ably argued the question. I would hope that this group who seems to be so intent on placing year figures in this bill would be as concerned or more concerned about making it possible for us to store water in this state. I really believe that the only answer to this problem in the long pull is for us to build sizeable dams all over this state wherever we can and it seems to me that ought to be our top priority rather than worrying about whether we can control the rain, whether we can control the flood, and I just would call the attention of this Legislature it is likely this year with the amount of snow we have in the mountains and the moisture we already have in the soil from last fall's rain that we will see go down the Platte River and the Missouri River and flooding our whole state enough water that probably would have lasted us for five years. So this is the reason why it seems to me that it is really very foolish for us to try to predict what nature is going to do.

PRESIDENT: The Chair recognizes Senator DeCamp. Question. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. The motion is, shall debate cease? Have you all voted? Well, record the vote.

CLERK: 26 ayes, 4 nays, Mr. President, to cease debate.

PRESIDENT: The motion carries. Debate ceases. Senator Hoagland, you may close on your amendment to the amendment.

SENATOR HOAGLAND: Thank you, Mr. President. I just have a few remarks in closing. Senator Schmit and I....Senator Schmidt indicated that he and I are 180 degrees opposite in the water issues from a philosophical point of view. I am not sure that is correct, but let me indicate in this particular area what my viewpoint is and if its 180 degrees - different than Senator Schmit's, I think that people in this state need to understand that. When it comes to dealing with the aquifers that we have in the State of Nebraska, it is my philosophy that we should make them last as long as we possibly can. We have the technology, we have the ability to measure what the aquifers are. We have the ability to predict pretty much how much water is going to be available and given the technology and the knowledge,

I think it is our responsibility as lawmakers to take affirmative steps to make those aquifers last as long as possible so that in many areas of the state we are not going to continue to use up all of the water in this generation and not have any water left for future generations and compel the return to dryland farming in many parts of the state. Now there was a major study done recently which indicated if current water use continues at the current rates and at expected growth rates, over one million acres, irrigated acres, are going to have to be returned to dryland farming in the next 30 or 40 years. That is going to have catastrophic results for agriculture in Nebraska and there are strong effective measures we can take today to prevent that reversion of dryland farming 30 or 40 years from now if we are willing to do it. LB 375 does not do that. LB 375 is a smokescreen. LB 375 is presented as a bill that is going to significantly advance the efforts towards preserving our underground water supply and that is wrong. If LB 375 passes, we are going to go backwards. If right now on the books of the State of Nebraska we have 12 percent of the water laws we need to deal effectively with the water problems in Nebraska, if LB 375 passes we are going to have 8 percent of the effective laws that we need. And it is very important for members of this Legislature to recognize and understand that. Now I am from Omaha. I don't have a lot of agricultural people in my district. I have no agricultural people in my district. I don't have the vested interest in this issue. I can stand up here on the floor of this Legislature and I can tell you what is going to happen out in central and western Nebraska if we pass this bill. This bill is a step backwards. It is not a step forwards in spite of what everybody may be telling you about this thing. Now we spent days and days and weeks and weeks in the Public Works Committee last year analyzing this and we analyzed it from one side to the other, and, yes, that is true, and we are adamantly opposed to this bill because we don't think it is going to be an advance. This bill is going to result in the NRDs being tied up in litigation when they try to set up management areas. If they do get their management areas set up, they are not going to have any effective tools to do anything. Now one thing that this bill begins to do a little bit of is it gives the NRDs the authority to manage water to a very limited extent and that presupposes an ability to predict what water use is going to be and what water reserves are going to be. There is absolutely no reason that we cannot put in a minimum aquifer life goal. It is perfectly consistent. And if a 100 years will not satisfy members of this body, I have another amendment up that puts that number at 30 years.



Senator Kremer talked about a 40 year problem. I cannot see why anyone would oppose putting in a minimum aquifer life goal of 30 years. It is not nearly what I would like but perhaps it is something that this body could adopt. One final comment, Mr. President, and then I will be done. Now, Senator Peterson, in your remarks earlier you talked about the possibility of sizeable dams all over this state as a solution to the water problem. Now that is another misconception that is being peddled by the people in the lobby right along with the misconception that LB 375 is the greatest bill since sliced bread. There are many, many areas of the state where we simply cannot build sizeable dams because there is not the feeder water for those dams, Senator Peterson. Let's take specifically the Enders Reservoir problem out on the Upper Republican Natural Resource District. That was a federally funded multimillion dollar project, a reservoir built between about 1948 and about 1953 to capture water coming out of Colorado from the Frenchman's Creek. Because of center pivot systems out there, over 3000 additional pivots have been installed in the last five years, why the Frenchman's Creek is drying up and the Enders Reservoir is drying up and that sizeable dam of the very sort that Senator Peterson is advocating is shortly going to be of no use because there is not enough water to fill the thing up. That illustrates the fact that in many arid and semiarid parts of the state there is not enough rainfall, not enough runoff to even begin to construct reservoirs.

PRESIDENT: One minute, Senator.

SENATOR HOAGLAND: So that is not going to solve the problem, Senator Peterson. We have got to also effectively manage our groundwater reserves. This amendment would be a small step towards doing that and I ask its adoption. Thank you, Mr. President.

PRESIDENT: The motion is the adoption of the Hoagland amendment to the amendment to LB 375 by Schmit and Kremer. All those in favor vote aye, opposed nay. There is a request for a record vote. It shall be done. Record the vote.

CLERK: (Read the record vote as found on page 376 of the Legislative Journal). 6 ayes, 26 nays, Mr. President, on adoption of the Hoagland amendment.

PRESIDENT: The motion fails. The amendment to the amendment fails. Ready for the next amendment, Mr. Clerk.

CLERK: Mr. President, the next amendment is by Senator

Hoagland. (Read the Hoagland amendment (2) as found on page 376 of the Legislative Journal).

PRESIDENT: The Chair recognizes Senator Hoagland.

SENATOR HOAGLAND: Mr. President and members, I don't want to take a lot of time on this amendment because the arguments are essentially the same as the previous one. This amendment says what it says. It says that if a management area is set up by a natural resource district and a management plan is developed, when they start imposing their controls, they cannot permit more than one-thirtieth of the total life of the aquifer to be used in any one year. Now it seems to me this is pretty minimal. Thirty years is one generation. If you vote in favor of this amendment, what you are saying is that you want the water in the aquifers in the State of Nebraska to last at least one additional generation, 30 more years. Now, frankly, I have a great deal of difficulty seeing how anyone could oppose that. If anybody is against that, I would be more than happy to attempt to respond to their remarks. I mean are you really against asking the NRDs to be sure our aquifers last at least 30 years?

PRESIDENT: The chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, Senator Hoagland said he had difficulty understanding how anybody could vote against this proposal. I have even more difficulty understanding how anybody could vote for it. What Senator Hoagland is doing, and I think this is the problem we haven't realized for a couple years, is he is reflecting the type of thinking he has been applying to water legislation all along, and that is, well, look we will just treat the underground water resources like, well like a building in Omaha, like a new house. We build it, we say we want it to last 25 or 40 or 50 years and if it is destroyed, fine. That is all we are shooting for. That water was put there by God and unless we use the system that we have got in the legislation already of trying to maximize it in conjunction with efficient use of it and taking into consideration changes as they develop whether they be recharge, whether they be new dams, or whatever, trying to make it basically a thing forever, preserved forever from pollution but also something that can be used. But I think, as I say, you are seeing laid out on the table maybe for the first time the real problem in water legislation and it is if you watched that last vote and the particular individuals that voted for it, it is that certain individuals in here have perceptions of

what really is or is not going on in the area of water that are completely out of touch with reality. And so, Senator Hoagland, if I were urging you to do one thing it would be let's say to talk to somebody in the area of water, talk to some of our geologists, talk to some of the people that have been working on it. Talk to somebody other than Lou Gerdes. Deal with some of the people that are really caring about it and have investments in it, and possibly you also can become a part of the solution rather than a part of the problem.

PRESIDENT: The Chair recognizes Senator Howard Peterson.

SENATOR H. PETERSON: Mr. Speaker and members of the Legislature, I would like to answer Senator Hoagland on his question. I believe probably I know the Republican River and the dams up and down that river about as well as anyone in this Legislature since I had a fertilizer plant in McCook and spoke all over that area on the use of fertilizer and watched the development of irrigation in that area. I happen also to be old enough to remember the Republican River flood of 1935, and I would submit to you, Senator Hoagland, that if we had another flood like that this year, we would fill all those dams up and then some, and that specifically is what those dams were built for. They were built to protect that area from another flood, and we need to understand that as we look at this whole water issue. Further than that, as you well know, the Enders people have before the Water Commission right now a request to transfer water from the South Platte River over to the Enders Dam. Now if we had all the dams that I talked about built in Nebraska and we had those full of water, then I would say it would be a great possibility this spring that as that flood comes down that South Platte which I am confident will happen, we could fill that Enders Dam completely full, and we would be filling it from a stream that does have water in it and at times in excessive amounts.

PRESIDENT: The Chair recognizes Senator Fowler.

SENATOR FOWLER: Mr. President, I would swear Senator DeCamp switched field on this issue in 24 hours. It's not necessarily surprising, I guess, but yesterday Senator Vickers had an amendment that says let's make this indefinite. Let's say that we will preserve this water indefinitely. And that was rejected because it was said, this can't last, we can't predict, we can't make it last indefinitely. Well, Senator Hoagland proposes today, well let's put at least a minimum life span on it, a certain

amount of time, and Senator DeCamp says, see Senator Hoagland is trying to use up the water. This is a resource that will last indefinitely. Now the whole concept of the specified period of time does not come from Senator Hoagland, it comes from LB 375. If it is not possible for this Legislature to establish a minimum amount of time with any certainty because of the rainfall, because of the snow, because of acts of God, because of technology, then how is it possible for an NRD board to do that? It seems to me that either it can be done and if it can be done it can be done by us or the NRD board, or it can't be done at all. Now the language that Senator Hoagland's amending uses the phrase "a finite period of time" as far as the definition of a groundwater reservoir life goal. Now if the bill says such a thing is attainable, a finite period of time, then that has to be something like 30 years, a 100 years or 5 years. If it is not possible, as Senator DeCamp seems to say, as others are saying, if it is not possible to establish that period, then this bill better go back to committee and consider a few more amendments. We are saying we cannot arrive at this number, that it is impossible to do. We are passing an unworkable piece of legislation. We are giving the NRDs an impossible task it seems according to debate on this floor. If so, then this bill really is kind of a fraud. We are saying we can't establish in this Legislature a minimum life goal, how do we expect an elected NRD board to do it? I don't think we can have it both ways, one way say that the water will last indefinitely and the next day say that we can establish a finite goal. If it is possible to have a finite goal, we can establish it as a state policy or it can be established by an NRD board. If it is not possible for us to establish it, it can hardly be possible for the NRD to do it. I think that Senator Hoagland's amendment may, in fact, point out contradictions within the philosophy on this bill. If you are not willing to accept Senator Vickers' concept of an indefinite life span for the aquifer, then there seems to be a desire to use that aquifer up. If you are saying today that, no, it will never be used up because we just can't predict the future, then really the bill cannot be workable. So I think that we should either adopt the concept of Senator Hoagland's amendment for a minimum policy of life goal or if it is not possible to have any sort of finite period of time like the bills says established as a policy, then the bill better go back to the Public Works Committee and we can find out a better tool for the NRDs to use to manage.

PRESIDENT: The Chair recognizes Senator Kremer.

SENATOR KREMER: Well, Mr. Chairman, this is rather difficult to stand up and oppose things that I would like to like this. I have no problem with talking of a 60 year minimum...or a 30 year minimum. I don't think there is going to be a single NRD, no matter who they are, that is going to go that far down. I don't think they will, but I want to say once again that it is impractical to establish a minimum not knowing what we can do with Nebraska's water until we store some water and then we are going to be able to look at what we can do in the State of Nebraska. I point out again that we have got a number of areas, 4 or 5 and probably 6 in the near future, when they discover there is going to be no way how we are going to determine how long we are going to make an aquifer last. I think it is going to be more than 30 years, but at this point I am not willing to put that into writing. This is not the time and I have full confidence that the NRD boards and they are people just like we are, they are even closer to it than we are, they are grass roots people, and they are doing the best possible job that they can, and I think we ought to let them do it.

PRESIDENT: The Chair recognizes Senator Dworak.

SENATOR DWORAK: Mr. President and colleagues, I certainly support putting a definitive number in this legislation. Whether 30 years or a 100 years or 70 years is right, I wouldn't say that, but I would say certainly a definitive number ought to be put in. I think Senator Kremer's arguments sort of beg for a minimum number. I guess it is a matter of what comes first, the chicken or the egg. He is saying, when we store water, when we put in conservation techniques, when we have increased technology, then we can talk about a minimum, or talk about a definitive period of time. I would just say the opposite, that if we put a definitive period of time and that, in fact, is what our objective is, then that will stimulate all these conservation tactics, all these storage schemes that need to be made to lengthen the duration of the life of that aquifer. You know, I think if this body doesn't believe strongly enough that this legislation is going to protect groundwater for a period of time of at least 30 years, then I wonder what we are doing in even fooling with it. You know, that is a lot of our lifetimes. Thirty years is not a very long time. I hope it is within my lifetime. But I certainly, and I think many people in this body certainly many people with land, with interest in agriculture think not only in terms of their lifetime but in terms of their childrens' lifetime, and I think basically if we really analyze it, most agricultural oriented people

think in terms of generations not one generation or two generations, but many generations. You know, if we set stewardship principle as far as our land and water and air are concerned, it is pretty reckless, it is pretty irresponsible to....actually it is kind of insulting to say that, hey, we are only going to preserve this for 30 years. That is kind of ridiculous because we all think in terms of time, in terms of land, in terms of water certainly longer than a 30 year period. In fact, when I heard the first proposal of Senator Hoagland's of a 100 years, we are going to use it up in a 100 years. We are going to plan to exhaust it in a 100 years. I thought, hey, that is not long enough, and now we are sitting here with 30 years which is a minute in the clock of the spectrum of land and water and air, and we won't even accept 30 years. Good heavens, what kind of a responsibility are we assuming? I think this is a serious matter and I think everybody ought to think and seek into their own conscience and in their own thinking before they cast a vote on this amendment. This is more important than just pride of authorship. This is a very significant important concept. Now are we actually going to say that we will not even accept a 30 year period? I can't believe we will do that. I think this is an issue that we really need to think through rather than just shallowly looking at the who is doing what, where and why, and take a look at this issue.

PRESIDENT: The Chair recognizes Senator Kahle.

SENATOR KAHLE: Mr. President and members, this is the most stupid discussion I have ever heard, that we think that we are so great that we are going to be able to figure out exactly how long something is going to last that we have no control of, or very little control of, or at least we don't want to control what we could do with it. I want to tell you something. In my own area in the early forties the wells were going in like toothpicks. It was nothing to see two or three well machines in the same area and in our area you can put a well in in half a day. And the word was that you guys are going to pump the water all out of the Platte Valley and you are going to turn it back to desert. That same time the tri-county system came into being and 10 years later we were digging drainage ditches to get rid of the water. Now what I am trying to tell you is that we can alter things to a degree and what Senator Peterson and some of the rest of them are saying, the water is here, the water is being provided for us, it's how we use it that makes a difference how long the aquifer is going to last. And it doesn't make any difference what kind of a....I would not be a part of saying that we were

going to pump the aquifer out in 30 years, 50 years, or a 100 years. My goal is to have it forever, and that can be done in my estimation, but it certainly can't be done with the malarky we are talking about this morning. Thank you.

PRESIDENT: The Chair recognizes Senator Beutler. The question has been called for. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. Record the vote.

CLERK: 7 ayes, 14 nays to cease debate, Mr. President.

PRESIDENT: The motion fails. The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, this is really kind of a funny situation because it is a trap situation and it goes like this. On day one they offer amendments that say, here is the cup and it is full, you can never do anything to tamper with the cup. And we say, well that is unreasonable because this is a resource, we are trying to manage it and use it and you take away all the tools and say you can't touch it essentially forever. And we say, that is ridiculous. And they said, aha, you don't want to make it so that the cup has to remain exactly the same forever, then we will offer you the other side of the coin, in other words, a complete repudiation of that. We will say, okay, you can use up the cup in 20 years, 30 years, which is not our goal either. Our goal is to maximize the cup, the aquifer as long as possible. Now can you imagine being on record here in the next few minutes voting to say, okay, we just all agreed this morning after 15, 20 minutes of debate that we are going to use up the Ogallala aquifer in 30 years, or 20, whatever the prevailing mood of the moment is. It is absurd. What is in the legislation is that we are going to manage that resource and as the technology and times change, we certainly hope we will make it last forever with management and use and control. But we don't want to play the games of, aha, you can never touch on one side or on the other, go to it, take her away. I repeat, it is a trap type situation and I think it takes away from the legitimate issues in the water debate and I think it makes it impossible. If you have some very legitimate amendments earlier or later I think it makes the credibility gone on those too. I wish you really hadn't done it this way because as I say I think it destroys the chances of any legitimate amendments you might have. It is a trap type game and I don't think it is right.

PRESIDENT: The Chair recognizes Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, I guess my comments or my thoughts are somewhat parallel in a sense to what Senator DeCamp has just said but, number one, I want to make it plain that I am voting no on some of these amendments because I think water legislation is too important to have a simple majority of those voting decide and I may well vote differently on a proposal at twenty-five votes to adopt than I will on a simple majority. Secondly, and I can agree with it totally, I can see the story, "Legislature Says Water to Last Thirty Years," and I would agree that is not the issue here, not at all, but it is being presented in that fashion. I can accept the concept that for planning purposes that a time period is put in but only if you include the full utilization of water diversion to extend that life period, the full use of dams for impoundment of water and recharge ground water, all of the other factors that are an intricate part of how long our water is going to last. To single out one portion of the issue and ignore the others it seems to me it would be an extreme mistake. The whole concept that I understood we started out six, seven years ago was that the water issue was going to at the extent possible, was going to be developed based upon the factual situation of the water in this state and that way we could not restrain or prevent the emotional arguments, that the basic decision would be on that basis. Now this morning I sense that we are doing an emotional thing that we are going to wipe out water in some definable period of time. The argument ought to be what factors ought to be considered, if you are going to do that, then the law ought to insist that every one of the things that we know have potential have to be taken into account assuming they will be done because that is what will cause them to be done, to maximize the use of available water most efficiently, and most beneficial, but only if you include them all. So I will not vote to put the one single factor disregarding all the other things of a simple one-thirtieth, one hundred year or two hundred year but what I will support at a point when there is an amendment that the time frame must take into account all of the possible alternatives for use of all of the water that is available to the state in arriving at what kind of a management system you are going to have. I think it is too limited to do as is being proposed with this amendment and I would not support it on that basis.

PRESIDENT: The Chair recognizes Senator Schmit.

SENATOR SCHMIT: Mr. President, I hope everyone listened to what Senator Warner said because without exception he put his



finger on, of course, the number one emotional aspect. If we were to adopt this thirty year proposal of Senator Hoagland's, every headline in the paper tomorrow would say we are going to be out of water in thirty years. This is exactly what the headline writers want, and as he said, that would not be a fact but it is what they would pounce upon and apparently that is what Senator Hoagland would like to have because it would give him another opportunity to berate those who as he says oftentimes waste the water. I think it is most important that we recognize under the present language of the law we can go for a sustained yield. It can last a hundred years, it can last two hundred years; the most recent study we have indicates that in two-thirds of the State of Nebraska under the maximum utilization of water you can't pump it dry. Now Senator Kremer and Senator Warner have pointed out there are areas that need recharge. There are methods available to us to provide recharge but in most instances the persons who are proposing this amendment are the ones who have also opposed recharge. They are the ones who have opposed the storage. In fact they are the ones who only last week voted to deny the urban legislator the right to vote. I would like to have seen that in the headline but I didn't see it. The point I want to make is this. There isn't any way, what we are saying here with the amendment of Senator Hoagland's is that if a man had a hundred thousand dollars in the bank, he says it will last for thirty years and then I am going to go get a job when my money is gone. What Senator Warner has said, what Senator Kremer has said, and others who have spoken here, Senator Peterson and others, is that we know we have this amount of money in the bank, but rather than to just use it up until it is gone, we are going to get a job now and go to work and we are going to try to add to it and supplement it and find other methods and mechanisms whereby we can make it last longer. I see the Hoagland amendment as being the absolute opposite of what I have in mind, of what Senator Kremer has in mind, and what I am sure this Legislature has in mind. There isn't any way, there isn't any way we can adopt that amendment and be consistent with good water policy in the State of Nebraska and I am confident that Senator Hoagland has to know that. There are areas of the state where we are going to have and we have water problems now but those problems are going to be resolved as Senator Kremer has said by that local action, by recharge, by development, other mechanisms, not by a statement in the law that we are going to maintain that for thirty years. It will not work. I ask you to oppose the amendment.

PRESIDENT: The Chair recognizes Senator Wesely.

SENATOR WESELY: Mr. President, members of the Legislature, this question is not a new one. It was discussed yesterday by Senator Hoagland and some others who tried to amend the bill in the intent section and I think what Senator Schmit and Senator Warner are talking about does make some sense. Of course, we don't want to talk about water running out in thirty years, we don't want to talk about a finite time frame and leave a legacy for our children and our children's children that no water will be available for them so I can agree that we want to allow our water to last for as long as possible, for eternity, if possible. But that is exactly what was proposed yesterday. Senator Hoagland had some language that was proposed in Section 1. We talked about in the Public Works Committee what we wanted to do in this bill and what we tried to work out in committee was the concept of sustained yield which would say that we sustain a yield from that aquifer that would maintain it for eternity, that would not decrease the amount over a period of years that eventually we would not have water available for our future generations in Nebraska. That was rejected in committee. It was rejected on the floor yesterday and that is what we have been hearing from some of the Senators opposing this amendment, that we shouldn't be talking about a finite set of years in which water should last, we should be talking about keeping it for everybody forever and talking about every other option we have to sustain the yield from that aquifer. But they can't have it both ways, they can't be against the amendment yesterday to do that and against this amendment today which is a much more modest attempt to try to keep up the water for at least that period of time. What we are talking about is a minimum number of years, thirty years. I would like to see our water last forever and I voted for and supported the efforts yesterday to try and put that into the law. We didn't get very far on that, didn't get very many votes, and yet today that concept is what is being espoused by these same people that opposed that effort yesterday, inconsistent, in my eyes, I believe, and I would believe in most of your eyes if you have looked at both of those issues. So I really think what Senator Hoagland is proposing is a very modest minimum target figure and I think what we really want to try and get at is the sustained yield concept, that we don't take more out of that aquifer than is recharged, that we don't take out more than that aquifer can sustain itself at so that eventually we don't run out of water in this state. I think that would be totally unfair for future generations and Nebraskans but in a way that is exactly the direction the state has been taking in many areas of the state. We have been talking about southwest Nebraska. That is always the one we point to first. That, obviously, has got some

serious problems and they are finding that some of their area is going dry. Well, I remember taking a tour down there that Senator Vickers graciously hosted a couple of years ago and I remember talking to a former Senator at that time about my concern for the fact that it looked like twenty or thirty years from now that that area was not going to be able to irrigate any further and I said that that was terrible, that we should have our water last forever, and we should not deny future generations the right to irrigate by not having water available. And that Senator said to me, look, we dryland farmed back in the Thirties and the Forties. We went to irrigation the last few decades and that was great. Those were the good times. But when we run out of water, we will go back to dryland and it was okay then, it will be okay now so what are you worried about. And this was an older gentleman and I was just stunned by that, the concept that we have had some real luxuries in the past few years, that we were able to irrigate, but the good times are now but they are not going to be here forever, and when we go back to dryland, well, that is not the worst thing because we used to have dryland and that was fine and we got by. Well, that is absolutely I think inconsistent and inconsiderate of the future of this state, that we should keep in mind the fact that if we have the benefits of irrigation which have really made our state flower, that we have become a garden spot in the world, not only our nation, that to deny irrigation possibilities for future generations is absolutely wrong. But this was the attitude at least one person had and I am sure it was shared by others and I believe at that point that I was absolutely opposed to that attitude, that we should try to maintain a sustained yield, not ever run out of water wherever we are at and talk about preserve and conserve...

PRESIDENT: One minute, Senator.

SENATOR WESELY: ...our water supplies in the State of Nebraska, and we all know this is a targeted problem. It is not across the state. We have had some areas where the water levels are rising so, of course, we are not going to be as concerned about that area, but at the same time we do have some areas where the prospects of in thirty years not having water around are viable, are possibilities that we should not reject, and so when we talk about at least trying to maintain them thirty years, I think that is what we are talking about. But for those who oppose this amendment, if you would come back at this point and talk about a sustained yield concept, about language that says we want to preserve our water supplies forever, then I would say that, yes, indeed, I can understand why you would oppose

this amendment. But if you oppose this and oppose that concept, then you are being inconsistent in my eyes and I think not fair to the future of the state.

PRESIDENT: We are ready then, Senator Hoagland, for you to close on your amendment to the amendment.

SENATOR HOAGLAND: Mr. President, the debate on this issue, on this amendment, has reminded me of that game that kids used to play where somebody whispers a word in the one ear and then it gets whispered around the circle, and by the time somebody tells you what...by the time the word gets around to the originator, it is a totally different word or phrase than what was originally put out. By the time Senator Schmit and Senator Warner and Senator DeCamp got around to arguing this amendment, I didn't recognize it. It was a completely different amendment than what is up there on Pat's desk. Indeed a member of the press came up to me about five minutes ago and said, "Now wait a minute. Your amendment says at least, doesn't it?" And I said, "Yes, it says at least." Now let me refresh your recollection as to what the amendment says as opposed to what people here are claiming that it says. If you turn to your bill book on page 5 and look at the section up at the top that defines ground water reservoir life goal, you can see that that language is set out very much in the terms that Senator Warner would like it to be set out. It says that the individual NRDs after considering all of the evidence and all the data have to arrive at an aquifer life goal which shall last a finite or an infinite period of time but it has to set a goal, after considering all this evidence and all the factors that Senator Warner suggests. All my amendment says is that when it comes to setting that infinite or finite life goal after considering all the evidence and all the factors, why that aquifer life goal has to be at least thirty years. It cannot be less than thirty years. That is all it says. It doesn't say anything more. It doesn't say anything less. Now Senator Dworak is really in a better position to close on this amendment than I am because his remarks I think have been exceedingly effective and I hope you will think back on what he said. This is a very, very serious problem and this is a very serious amendment, and if this Legislature votes down this amendment, it is going on record as saying as far as we are concerned, the NRDs can set a five year, ten year, or twenty year life goal. They can use the water up tomorrow as far as we are concerned. We are not going to put any minimum standards in the bill at all. Now I really think that we are being snookered by the proponents of this particular bill. I mean yesterday we were

told we can't have an infinite life goal, that just won't work. Earlier today we are told we can't have a hundred year life goal. Now we are told we can't have a minimum thirty year life goal, whatever we come in and propose. In committee, of course, we were told we couldn't have a sustained yield concept like Senator Wesely talked about a little while ago. Whatever we come up with, no, it just isn't workable, we can't have it. You guys really don't understand the water issues because you are from urban areas. You haven't spent enough time studying it, and if you were as smart as we were, you would realize how unrealistic your proposals are. Well, of course, that is ridiculous. This amendment is very simple and all the obfuscation and all the attempts to make it sound more complex than it really is shouldn't work. Now let me get back to one of the essential points that concerns me about LB 375 as much as anything else. I hope you all understand that this bill has been written by lobbyists who are working for principals who frankly don't want government at any level to be able to deal effectively with our water problems. That is where this bill comes from and I know it is being promoted and it is being billed as being something very different, but the fact of the matter is it was written by people who have been hired by people that don't want government in any level to be able to deal effectively with our water problem. So that is the truth of the matter and this bill was not going to help. And what we are trying to do is put a couple of amendments in it that are going to strengthen it and make it work a little bit better than it is going to work right now. As indicated before, if this bill passes in its current form, it is going to be a setback, and granted I am from an urban district, and granted I wasn't born or raised on a farm, but by the same token I don't have a vested interest in any of these...in most of the issues related to water and I really think that putting in minimum language of this sort for the reason Senator Dworak and others have said makes a great deal of sense and at least we have that minimum protection that otherwise we will not have if this is not adopted. Thank you, Mr. President.

PRESIDENT: Senator DeCamp, state your point.

SENATOR DeCAMP: Mr. President, could I have the amendment, since it is not printed in the Journal, could I have it read so that I know and everybody knows specifically what we are voting on.

PRESIDENT: All right, the Clerk will read the amendment.

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LB 375

CLERK: Mr. President, the amendment reads as follows:  
(Read Hoagland amendment (2) as found on page 376, Legislative Journal.)

SENATOR DeCAMP: Will this be printed in the Journal at some point in time?

CLERK: It will be printed because Senator Hoagland has offered it (interruption).

SENATOR DeCAMP: Okay, I would specifically request it and I will be asking for a roll call vote.

PRESIDENT: All right, a record vote and you want a roll call.

SENATOR DeCAMP: Yes, and a Call of the House. I think this tells us where we are on water (interruption).

PRESIDENT: All right, your first motion is for a Call of the House. The motion is, shall the House go under Call? All those in favor vote aye, opposed nay. Record the vote.

CLERK: 22 ayes, 2 nays to go under Call, Mr. President.

PRESIDENT: Motion carries. The House is under Call. The Sergeant at Arms will see that all members return to their desks, all other people leave the floor. Please register your presence. There are eight excused. Senator Hoagland and Senator DeCamp, there are eight excused. Have you all voted...the House is under Call. I would remind all members to register your presence as soon as you can so that we can proceed. Senator Landis, would you...Senator Beutler, would you show your presence. We now have seven excused, right, Mr. Clerk? Senator Sieck has shown his presence. Senator Chambers is the only member who is not at his desk. Proceed. We will proceed now with the roll call vote. The question is the adoption of the Hoagland amendment to the Schmit-Kremer amendment to LB 375. Proceed with the roll call vote, Mr. Clerk.

CLERK: (Roll call vote taken. See pages 376 and 377, Legislative Journal.) 9 ayes, 31 nays on the adoption of the Hoagland amendment, Mr. President.

PRESIDENT: Motion fails. The amendment fails. Anything further on Section 2?

CLERK: I have nothing further on Section 2, Mr. President.

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LB 375, 571

PRESIDENT: All right, Senator Kremer.

SENATOR KREMER: Mr. Chairman, members, I move that Section 2 be advanced to E & R.

PRESIDENT: The motion is to adopt Section 2. Any further discussion? All those in favor of adopting Section 2 will vote aye, opposed nay. Record the vote.

CLERK: 31 ayes, 2 nays, Mr. President, on adoption of Section 2.

PRESIDENT: Motion carries. Section 2 is adopted. Senator Lamb wishes the Chair to announce that the Reference Committee will meet under the North balcony immediately.

CLERK: Mr. President, while we are waiting, your committee on Appropriations gives notice of hearing for January 27.

Mr. President, I have a report of registered lobbyists for the week of January 15 through January 19. That will be inserted in the Journal. (See page 378.)

Mr. President, your committee on Judiciary reports LB 571 to General File.

Mr. President, Judiciary gives notice of hearing...cancellation of hearing for February 3 and that is signed by Senator Nichol as Chair.

PRESIDENT: We are ready then, Mr. Clerk, to consider Section 3 of LB 375.

CLERK: Mr. President, I have several amendments to Section 3. I believe the first I have is from Senator Vickers and he asks unanimous consent to withdraw that.

PRESIDENT: All right, Senator Vickers is withdrawing the first amendment. It is withdrawn, Senator Vickers. Go ahead.

CLERK: Mr. President, the next amendment I have is from Senator Beutler. Senator Beutler would move to amend Request #2505 by adding the words "proposed management" after the word "the" in line 4, page 6; and by adding the words "livestock and pasture" after the word "crop" in line 5, page 6, and by adding the words "proposed management" after the word "the" in line 5 on page 6.

PRESIDENT: The Chair recognizes Senator Beutler,



SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I have been discussing for sometime this morning with Senator Schmit the various amendments and the possibility of working out a kind of compromise and Senator Schmit has been very reasonable and has agreed to one particular amendment which will come up on Section 14 which will be introduced by Senator Vickers and myself, and with that agreement, I would like to request unanimous consent from the Legislature to withdraw all amendments...all Beutler amendments that are pending on request #2505.

PRESIDENT: All your amendments with the exception of this one on Section 14 that Senator Vickers had shall be withdrawn. They are withdrawn.

CLERK: Mr. President, the next amendment I have...I have two more amendments to Section 3, the first offered by Senator Hoagland. The amendment would read...would you like me to read the amendment, Senator? The amendment would read as follows: (Read Hoagland amendment (1) found on page 379, Legislative Journal.)

PRESIDENT: The Chair recognizes Senator Hoagland.

SENATOR HOAGLAND: Mr. President and members, this is a serious amendment as are the previous ones but I want to emphasize this because I would really like for you to pay attention for just a moment. If you look at page 5 and 6 of the bill, you will see that before....of the amendments... you will see that before a Natural Resource District can set up a management area they have to prepare a management plan. And pages 5 and 6 set out in considerable detail what that plan has to contain. I would like you just to review those pages for a moment and understand the complexity of what has to be contained in a management plan. Now if we don't adopt this amendment, what I foresee is litigation of the sort that has surrounded federal environmental impact statements which will be able to be used successfully by even a single landowner in an area to hold up the imposition of a management area. Now let me explain this in detail. One of the principal concerns that I have had about this bill, and this has been expressed by other people outside the Legislature who have reviewed it, is that these attempts by NRDs to set up management areas can be tied up indefinitely in litigation by the courts and the litigation would center around whether this management plan is adequate or not, whether it complies with the statute or not, and if you will look at page 5 and 6 where those thirteen subsections are set out, you will see that it is full of traps. It is full of opportunities for a Natural Resource District



to develop the ground water management plan that is not going to be sufficient in the eyes of some judge sitting out somewhere in some area in a lawsuit brought by just one landowner inside of a proposed management area who may object, who may not want ground water controls imposed and may want to continue his irrigation at the current level, may not want any government interference whatsoever in his ability to use the water underneath his land and will take an NRD to court and can tie the NRD's efforts to create a management area up in court for two or three years. Now the purpose of this amendment is simply to say that these shall not be subject to litigation, that nobody can challenge the adequacy of a management plan in the courts, that whatever the NRD does is acceptable and there will be no recourse in the courts and, of course, the purpose of that is to permit the NRDs, if they want to, if the Boards of Directors want to, to go ahead and proceed to set up a management area without having to litigate it every time it comes around. So I think this is a reasonable amendment. And you know, Senator Schmit has teased me previously about bills being lawyer relief acts. Well, believe me, LB 375 if passed in this current form in my opinion will be one of the major lawyer relief acts that we are going to pass this session, and this is an attempt to make it not a lawyer's relief act but to say that some of these things can't be litigated, that if an NRD wants to set up a management area, they can go ahead and do it without having to justify it in the courts for a one, two or three year period. Now I know that Senator Kremer has expressed concern about this aspect of the bill previously. I am interested in his views and would be pleased to attempt to answer questions any of you might have about this proposal.

PRESIDENT: Senator DeCamp.

SENATOR DeCAMP: Mr. President, is this amendment in the Journal?

PRESIDENT: It is not.

SENATOR DeCAMP: Okay, could somebody read the amendment to me and I am going to try to prove a point here shortly and I think I can.

PRESIDENT: Mr. Clerk, can somebody read the amendment for Senator DeCamp.

CLERK: Mr. President, the amendment...

SENATOR DeCAMP: Now listen to this.

CLERK: The amendment reads as follows: (Reread Hoagland amendment (1), page 379, Legislative Journal.)

SENATOR DeCAMP: Okay, those last four words, "shall not be challengeable in court on sufficiency 'or any other grounds'". Maybe I didn't go to as prestigious law school but I think I picked up a few things there and I can't imagine you putting into law something that says you can't challenge something in the court on any grounds whatsoever. so the ground management or the management plan, let's say if they know they have got that in the law, theoretically, and we are talking theory here because we don't know what is going to happen, theoretically they could put in things blatantly unconstitutional, taking of property or you name it, call that the management plan and according to this amendment you could not even challenge it in the court if supposedly it was unconstitutional. Now it doesn't worry me quite frankly because it is blatantly unconstitutional. It says "or any other grounds". Well, you will get your shot.

PRESIDENT: I will recognize you after...

SENATOR DeCAMP: I think maybe we are facing up to a specific danger here and that is a bill that they worked on a couple of years and that they spent the whole summer, Senator Kremer and Senator Schmit, who were in diametrically opposite positions in a number of areas, have now agreed. Schmit agreed to a moratorium which I thought the heavens would come down before he ever agreed to that, a number of other things. Kremer agreed to a number of things that I thought he would never, and now without ever seeing an amendment in the Journal, one after another, we are having whole new concepts saying you can't go to court on it now and I am sure Peter will explain that all the way and maybe he can, but listening to the way the amendment was read there and not having it to look at from a Journal and not having a chance to examine it otherwise, I think it is blatantly unconstitutional, and if it somehow might be defended as constitutional, I think it is unwise policy. So I would suggest if you are going to offer more amendments, maybe you ought to consider printing them in the Journal and at least letting us have a look at them and maybe taking them up on Select File or wherever where you would have to muster twenty-five votes for the ideas rather than trying to hope that somebody goes out of the room or to the bathroom and you can get a simple majority on something. I just think that if we are really going to...if you are as sincere about water as everybody claims, I mean everybody in here, then let's do it in kind of a halfway responsible fashion. Put the stuff so people

can read it in advance. Muster the number of votes it would properly take, twenty-five, instead of trying to do it with simple majorities. Show that we are really sincere on this thing and make it fair to everybody to know what is going on. But I have been handed a copy of it now they have made. If any suit, in any suit instigated concerning the adequacy of a ground water management plan...no, this is another one...this is another one, still don't have a copy of that one but the way he read it I see it blatantly unconstitutional telling me I can't go to court on any grounds if they do something.

PRESIDENT: Before I call on Senator Hoagland to close and to reply to that, the Chair would like to introduce members of the top ten group of supervisors from Goodyear up here in the North balcony. Would you please be recognized and welcome to your Unicameral Legislature, people from Goodyear, welcome. Senator Hoagland, you may now reply and please close on your amendment to the amendment.

SENATOR HOAGLAND: Mr. President and colleagues, this amendment was distributed to all of you yesterday. It was put on your desk yesterday and we have plenty of copies around if anybody would like to see it. Now I am afraid with Senator DeCamp we have played this whispering game again. Senator DeCamp emphasized the last five or six words of the amendment and left out the first three or four words that are controlling. What the amendment says is "The adequacy of the ground water management plan...", the adequacy, that is whether or not it complies with those thirteen subsections that are set out on page 5 and 6 that I called your attention to before "...shall not be subject to challenge...". Now let me take you back to all the lawsuits and all the newspaper articles you have read about the lawsuits involving the environmental impact statements over the past ten or fifteen years. I am sure Senator Schmit remembers very, very well the environmental impact statement litigation that held up the Norden Dam. I mean the Norden Dam might very well be built now, as Senator Schmit and Senator DeCamp know, if it weren't for the fact that every time somebody wrote an environmental impact statement somebody else could take it into court and hold it up for years. Now there is nothing about this amendment that prohibits people from filing lawsuits challenging the constitutionality of LB 375 or objecting to all kinds of other things the NRD might be doing. All this amendment says is that if an NRD has developed a thirteen point ground water management plan they can't be taken to court on the adequacy of that plan because don't you see that if everytime they develop a plan one disgruntled landowner in an NRD proposed management area

can drag the NRD into court, you are going to hold the whole thing up for one year or two years. You are going to be imposing thousand of dollars of attorney fees on the Natural Resource Districts. It is going to be a monkey wrench into the whole system, and what I have been trying to demonstrate to this body is that LB 375 is a step backwards, and one of the reasons it is a step backwards is because the NRDs aren't going to be able to set up control areas, they are not going to be able to set up management areas, all they are going to be able to do is hire a bunch of lawyers and litigate. Because every time that they develop a plan, we are going to be litigating, litigating, litigating, and that is great for the lawyers but it is not a way to solve the water problems of the State of Nebraska. All this amendment does is says the adequacy of that plan shall not be subject to litigation. Now if Senator Schmit and Senator DeCamp have some objections to the way this is written and would like to accomplish the purpose of this through other language, I would be more than happy to work out an amendment with them. Senator DeCamp, if you want to work out an amendment that will truly do what you think my amendment tries to do but doesn't do, let's get together and work that amendment out, but in any event, this is a good concept that needs to be adopted and I would ask for the adoption of this amendment. Thank you, Mr. President. I would ask for a record vote on this, too, Senator Clark.

## SENATOR CLARK PRESIDING

SENATOR CLARK: A record vote has been requested. The question before the House is the adoption of the Hoagland amendment to Section 3 of the bill. All those in favor vote aye, opposed vote nay. It takes a simple majority. Have you all voted? Once more, have you all voted? Record the vote. A record vote has been requested.

CLERK: (Read record vote as found on page 379, Legislative Journal.) 6 ayes, 22 nays, Mr. President.

SENATOR CLARK: Motion lost. I would like to introduce to the Legislature the mother of Senator Pirsch, Mrs. Lyle McBride from Omaha sitting under the South balcony. Will you stand and be recognized please? Welcome to the Legislature, Mrs. McBride. Are there any more amendments to Section 3?

CLERK: Mr. President, Senator Hoagland has another amendment to Section 3. (Read Hoagland amendment (2), page 380, Legislative Journal.)

SENATOR CLARK: Has that amendment been distributed?  
All right, Senator Hoagland.

SENATOR HOAGLAND: Mr. President and colleagues, all of you have a copy of this amendment on your desk written by a page whose handwriting is a lot better than mine. I asked that be done so it would be legible to you. Now if you are going to permit lawsuits against the NRDs, which evidently you are going to do, it is going to tie these things up for a couple of years, at a minimum let's adopt this amendment that says the NRDs can't get nailed with the attorney fees of the person that brings the lawsuit. Now we all know, Senator Haberman is familiar with the problems the Upper Republican Natural Resource District has because of the shortage of funds. The NRDs all raise their money through property taxes, property taxes that are levied on the people out in that area. If a control area is set up, they can levy a little bit higher mill levy than otherwise, but nonetheless it comes out of property taxes. The NRDs budgets are small, \$50,000, \$100,000, \$150,000, \$200,000. Now what this amendment is designed to do is prevent them from having to pick up the entire cost of litigation. Now this amendment is necessitated by another bill that is in the process this year that permits people to recover attorney fees when they sue the state or sue some political subdivisions. Now here is the problem that I have got and I hope you listen carefully to this. Let's say an NRD Board really, genuinely wants to set up a management area so they develop a management plan and you have got one disgruntled landowner who wants to hold the thing up for a year or two so he takes the NRD into court, and the NRD runs up \$20,000 in attorney fees and the landowner runs up \$20,000 in attorney fees. All this amendment says is the court cannot require the NRD to pick up the landowner's attorney fees, because you see what you are going to do if this bill passes with these provisions in it, you are going to be tying the NRDs up in litigation for a couple of years and they all are going to be going broke because they are going to have to use up their property tax money to pay not only their own attorney fees but the attorney fees of the people that are filing the lawsuit. Now I can understand that some proponents of this bill may have problems with the way this amendment is drafted technically and I see Senator DeCamp's light is on and we may hear about some technical problems with the way this amendment is drafted. He maintained there were technical problems with the way the last amendment was drafted and I have no pride of authorship. If Senator DeCamp and Senator Schmit want to sit down and work out with me an amendment that will do this in a technically correct way, let's go ahead and do it but let's not use

that argument as a smokescreen for saying, "No, we want to leave it like it is so the attorney fees not only will be sued but they have got to pick up everybody's attorney fees that come into the suit". Now that doesn't make any sense. This is a legitimate amendment. It is in response to a legitimate concern and I hope that you will give some consideration to voting for it. Thank you.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President, as I am prone to do, I think I will just lay her all out here on the table. Aren't we talking about the famous case out in Scottsbluff or wherever it was? Isn't that what it is all about, Petros? Huh? In other words, I am not sure Peter got stated the whole situation that bright and clear. There was a large award of attorney's fees as you probably all know involving a case, the Singleton case, or whatever the blazes it was, out in western Nebraska but that was only after, as I understand it, and I stand to be corrected if I am slightly wrong, that was only after they found the NRD was illegally taking the man's property and a jury all concluded that and gave him the proper amount for his property or what they deemed was proper and they gave him attorneys fees. Now I have mixed emotions on this whole thing. The way it is here obviously I don't think you can accept. Whether this issue should even be addressed in LB 375 is sure a separate question. I would submit that this is more a judicial matter. I guess I would almost suggest that it probably is not germane to the bill itself. You are getting into... it is really not into ground water. What it is into is the whole legal procedure, awarding of attorney fees, this kind of thing, and if we venture out on this limb, I guess I wonder how much further. So I kind of ask the Speaker or the Chair, is this germane? Have you had a chance to read it?

SENATOR CLARK: I haven't seen it yet but I will get a copy.

SENATOR DeCAMP: Well, I know Peter would never want to do something that wasn't just real germane, because I know his concern about that, and I just wonder if maybe the proper place for this isn't in a separate legal bill sent to the Judiciary Committee or something. Senator Nichol, do you have similar things in your committee on this subject?

SENATOR CLARK: Senator DeCamp, I would have to rule it is germane. It has to do with ground water management act. Senator Nichol, did you want to reply?

SENATOR NICHOL: Yes, Senator DeCamp, I think this is covered in other sections of the law and I don't believe though that it needs to be covered in the water law. I would suggest that you or Senator Hoagland look up...I don't know whether it is necessary to put that in water law because I think it is covered somewhere else in other legislation last year.

SENATOR DeCAMP: Yea, I kind of thought so, too. Well, I would object to it and I am going to vote against it and I would sure be willing to sit down with you, Peter, and talk about it in a bill or in...I think there is two or three bills before the Judiciary Committee now that deal with this very subject, attorneys fees. I think Karen has one and I don't know who else, all kinds of them.

SENATOR CLARK: Senator Burrows.

SENATOR BURROWS: Mr. Chairman, members of the body, I would strongly oppose this amendment. It simply tends to make dictators out of the Natural Resource Directors. In my hometown in the last couple of years, I paid taxes on both sides of a lawsuit where the Natural Resource District took on a ridiculous case of forcing the town to remove a water line that was in the vicinity of a structure that is next to the town. They took it to the Supreme Court and they lost, and in that circumstance, it was the town, and we had taxpayers paying both sides of the suit. Some of these Natural Resource District managers tend to feel very lofty in their positions and the individual, if he can't recoup any portion of attorney fees when he is unjustly taken to court by a Natural Resource District or involved in a lawsuit with it where he is unjustly treated, he is even in a more helpless position. The way the bill is presently drafted takes care of the NRD as long as their activities are reasonable. They don't have anything to worry about. The attorneys fees are only going to be awarded when they forgot about following the law, when they have got into an unreasonable position with the individual they are dealing with, and all the amendment will do is give them a little super power. They are okay right now if they follow the law and their activities are reasonable and prudent. They won't be paying any individual attorneys fees. I think this amendment is one of the worst things that could happen to the farmers in the State of Nebraska, to give that Natural Resource District, which may and probably ordinarily will operate fairly, give them the hammer over any individual they are dealing with in water law. I strongly urge the body to reject this

amendment and send the bill on its way in a more reasonable fashion, in a fashion that is reasonable the way it exists right now. Thank you.

SENATOR CLARK: Senator Warner.

SENATOR WARNER: I have a couple of questions of Senator Hoagland.

SENATOR CLARK: Senator Hoagland.

SENATOR WARNER: Senator Hoagland, my first question, I assume, and I am not arguing about drafting now, understand, but I assume that your amendment would apply to any federal or state court?

SENATOR HOAGLAND: Yes, Senator Warner, but it is limited that the suit has to be one challenging the adequacy of a ground water management plan.

SENATOR WARNER: Is it conceivable it could be in a federal court, would you think?

SENATOR HOAGLAND: Well, boy, you would have to ask Senator Schmit and Senator Kremer that, whether they anticipate the adequacy of ground water management plans being litigated in federal court? I would think probably not but conceivably if these can be litigated in federal courts as well, Senator Warner, you are opening up a whole new area of tying the NRDs up in litigation.

SENATOR WARNER: My assumption was that at least the state is getting assessed, you know, for attorney fees in some instances at least where it is federal court which is federally mandated. Senator Hoagland, I was wondering if your amendment ran contradictory to what the federal law or the federal courts, at least, now require?

SENATOR HOAGLAND: Two real quick points, those are suits pursuant to the federal civil rights act which specifically grants an award of attorney fees. Secondly, we don't have the authority in this body to say federal courts can or cannot grant attorney fees.

SENATOR WARNER: Well, that I understood and that is why I was wondering if we were forcing all suits into the federal court as opposed to state court indirectly because the odds of being reimbursed was there but maybe they would never be tried there is what you're suggesting.



SENATOR HOAGLAND: In federal court, they could only get attorney fees in an action under the civil rights act and I don't think they would have a civil rights action contesting the adequacy of a ground water management plan.

SENATOR WARNER: That is fine. The other question, thing, I listened to your argument on why they should not which as I understood is primarily as property tax saving or cost saving and I have a little difficulty in rationalizing that position with the other bill that you mentioned which does permit the recovery of attorney fees if the governmental subdivision is wrong, which I assume also would affect property taxes. What is the uniqueness about making this situation exempted from the other bill that the property tax argument would seem applicable to both or either?

SENATOR HOAGLAND: It is, Senator Warner, but here is what is unique about it. All this amendment applies to is the adequacy of the ground water management plan which an NRD has to complete and has to have approved by the State Director before it can set up a management area. Now I think that our law should attach such a presumption to the adequacy of that that no suit is permitted to challenge it at all and I made that clear in the previous amendment, but if we are going to permit suits to challenge it which evidently is the will of this body, why then at an absolute minimum let's not let the NRD have to pay property tax funds to pick up the other side's attorney fees as well as having to pick up its own attorney fees, and hopefully that will tend to discourage suits if people have to pay their own attorney fees so that the management plan can get adopted and we can have a management area and we can get on with controlling the use of water. But I think in response to what Senator Burrows indicated, this amendment is very specifically limited, only the suits to challenge the adequacy of the ground water management plan, nothing else, and the way I distinguished that from the other bills we have talked about, Senator Warner, is I think there should be a presumption attached to those or else we are not going to get any water managed in this state under 375 for one heck of a long time. As long as there is one disgruntled landowner in the proposed management area that doesn't like it, and you know there is going to be at least one person that don't like it.

SENATOR CLARK: All right, Senator Hoagland, do you wish to close?

SENATOR HOAGLAND: Mr. President, I don't want to beat a dead horse. We have already spent over an hour on this

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bill this morning and I know some of you aren't going to agree with this but I really want to illustrate the point that we are going to have a lot of lawsuits, and if we aren't careful, we are going to have the NRDs paying all of its property tax revenues or a substantial amount of those in litigation and never getting around to the hard job of managing water. Now I think this is one protection. This is going to deter some lawsuits. If people nonetheless file, at least the property owners within the NRD are not going to have to pay the tab. I think this is a reasonable amendment. I think if there were a different atmosphere on the floor and if LB 375 hadn't been lobbied so heavily, why this would be a reasonable amendment and it would probably get adopted. I would encourage you to vote for it. It is not going to interfere with the operation of the bill, of LB 375, in any way and it is going to give a little bit of protection and enable the NRDs to get down to the business of managing water a little bit more quickly than they will if this amendment is not adopted. Thank you, Mr. President.

SENATOR CLARK: The question before the House is the adoption of the Hoagland amendment to Section 3. All those in favor vote aye, opposed vote no.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Once more, have you all voted? The Clerk will record. There was no record vote requested that I know of. Do you want a record vote? All right, a record vote has been requested.

CLERK: (Record vote read. See page 380, Legislative Journal.) 10 ayes, 22 nays, Mr. President.

SENATOR CLARK: The motion lost. Is there any further amendments on Section 3?

CLERK: I have nothing further on Section 3. Mr. President. actually I have nothing further on Section...Senator Vickers, did you want to withdraw all your amendments, Senator, we had printed except for the one on Section 14? Is that right?

SENATOR VICKERS: Yes.

CLERK: Okay, Mr. President, I have nothing further on Request #2505 until we get to Section 14 then.

SENATOR CLARK: All right, the question before the House then

is the adoption of the following sections, Section 3 through 13. Senator Kremer.

SENATOR KREMER: Thank you, Mr. Chairman. As the Chairman has announced now we have discussed in detail Section 3. I understand there are no amendments from there on up to Section 14 so I do move, Mr. Chairman, that we adopt Section 3 through 14.

SENATOR CLARK: Through 13.

SENATOR KREMER: Is it 13? Okay, 13.

SENATOR CLARK: You have heard the question before the House. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of Sections 3 through 13.

SENATOR CLARK: Those sections are adopted. Section 14, amendments.

CLERK: Mr. President, I have an amendment offered by Senators Vickers, Beutler, Schmit and Kremer to Section 14. It would read as follows: (Read amendment as offered on page 381, Legislative Journal.)

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President, Senator Schmit and Senator Kremer have agreed with Senator Beutler and I to accept this amendment and this amendment simply inserts into the management area as far as well spacing is concerned the same language consistent with the language included in the control area with the exception it also leaves in the statute for the management area, it leaves in the bill the opportunity for the district to have a variance of whatever restrictions they might put on well spacing and I am sure Senator Schmit or Senator Kremer would like to visit about this also but I just would urge the body's adoption of this amendment.

SENATOR CLARK: Senator Kremer.

SENATOR KREMER: Mr. Chairman, members, I think this body had heard me say before that I wanted in this bill the right

to space wells but I did put a limitation on it in the bill. Now we have gone beyond that which is our agreement and we were anxious to provide for variances in a hardship case. A person that needs to come closer than the rule established by the Resource District, they can get a permit and if it is reasonable that permit will be granted. So the way the amendment is now drafted, I wholeheartedly support it.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Just to say this is more than just a compromise or concession. It is a major part of the bill because the whole issue is what controls are available. The conversation is local control and you are giving probably one of the biggest tools possible. I support it. It is a major grant of authority to the NRDs in their management plan, maybe bigger than anything else you could think of, and I applaud Senator Kremer for yielding on this point and Senator Vickers and the others for agreeing that it is time to reach a settlement and make the bill go so I support it completely.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I concur with what Senator Kremer has said. I visited with Senator Beutler and Senator Vickers, discussed with Senator Vickers my concern, that I was afraid that there might upon some occasion be an NRD that might use the restriction on the limitation to adapt to land use regulation rather than the control of water. And I explained to Senator Beutler that if it became apparent to this Legislature that the restriction on well spacing was being used not for the regulation of the water but for the regulation of the land use that I would ask him to take a look at it again in future years and we could approach it in that manner. There is one other point I want to make here, and I have made it many times, both before committees and on this floor. I believe that it would not be possible, I do not believe the courts would allow well spacing limitations so restrictive as to deny an overlying landowner the right of access to the water that was under his land, and because we have placed in the bill other methods whereby we can regulate the withdrawal of water, I am willing to go along with this proposal. As Senator DeCamp has pointed out, it is a major concession, not a minor one, and is something which should not be viewed as a minor concession. It is as I have said before on this floor so frequently when you run a number of amendments through, some of which are important and some of which are less important, we have a

tendency to view them all a bit casually so I would hope that you would read the amendment well, understand it. If you have any questions, ask Senator Kremer, Beutler, or Vickers to give their interpretation of it if they haven't already done so but I think that we want to recognize that I have...in the original draft of the bill it was not my recommendation to have well spacing limitations in the bill. I did not address that issue but I think that if we want to do it in this manner we should recognize that it is for the purpose of regulating the water withdrawal and not for the purpose of regulating land use. I want that intent stated on the floor, and if anyone has any other ideas about it, then I would hope that we would discuss it at this time. It is to be used for control of water and not for control or land use regulatory measures. Again I want to emphasize my earlier point, I do not believe the courts would allow an NRD to adopt well spacing limitations that were so restrictive as to deny the overlying landowner the right to the benefit of the use of the water without the use of the correlative principle which Senator Kremer has advocated for so long. So I support the amendment and I congratulate Senator Vickers and Senator Beutler on their working with us on this amendment and I thank them for withdrawing the other amendments.

SENATOR CLARK: Senator Koch.

SENATOR KOCH: Mr. Chairman, I move the previous question.

SENATOR CLARK: You are the last one so you have moved it. Senator Vickers, do you wish to close on your amendment or do you have anything further? Senator Beutler, do you want to close on it?

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, we have talked about water long enough I think. This is a big change and this change along with the changes that Senator Schmit and Senator Kremer made when they came back with Request #2505 makes it a piece of legislation that you might argue is a very good piece of legislation or you would argue at the very worst that it is a so-so piece of legislation but certainly it is a much better thing than what we had at the end of last session. So I certainly hope you will adopt this amendment and bring this discussion to an end temporarily. Thank you.

SENATOR CLARK: The question before the House is the adoption of the Vickers amendment. All those in favor vote aye, opposed vote nay.

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CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: 34 ayes, 0 nays on adoption of the Vickers, et al amendment to (interruption).

SENATOR CLARK: The amendment is adopted. Are there any more amendments to Section 14?

CLERK: Nothing further to Section 14, Mr. President.

SENATOR CLARK: Do you have any further amendments from here on?

CLERK: I have two from Senator Vickers but I think they will be withdrawn. I have nothing further to proposal #2505, Mr. President.

SENATOR CLARK: The question before the House is the adoption, after we get it from Senator Kremer, of Sections 14 through 23. Senator Kremer.

SENATOR KREMER: Mr. Chairman, I will make that motion providing that Senator Vickers agrees...

SENATOR CLARK: He is withdrawing his.

SENATOR KREMER: You are withdrawing? Then, Mr. Chairman, members, I do move that Sections 14 through 23 be advanced to E & R.

SENATOR CLARK: The question before the House is the adoption of Sections 14 through 23 of the bill.

SENATOR KREMER: Adopt, I am sorry, I said move. It should be adoption.

SENATOR CLARK: All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? Record the vote.

CLERK: 33 ayes, 0 nays on adoption of Sections 14 through 23, Mr. President.

SENATOR CLARK: The motion carried. The amendments are adopted. The motion now, Senator Kremer, is to advance

the bill as amended.

SENATOR KREMER: The moment has arrived and I am happy to move that LB 375 be advanced to E & R as amended.

SENATOR CLARK: Senator Lamb.

SENATOR LAMB: Mr. President, members of the Legislature, I support advancement of the bill. I would also hope that during this discussion you have noticed that there is no contradiction between this bill in its present form and LB 401 which is currently stalled on General File. Thank you.

SENATOR CLARK: Senator Hoagland.

SENATOR HOAGLAND: Mr. President and colleagues, I would like to address a general question to Senator Schmit and Senator Kremer about this problem of lawsuits and environmental impact type litigation that I talked about before, whether they think it is a problem, the problem of the proposed management plans being litigated in court? If they are litigated, if it is not going to slow up the ability of the Natural Resource District to take any effective action in water for years after they begin to work on a management plan, and what, if anything, they think we should do to LB 375 so that problem won't exist?

SENATOR CLARK: Senator Schmit or Senator Kremer, did you care to answer?

SENATOR KREMER: I really have no answer only to say that because of the visiting back and forth between some of the people who came to my desk, and I am not a lawyer, sometimes I wish I were, I did not feel qualified to vote green and hardly to vote red so I voted red and I would be glad to discuss what Senator Hoagland has to offer. This bill will come up later on Select File but in that I was not a lawyer I could not see a great deal of danger at this time. It has not happened before, therefore I saw fit to vote red.

SENATOR CLARK: The question before the House is the advancement of LB 375 to E & R. Senator Hoagland, do you want to...?

SENATOR HOAGLAND: I just want to make it clear that I, for one, cannot support this bill as long as this problem continues. There are a number of other problems we have with the bill, of course, but this is one of the major ones and I sure hope that we can work this problem out, because if

not, it is going to make the management of water very, very difficult.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, contrary to Senator Kremer I am not sorry that I am not a lawyer and I regret we don't have Senator Hoagland's support but I guess maybe we will have to struggle along without it. The matter of the litigation has been a prime concern of myself and Senator Kremer and every other member of this body for a long while. I have discussed it with Senator Beutler a number of times and other members of this body because we know it is a concern and we have attempted to address it and the Ag Committee made a series of visits to a number of the Natural Resource District offices this last interim period and I can tell you that many of the NRD managers and Boards of Directors are concerned about it. The problem of litigation between districts is a most serious one. As Senator Burrows has pointed out, the problem of litigation between subdivisions of government is a very, very serious one. We can utilize all of the funds they receive, whether it is a million dollars or fifty million dollars in litigation if we are not careful, but for Senator Hoagland to imply that the issue is of paramount importance under 375, the ground water management act, and not of importance in any other area is misleading. The issue is there and I have asked that it be addressed on a number of occasions and Senator Kremer and I in the previous session were on opposite sides of the bill and the principal reason that Senator Kremer opposed the bill was because he was afraid it would lead to additional litigation. The bill was defeated and there was a very expensive settlement of the case that was being discussed on the floor at great length but the point is they followed the procedure and the NRD in that instance lost their case in court. The award was more than fifteen percent of the offer by the County Planning Board and so, therefore, they were just within the law and they made the award and the attorney was granted a percentage of it. The point I want to make is that very seriously it ought to be addressed, Senator Hoagland, but not in 375 as a separate issue and as an isolated issue. The concern and we have discussed it, in some instances, with the NRDs themselves because in my NRD I believe my manager told me that we spent \$65,000 recently on attorney fees and that would do a considerable amount of conservation work and we don't want to get into that situation. But 375 will not generate any more litigation than which we already have and going. I would ask you to support the bill. I believe it represents some very serious efforts on the part



of members of this Legislature. Senator Hoagland says it is the result of lobbyists. I take issue with him on that. Senator Kremer and I and other members of this body spent hundreds and hundreds of hours on this bill as did the Public Works Committee and the bill represents the best thinking we could put together. As I said earlier, we are never going to agree entirely but I think we have come a long, long way, and as Senator Beutler has said, the bill as it is today is more acceptable than it has been at any time in the past. Senator Kremer and I had some very deep differences of opinion as we progressed and we compromised. I went about 85% of the way and he went about 10% and this morning we hammered out the other 5.

SENATOR CLARK: You have got about thirty seconds.

SENATOR SCHMIT: So that is where we are at this morning, and if you compromise like that, Senator Hoagland, you can almost always win.

SENATOR CLARK: I would like to introduce some people right at the present time, guests of Senator Nichol, Kenneth Dill and Harold Tripple of Scottsbluff. Also at the same time, they are sitting together over there, is Dale Caskey of Bassett, Nebraska, guest of Senator Lamb. Would you step out and be recognized please. Welcome to the Unicameral. Senator Hoagland, on the advancement of the bill. I hope we don't rehash the whole bill again.

SENATOR HOAGLAND: I will be very brief, Mr. President. I would just encourage all the members that are sitting here to take a look at the letters that have been distributed to you, one from the Twin Platte Natural Resource District and the other from the Upper Republican Natural Resource District. Those are both NRDs that are very active and water short areas, both of them are inalterably opposed to this bill for a whole variety of reasons set out in those letters. Now I would encourage you to read those over. I think this amendment that was adopted it clearly improves the bill but it still leaves a great deal to be desired, not just from a litigation point of view but from a lot of other points of view as well, and I think if people are truly concerned about getting down to the local Natural Resource Districts the authorities they need to effectively deal with water problems, then you are going to be truly concerned about the impact of LB 375 because listen to the Natural Resource Districts themselves who are going to have that responsibility including the Upper Republican Natural Resource District in Senator Haberman's and Senator Vickers' area which has had a control area for a couple of years now,

which has very diligently been working towards trying to solve the water problems out there. Those people have sent us a letter unanimously saying that LB 375 is not a good bill so don't be caught up in the sweep here today, don't be caught up in the fact that we were able to get one amendment through. There are a whole variety of problems with the bill. I would ask you to please read those letters and please be very skeptical that this is going to contribute to a long range problem...solution in Nebraska's water problems because I adamantly feel that it is not going to. Thank you.

SENATOR CLARK: Senator Kremer, did you wish to close on advancement?

SENATOR KREMER: Mr. Chairman, members of the Legislature, I attempt to point out some reasons why this bill is important and why it is necessary at this time. First of all, I would like to address several remarks made by Senator Hoagland. I would point out that there were only two of the twenty-four Natural Resource Districts from which I received any mail opposing this bill. On the other hand, I have heard others say and the Association say that in light of the many things they have to do, this bill, they do not need to take a definite stand on it. We have got more important things to do. We tried to the best of our ability I think, or mine at least, and I am sure others that have been involved to bring before you a bill that is reasonable and it will be a tool to deal with water problems in Nebraska. Now I would like to share with you why I think and others think that this bill is important. First of all, a number of you were present for the dinner provided by the Ag Council at the Legionnaire's Club last night and heard Senator Zorinsky make several very, very important statements. Among them he said this, that at the federal level and all across our country water is an issue that is going to have to have attention because of the seriousness of the thing that we are facing in the future and I tried to lay before you yesterday a reproduction of headlines. They are screaming clear across this country. Senator Zorinsky went on to say this, that the feds today are wanting and willing to have the states take care of their own water problems but because of the seriousness of it if they did not the feds would step in. Now if any who were there and feel that I have misstated in trying to quote Senator Zorinsky, tell me but I think this is what he said. Okay, I would like to address further or bring to your attention simply because there are those in this country that feel that someday we are going to bring water down from Canada and take care of the serious water needs we have in this country, I have here in my hand

a copy of the November-December issue of the Upper Midwest Report whereby some important people in Canada are quoted as saying you guys down there in the United States just kind of forget the idea of getting any Canadian water because you are not going to get it. We are going to need it all ourselves. That is out. To move water from some of the main stems into these water short areas is going to be impractical. We talked about that before in the Ogallala study. It is going to cost from six to eight hundred dollars an acre foot to move it so that is out. So what do we need? In our state, the State of Nebraska, we need to give some tools to somebody, a good plan and a method by which we can manage our water. Now the idea of restricting the use of water is simply not going to come in Nebraska as such. I wish all of you could be close enough so you could see this map that I hold in my hand. It is a map put together by the U. S. Geological Survey and supported by what the Ogallala study has brought out. Now this map, and you can come to my desk, I will show it to you, I will be glad to show it to you, it is color coded and if you can see from where you are the color you will note, Nebraska here at the top, most of it is green and even purple. What this color code means is that we have the most abundant supply of water of any of the states from the Dakotas on south into Texas. That means we do have water and believe me some of it is yellow where I am at, and I talked about that before, that means you don't have a lot of water, that means only one thing, that we have water and it is the only resource we really have. We do not have coal. We do not have natural gas. We do not have oil like other states do, like these other states do. So what do we have? We have got water and, believe me, it is going to be used and I doubt if it is practical or even feasible to attempt to do that so...

SENATOR CLARK: You have thirty seconds for the advancement of the bill.

SENATOR KREMER: Oh, my, I need another thirty minutes. Okay. So we have the water. Now we believe that this is another tool now we can use. We passed LB 577 that allowed the NRDs to go under control. We set up the NRD organization. That is grass roots. That is what the people want and we have got that. Okay, most NRDs have not taken advantage of going under control so here is another tool they can use. They can use a water management system and I think it is going to work. With these two tools, I think Nebraska can take care of its water and I think we are going to, if the whole world hangs together, we are going to come forth as the greatest agriculture state in all the United States of America. I move that we advance LB 375 to E & R.

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597, 714, 788  
LB 375, 127, 127A, 347

SENATOR CLARK: The motion before the House is the advancement of 375 to E & R. All those in favor vote aye, opposed vote nay. I would like to announce to the Legislature while we are waiting for the vote, there are sixteen students from the Nebraska School for the Deaf. Their Senators are Senator Stoney, Wiitala, V. Johnson, Kilgarin, Newell, H. Peterson, Apking, Chronister, Cope, Warner, Fowler, Carsten, Johnson and Burrows. Welcome to the Legislature. Record the vote. Voting aye.

CLERK: Senator Clark voting yes. 29 ayes, 4 nays on the motion to advance the bill, Mr. President.

SENATOR CLARK: The bill is advanced. I imagine in the intervening time, the Clerk has a lot of things to read in.

CLERK: Mr. President, your committee on Urban Affairs gives notice of public hearing for Wednesday, January 27.

Your committee on Business and Labor gives notice of hearing for Wednesday, January 27 and February 10.

And your committee on Public Works gives notice of hearing for Thursday, January 28. Those are all signed by their respective chairmen.

Senator Nichol would like to print amendments to LB 347; Senator Sieck to LB 127 and 127A. (See pages 381-384 of the Legislative Journal.)

Mr. President, your committee on Judiciary whose chairman is Senator Nichol reports LB 597 advance to General File with the committee amendments attached. (See page 384 of the Legislative Journal.)

Mr. President, I have a reference report referring LB 881-966.

Mr. President, Senator Koch would like to add his name to LB 788 and Senator Fenger to LB 714 as cointroducers. (See page 387 of the Legislative Journal.)

SENATOR CLARK: No objection, so ordered.

CLERK: Mr. President, your committee...oh, I have another hearing notice from Constitutional Revision and Recreation setting hearing for February 4, 5, 11, 18 and 19.

Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined and reviewed

SPEAKER MARVEL PRESIDING

DR. PALMER: Prayer offered.

SPEAKER MARVEL: Roll call. Please record your presence.

CLERK: Mr. President, Senators Beutler and Goll would like to be excused until they arrive. Senators Warner, Kilgarin and DeCamp would like to be excused for the day, Mr. President.

SPEAKER MARVEL: Have you all recorded your presence?

CLERK: There is a quorum present, Mr. President.

SPEAKER MARVEL: Before we proceed it is my privilege to introduce to the Legislature 30 new fellows from a program known as L.E.A.D. and L.E.A.D. is a two year program of intensive training of the young agricultural leaders for tomorrow. It is designed to build a storehouse of leadership, an informed group of young men and women who can deal with the issues and the issues that affect Nebraska agriculture in its relationship to the whole state and the nation. Each year 30 young Nebraskans, primarily between the ages of twenty-five and forty, are selected as agricultural leadership fellows for the two year course of study. Three-fourths of them are from production agriculture. Other candidates are selected from the ranks of agribusiness. They must have demonstrated a strong leadership potential. It was my privilege along with Senator Wesely to spend two hours last evening at Nebraska Wesleyan visiting with this fine group and so will you please give a hand to members of the L.E.A.D. program and when you get an opportunity maybe you can visit with them so let's give them a hand before we start. Welcome to the Unicameral.

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: A quorum being present, Mr. Clerk, any corrections to the Journal?

CLERK: The Journal is without error this morning, Mr. President.

PRESIDENT: Okay, any messages, reports or announcements?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports that we have carefully examined and reviewed LB 375 and recommend that same be placed on Select File with amendments; LB 267 Select File with amendments and LB 255 Select File with amendments, all signed

February 10, 1982

LB 335, 375, 454, 784

CLERK: 25 ayes, 21 nays, Mr. President.

SENATOR CLARK: Motion passed. The amendment is adopted. We are going to stop the bill at this point being as it is time. We have a few things to read in and then, Senator Barrett, I want you to adjourn us until tomorrow morning. I imagine you are on Medicare now, your birthday was yesterday? Alright.

CLERK: Mr. President, Senator Newell would like to print amendments to LB 454; Senator Hoagland to print amendments to LB 375. (See pages 636-637 of the Legislative Journal.)

Mr. President, your committee on Administrative Rules reports LB 784 advanced to General File. That is signed by Senator Vard Johnson. (See page 636 of the Journal.)

Mr. President, new resolution, LR 219 by Senator Lamb. (Read as found on page 637-638 of the Journal.) That will be laid over pursuant to our rules, Mr. President.

SENATOR CLARK: Senator Barrett, will you adjourn us until tomorrow morning as a senior citizen.

SENATOR BARRETT: I would be happy to, Mr. Chairman. I move that we adjourn until tomorrow morning, February 11 at 9:00 a.m.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed nay. We are adjourned until tomorrow morning at nine o'clock.

Edited by Arleen McCrory.  
Arleen McCrory

February 18, 1982

LR 198  
LB 259, 375, 378, 706, 717,  
766, 769, 773, 842, 947

CLERK: (Read the record vote as found on page 752 of the Legislative Journal.) 21 ayes, 22 nays, Mr. President.

SPEAKER MARVEL: The motion failed. The Clerk has some things to read into the record.

CLERK: Mr. President, Senator Cullan would like to print amendments to LB 375 in the Legislative Journal and 378. (See pages 752 and 753 of the Journal.)

Mr. President, Senator Hoagland asks unanimous consent to add his name to LB 259 as co-introducer.

SPEAKER MARVEL: No objection, so ordered.

CLERK: Mr. President, I have an announcement from the Speaker regarding the Special Order scheduling and also priority designations by Senator Chambers and Chronister.

Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 717 and recommend that same be placed on Select File with E & R amendments attached. (See page 754 of the Journal.)

Your Committee on Constitutional Revision and Recreation whose Chairman is Senator Labedz reports LB 766 advanced to General File with committee amendments; LB 947 General File with committee amendments; 769 indefinitely postponed; 773 indefinitely postponed; 842 indefinitely postponed and LR 198 indefinitely postponed. All those signed by Senator Labedz as Chair. (See pages 754 and 755 of the Legislative Journal.)

SPEAKER MARVEL: Senator VonMinden, your light is on, for what purpose do you rise?

SENATOR VON MINDEN: For information, sir. Mr. Speaker, fellow legislators, the past few weeks different Senators have brought in treats for us such as sugar and popcorn and apples, and Senator Peterson said he would bring in some honey. I also brought a treat for you this morning. At 11:30 the Abu Bekr Shrine Chanters from my District will be performing for you. They are 45 strong and I can vouch and tell you they are 45 male voices that is something you have never before. So stick around at 11:30 and appreciate the treat I have for you. Thank you.

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Mr. President, I have received the reports pursuant to statute on the State Patrolmans' Retirement System, State Judges' Retirement System, Nebraska State Employees' Retirement System and the Nebraska County Employees' Retirement System. Those reports will be on file in my office.

SPEAKER MARVEL: The first order of business today is LB 375.

CLERK: Mr. President, I have a series of amendments to LB 375. First of all, I do have E & R amendments that need to be adopted.

SPEAKER MARVEL: Senator Wesely, do you want to move the adoption of the E & R amendments?

SENATOR WESELY: Yes, I move the E & R amendments.

SPEAKER MARVEL: All those in favor say aye. Opposed no. The motion is carried. The E & R amendments are adopted.

CLERK: Mr. President, the next amendment I have is from Senator Hoagland. Senator, it is an amendment that you had offered earlier. It is Request 2404.

SPEAKER MARVEL: Senator Hoagland, do you ask for unanimous consent to withdraw the motion? Hearing no objection, so ordered.

CLERK: Mr. President, the next amendment I have is by Senator Kremer.

SPEAKER MARVEL: The Chair recognizes Senator Kremer. Senator Kremer.

CLERK: Senator.....

SENATOR KREMER: Pat, you're talking about my amendment to 375?

CLERK: Yes, sir.

SENATOR KREMER: This is my amendment and it is a very simple amendment. All the way through the planning of this bill I have made it very clear that I wanted the concept of 577, which is the control concept, wanted the control left intact. All my bill...my amendment does is it assures that if an NRD goes under control, they can exercise all their authority under that bill, 575. In other words, they can impose a moratorium if they feel



it necessary, if all other things fail, they can impose a moratorium for one year. Also they can impose a greater well spacing that is greater than the state law which is 630 feet. That is all the amendment does. And that has been my commitment and most of the people agree on that, so I move the adoption of the amendment.

SPEAKER MARVEL: The motion is the adoption of the amendment to 375 as explained by Senator Kremer. All those in favor of that motion vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of Senator Kremer's amendment. Mr. President, the next series of amendments I have are from Senator DeCamp.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: I am going to withdraw my amendments. How many more amendments are there from other members?

CLERK: I believe there are six, Senator. Six additional ones.

SENATOR DeCAMP: From my friend, Peter, over there, I'll bet, aren't they? I am going to withdraw mine.

SPEAKER MARVEL: Do you ask unanimous consent....

SENATOR DeCAMP: Yes.

SPEAKER MARVEL: ....to withdraw them? Hearing no objection, so ordered.

CLERK: Mr. President, the next amendment I have is from Senator Hoagland. It is found on page 636 of the Legislative Journal.

SPEAKER MARVEL: Senator Hoagland.

SENATOR HOAGLAND: Mr. Speaker and colleagues, I would ask you to refer to page 636 of the Journal in which the content and also the purpose of this amendment are set out. There are a number of us who well know who have been arguing for years now that the principal thing we need to do here in the Legislature is to get adequate authority down to the 24 locally elected Natural Resource Districts to be able to deal in an important and significant way with the groundwater depletion problems that we are experiencing in many parts of the state. If we are going

to have local control in the State of Nebraska why we need to give the local authorities the power they need to truly effectively deal with the problem, and some of the amendments that I am presenting to the Legislature today will enhance the amount of authority that the local Natural Resource Districts would have. Now as you know, over the last three or four years and extending into the next three or four years we have appropriated hundreds of thousands of dollars for the State Water Planning and Review Process. A number of reports have been or are being or will be prepared on various subjects. In the fall of last year the State Water Planning and Review Process completed the groundwater reservoir and management study in which they discussed all the various options that we have of regulating and controlling the use of groundwater in the state in order to preserve that water for purposes of agriculture and irrigation to as long an extent as possible. Now after that study was completed in November of 1981 with a number of appendixes and supplements and so forth, why the Natural Resources Commission held hearings on the study around the state and then the NRC published its own comments and recommendations of the Natural Resources Commission on the study itself. Now shortly I will be distributing to you a copy of those four pages of comments and recommendations. Now one of the principal recommendations of the Natural Resources Commission, and this just recently received some publicity in the paper following the last debate that we had on LB 375, was the recommendation that we here in the Legislature establish maximum allowable depletion rates that can be adopted by the Natural Resource Districts, and that maximum allowable depletion rate is 1 percent of the aquifer per year or as the Natural Resource Commission states it, 5 percent over a 5-year period. Now this amendment essentially incorporates that explicit recommendation of the Natural Resources Commission into LB 375. Now as I indicated, the comments and recommendations will shortly be distributed to you. They are in the process of being prepared now, but let me read to you a short paragraph in those comments and recommendations and this again is from the Natural Resources Commission. This language was passed around to the members of the commission, prepared by the staff and ultimately received the approval of the entire commission. Now let me read this so you will understand what this amendment does and where it comes from. Now the comments and recommendations say, "The Legislature should establish the maximum allowable depletion rate that can be adopted by an NRD. We recommend that the maximum allowable depletion rate be no greater than 5 percent of the saturated thickness over a 5-year period. Any NRD

would be free to establish a more restrictive rate than that established by the Legislature, if they desired." So what this amendment would accomplish is it would indicate to the Natural Resource Districts that in making a determination of the aquifer life goal and in implementing management techniques pursuant to that determination, they had to establish a maximum allowable depletion rate of no greater than 5 percent of the saturated thickness of an aquifer over a 5-year period. In other words, they would have to establish a hundred year aquifer life goal. Now I recognize that we talked about this on the floor before. There were a lot of criticisms before as to the amendment that we were then discussing in that it was not workable and it was not technically correct. Now we have had this amendment prepared following the recommendations of the Natural Resources Commission. It is technically correct. It will accomplish that goal. As I indicated before, we have invested hundreds of thousands of dollars into this study, into these series of studies. This is one of the explicit recommendations made by the commission. It fits hand and glove with the objectives that many of us have for groundwater management. It fits very neatly into the existing language of LB 375, and I would ask the body to adopt this amendment. Thank you.

SPEAKER MARVEL: Senator Lowell Johnson. Okay, Senator Schmitt.

SENATOR SCHMITT: Mr. President, it is a little difficult to follow Senator Hoagland's dialogue, but I would just like to say that I oppose the amendment as proposed by Senator Hoagland. Senator Hoagland refers to bits and particles of articles, news articles, letters, comments, all of which refer to a particular point but none of which really say what he is trying to say and that is that they support his amendment. The fact is they do not. I think you need to recognize if you would just read the language of the amendment, identification of the principal aquifers in the area, if any, on which a substantial segment of the district relies or will rely for groundwater supplies. If you would read that, you would think that Senator Hoagland could stand on a hill outside...out west of Omaha and point to the aquifers. The fact is it is a little bit difficult to see beneath the surface of the soil. It is an impossibility to describe what he is attempting to describe here. He has talked about many other areas of his amendment but what he is really talking about is something that cannot be done. Now the portion

that he talks about insofar as maintaining that 1 percent of the saturated thickness per year over any 5-year period is an indeterminate...it's an absolutely indeterminate factor. You have to use the best available information you have and that will vary from one part of the state to the other. It will vary from one area to another. It will vary within an area, and that is going to have to be determined on an area by area basis and the best you can do, the best you can do is to try to shoot for some kind of useful utilization of the aquifer. Now if you want to shut it off, which is really what Senator Hoagland is trying to do, Senator Hoagland is anti-irrigation even though he claims not to be. Senator Hoagland has picked up a point which he thinks is a popular one and one which he thinks is going to sell to the public and he is attempting by use of this method here with some other people who do not know what they are talking about either, most of them in the press, to sell a point. Now, Senator Hoagland, this is not a court of law. You do not need to convince a jury. You need to convince 24 of your peers that what you are doing is reasonable. I suggest that what you are doing is not practical, it is not possible, it is not reasonable, and there is no.... it makes no economic sense. This bill has had more discussion and more debate. It has been dragged back and forth for almost two legislative sessions. It has been fine-tuned more than any piece of legislation which I have seen in my fourteen years in this body. And I have read all of your amendments, Senator Hoagland, and I would have to suggest that none of them are of any substantive value. As Senator DeCamp had a series of amendments, and he withdrew them, because although they may have one or two words here or there which you could change, they do nothing of substance to the bill. I do not believe that if you are serious about wanting to enact water legislation in the State of Nebraska that you can be serious about the adoption of these amendments.

SPEAKER MARVEL: You have one minute.

SENATOR SCHMIT: I will not take any more time, Mr. President. We have taken far too much time debating an issue on which I am sure most of us have already made up their mind. I ask you to oppose this amendment and all other subsequent Hoagland amendments.

SPEAKER MARVEL: Senator Kremer.

SENATOR KREMER: Mr. Chairman and members of the Legislature, I'm not going to take a lot of time. I don't think

there is a single one of us here in this body that does not want to exercise to the best of our ability a plan and a program to make the water in Nebraska last as long as possible. And I repeat, I think we can do that. Now let's get down to the amendment, Senator Hoagland, that you are offering us today. You will recall our discussion following the hearing in the Public Works Committee last week and we talked about the 1 percent depreciation, and I was referred several times to the model that was set up and I use one example and there is four of them for areas like this in the state that was set up in the Upper Big Blue, and if this model is correct to any extent of being right, in the Upper Big Blue we probably will be running out of water approximately speaking in about 35 or 40 years. There is another report also bringing this out. Now if you shut down depletion to 1 percent, you are almost going to destroy any irrigation in that area. What's the alternative? Shut it down to the extent practical so that those that have purchased farms and real estate and mortgaged that land and put down an irrigation system, they are not going to pay off that mortgage. I believe and I think I have evidence to support it that if we will do what is practical and then store some of the water that is now flowing out of the state by the millions of acre feet, we can recharge these aquifers and we can make it last 100 years, but to do it now by law is going to shut down the irrigation in that area and in about two other areas in a certain length of time. We just can't do that. It is impractical. It won't work. If we want to destroy the economy of the state this is one way to do it, Senator Hoagland, and I think I discussed this with you very thoroughly after the committee hearing the other day. Therefore, I am going to have to oppose your amendment, Senator Hoagland, although I agree with you that we do want to make our water last as long as possible and I still think we can but this is not the way to do it. I oppose the Hoagland amendment.

SPEAKER MARVEL: The Chair recognizes Senator Lamb.

SENATOR LAMB: Mr. President and members of the Legislature, I rise to oppose Senator Hoagland's amendment. In Public Works just the other day we had a hearing on Senator Hoagland's bill, 958, which would do approximately the same thing he is talking about here, except in that bill he would give the Director of Water Resources the power to declare a control area, in other words, would give the state increased authority in the situation he

describes. I think this is contrary to the thinking of most of the people in this body and most of the people in the state that the state should take control of the water situation, that most of us believe the Natural Resources Districts should do it. His LB 958 would have gone in the other direction. He is incorporating part of the provisions of that bill in this amendment. As Senator Kremer has explained, this amendment is impractical and while I am certainly in support of measures which will conserve and enhance our water supply in the future, this is really an impractical proposal that Senator Hoagland has here and it seems to be another step in delaying the passage of the bill. I hope that the Legislature will turn down this amendment, go on and pass this bill which is a very significant step forward in allocating and in enhancing and in conserving the water supplies of this state.

SPEAKER MARVEL: The Chair recognizes Senator Vickers.

SENATOR VICKERS: Mr. President and members, I rise to support Senator Hoagland's motion and would point out that the terrible things that Senator Kremer pointed out that would happen as a result of this amendment in his area I respectfully suggest to Senator Kremer that perhaps he is a little bit mistaken since this amendment deals with a management area and in the area that he refers to, if I am not correct, if I am not mistaken, it already has a control area established. This does not affect any of the control areas of this state at all, those areas that are in a position where the situation is already out of hand to a degree, if you will. The decline is too much. This will not shut down or cause to be shut down any of those wells in those control areas. This is simply an indication that this great piece of legislation that is creating these management areas, these people will be able to allocate or to set their goal based on what our own Natural Resources Commission recommends to us. It seems rather strange to me that the same people that have stood up on this floor many times saying, we shouldn't do things with water until the Natural Resources Commission tells us what to do because we are allocating all those funds to them, we are waiting for those studies, now when the Natural Resources Commission comes up with recommendations, the same people stand up and say, ignore them, don't do it because it is going to cause a lot of calamities out there even though we are putting it in a section of the statutes that is to be administered at the discretion of local people. I find that rather hard to understand.

I guess I can't quite follow that logic. But I repeat, for the Imperial area, for the Big and Little Blue areas, that already have control areas established, a 1 percent requirement would do nothing since that is a control area and what this section is going into is a management area. It wouldn't shut down one well out there. The intention, I thought, of LB 375 was to prevent certain things from happening and I thought that is what Senator Hoagland's amendment was going to help clarify so that local people could manage the resource before the horse starting going out of the barn door. I would urge the body's adoption of this amendment.

SPEAKER MARVEL: Senator Kahle, do you wish to....?

SENATOR KAHLE: Mr. Speaker and members, I missed part of the debate this morning and I am sorry for that, but I would like to have Senator Beutler tell me what he means by 1 percent....Hoagland, I mean. One percent of the aquifer, how would that be determined? Could you help me?

SENATOR HOAGLAND: Senator Kahle....is my microphone on? Senator Kahle, earlier in the debate, I read a passage from the recommendations of the Natural Resources Commission following a study that has cost us several hundreds of thousands of dollars. This amendment implements that recommendation. Now let me read what the recommendation says. "We recommend that the maximum allowable depletion rate be no greater than 5 percent of the saturated thickness over a 5-year period."

SENATOR KAHLE: Thickness of what?

SENATOR HOAGLAND: The saturated thickness of the aquifer, and that measurement and that judgment as to what saturated thickness is would be made the local Natural Resource District.

SENATOR KAHLE: Well, my point is that the aquifer isn't a square box and it would be very difficult to tell what 1 percent or 5 percent of that aquifer would be. If you would put water in a pan, it is not flat on the bottom, the aquifer is not flat on the bottom. So I don't believe you can determine what 1 percent of the aquifer or 5 percent of the aquifer would be, especially not with the figures and statistics we have today. I don't think we know enough about that aquifer. We just heard the other day that it's as deep what, as 600 feet in places. I had no idea it was that deep. I know it is a couple of

inches in places too. So I just can't imagine using that as a part of the statute in the bill. It just doesn't...I don't think any of us know what the aquifer is and when you talk about depleting it in a 5-year period, we know that we have depleted the aquifer in a 5-year period of hand running and then the next 5-years it built back up again. So this is one problem that I have with trying to define that. But I think we are picking at gnats on this thing and we have worked this bill with...the best minds in the State of Nebraska have worked on it that know about water. I wish we could proceed with it. We certainly aren't going to solve all the problems with 375, but I believe it is a tool that we can help alleviate the situation that we find ourselves in. And so I would hope that we could defeat this amendment and get the bill passed. Thank you.

SPEAKER MARVEL: Senator Kremer, do you wish to speak to the Hoagland amendment?

SENATOR KREMER: Just one statement, Mr. Chairman. I want to answer Senator Vickers in a statement he made, and he is partly right, because when an NRD is under control it can exercise the authority to limit irrigation and things that they want, but there are certain areas in the NRDs that are under control....that are under the NRDs that are not under control, and that is what I was talking about. And there are other NRDs where no part of the area is under control but they are still getting a depletion that you have to shut them down practically speaking. Five or six inches of water will not produce a crop except on an exceptional year, so my answer to Senator Vickers is this. I made that statement with reference to part of the NRD that is not under control. Thank you.

SPEAKER MARVEL: Senator Hoagland, do you wish to close on your amendment?

SENATOR HOAGLAND: Mr. Speaker and colleagues, this amendment has been quite harshly criticized I think mostly for reasons that are wide of the mark and off the point. As Senator Vickers indicated, you know, we have been hearing for the four years I have been down here in the Legislature that we can't really do anything in the water area until we get these reports back from the Water Study Planning and Review Process. Well now we have a report that has come back from the Natural Resources Commission and let me remind you how the Natural Resources Commission



is made up. You know, there are 15 members on the commission 12 of whom come from the Natural Resource Districts themselves. The commission is heavily rural oriented. Membership on the commission is not based on a one-man one-vote basis. The rural and agricultural interests clearly dominate the commission, control its proceedings, control its comments and its recommendations, control its staff. Now that very commission now having spent hundreds of thousands of dollars of state funds has come back with this among other reports and the four-page summary of its recommendations has now just been distributed to you. I see some of you are reading it, and if you will look on the top of page 2, well you can see exactly the language that I have been quoting. Now the commission has come back with a very explicit recommendation, and it seems to me now is the time to fish or cut bait. You know, we have been postponing a lot of the very difficult decisions on water legislation until these studies were done. This particular study has been done, and I have a copy of it right here. Now take a look at this thing. This is the contract report itself right here which consists of about 75 pages and in addition to that there are three appendixes, Appendix A, an atlas of maps; Appendix B, management techniques; and Appendix C, action alternatives. Now this is very extensive literature indeed showing that an exhaustive study was made by the commission and the associated agencies in relation to this problem. And they have come back with a very explicit recommendation. Now Senator Kahle argues that, how are we going to come up...how are we going to figure out what this saturated thickness is? How are we going to figure out what the size of the aquifer is? How are we going to figure out what 1 percent and 5 percent are? Now with all due respect to Senator Kahle, I think there are much better arguments in opposition to this amendment than that one. We do have the scientific techniques now to make these kind of measurements, and, Senator Kahle, there are some good arguments against this amendment but I don't think that is one of the best. We do have the scientific capability to make these judgments. They can be made down at the local Natural Resource District level. The commission is comfortable with that scientific capability. I am surely comfortable with that scientific capability. Senator Kremer talks about the Big Blue problem where we may have an aquifer that only has 40 or 60 years. We have a lot of irrigation investment, what are we going to do about that? All right now, practically that is not a problem with this amendment. An absolute maximum amount of time it takes to recover your investment

on irrigation equipment is 20 years and in many situations you can get your money back out of an investment in 12 years and in some situations even 8. The NRD is still going to have a lot of flexibility to deal with these problems. There is nothing in 375 that mandates a management area. This restriction would apply only in management areas anyway. The territory that Senator Kremer is talking about is under a control area. Even if this 5 percent concept were applied in that area, there is enough flexibility to be sure that existing farmers are able to recover their existing investment.

SPEAKER MARVEL: You have a minute.

SENATOR HOAGLAND: I submit that is not a practical problem. Now again there have been a lot of allegations that this is impractical, that it is unworkable, and so forth, so on and so forth, that it erodes local control, so on and so forth. There is no agency in state government that is more conscious of having substantial local control at the NRD level than the Natural Resources Commission. I discussed earlier the composition and the rural orientation of that commission. You all have before you the comments and recommendations of the commission that explicitly say this is what we ought to do. Now people can stand up and say...scream that it is impractical and it is pie in the sky until the cows come home, but what those people are saying is that this four volume study that we have spent hundreds of thousands of dollars to have conducted by local oriented rural scientific experts and others around the state isn't worth the paper it is printed on. Those are the same people that were saying we couldn't do anything until the study was done.

SPEAKER MARVEL: Your time is up.

SENATOR HOAGLAND: Now I don't think that makes sense. I think the time is here now to make an important decision on water issues. The commission says this is the thing to do. Let's go ahead and do it. Thank you, Mr. Speaker.

SPEAKER MARVEL: Okay, the motion is the adoption of the Hoagland amendment to LB 375. All those in favor vote aye, opposed vote no. Voting on the adoption of the Hoagland amendment. Have you all voted? Senator Hoagland.

SENATOR HOAGLAND: I would like to ask for a record vote on this issue, Mr. Speaker, and so people know I will do

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that, they may want to get their votes up on the board.

SPEAKER MARVEL: Okay, go ahead, Mr. Clerk.

CLERK: (Read the record vote as found on pages 830 and 831 of the Legislative Journal.) 13 ayes, 26 nays, Mr. President.

SPEAKER MARVEL: The motion lost.

CLERK: Mr. President, the next amendment I have is from Senator Hoagland and it too is found on page 636 of the Legislative Journal.

SPEAKER MARVEL: The Chair recognizes Senator Hoagland.

SENATOR HOAGLAND: Mr. Speaker and colleagues, I would ask you to refer to page 4 of the comments and recommendations of the Natural Resource Commission which I passed out before and read the middle paragraph on page 4. And I think if you read that, why you will understand as clearly as anything I could say what the purpose of this amendment is. Now Senator Vickers also about half an hour ago distributed a very thoughtful memorandum and I will let him discuss that and argue that about the unfortunate effect of LB 375 where it limits the Natural Resource Districts to basing allocation systems solely on irrigated acres. And after you have had a chance to read that middle paragraph on page 4 of the NRC's recommendations, I would encourage you to read Senator Vickers memorandum because it is a very thoughtful memorandum indeed which I think points out the problems with restricting the Natural Resource Districts to one method of allocating which LB 375 does. Now let me review for the body just a moment what allocating means. Once a management area or a control area is set up, why the principal means that Natural Resource Districts will use presumably, at least the principal means they have relied on in the past in order to regulate the use of groundwater to preserve the future of our agricultural economy in the State of Nebraska, is to allocate the use of water among irrigators which is to say that in the next five-year period you can only use 75 acre inches a year. Allocating means limiting the amount of water you can put on on an acre inch basis, limiting the amount of water you can use on an acre inch basis. Now they may say that in one year you can use 22 acre inches a year and as the aquifer gets run down, five or ten years later they may move down to 18 acre inches a year, eventually 15 acre inches a year, to try and spread the loss out among all the people that have center pivot

systems or gravity flow irrigations systems. Now a lot of us that have been involved in this issue for several years feel that the local Natural Resource Districts should have maximum discretion in deciding how to allocate as the Natural Resource Commission says on page 4 that one of the principal problems with 375 that a lot of us have been complaining about since this bill was introduced and all through the hearing process and out here on the floor, is that LB 375 says the Natural Resource Districts can allocate only on an irrigated acre basis. Now Senator Vickers in his memorandum discusses the economic ramifications of that, and the economic ramifications of that are to virtually force the small farmer, the guy that owns 3, 4, 5 sections to install center pivot systems if he is going to retain his right, his full rights to use water...to use groundwater. In other words, this is going to have a distorting effect on the economy because we are going to be putting in statutory provisions that are going to have the effect of pushing the farmers in the direction of purchasing equipment... expensive center pivot irrigation equipment, installing that equipment in order to preserve their rights to use the water underneath their land. Now it seems to me that it makes a lot more sense to let the local Natural Resource District require allocation on any reasonable basis it wants, and that is what the amendment provides. Now when this Legislature in the mid-1970s passed the Groundwater Management Act to set up the control area system that is now in place, it did not put any such restriction on the ability of the Natural Resource Districts to allocate, and in the control areas that are now set up around the state we have three control areas set up around the state, why the Natural Resource Districts are not necessarily limiting allocation to irrigated acres. Now it really makes no sense to shackle the Natural Resource Districts and telling them that they can allocate only on one basis and not on any other basis. If we are going to have local control in the State of Nebraska, let's have local control. Let's give them the authority and discretion to do what they think is right to manage the water in their area in the most efficient means possible. And let's particularly not skew the statutes of Nebraska in favor of one particular industry, an industry that manufactures and sells center pivot irrigation systems which is what this provision in the law in my opinion has the effect of doing. Now again the Natural Resource Commission has taken the position on page 4 of the handout that it does not make policy sense to put those kinds of restrictions on the NRDs. Senator Vickers argues that point quite well in his

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memorandum and I would urge the Legislature to adopt this particular amendment. Thank you, Mr. President.

SENATOR HEFNER PRESIDING

SENATOR HEFNER: The Chair recognizes Senator Schmit on the Hoagland amendment.

SENATOR SCHMIT: Mr. President and members of the Legislature, once again we discuss the amendment which has been discussed repeatedly many, many times in many, many places by many, many people, most of whom again did not agree with Senator Hoagland. Senator Hoagland refers to....I would just like to point out inconsistency and I hope that...I do not mean to belittle Senator Hoagland's information or to deride his accuracy, but he has described a small farmer as one who owns 3, 4, or 5 sections. Now, members of the Legislature, if all members here who are in agriculture will stand up who own between 1920 acres and 3200 acres, I will be pleased to count you. You are talking about people who own 3000 acres, Senator Hoagland, as being a small farmer. I suggest to you that the average size of a farm in Nebraska is much, much less than that now, and I suggest that the rest of your information is basically as inaccurate and is lacking in facts as those facts you just used to describe a small farmer. The reason for allocating water upon irrigated acres is very simple. It is one which is logical, reasonable and effective. Why would you want to limit the pumping of water on a farm on which there is no pump? Why issue an allocation of water to a farmer who has no irrigation well? You are allocating inches of water to an area where only the good Lord can apply water through rainfall, and we have no control over that much as we might want to try sometime. You are bringing into this context a totally different point of view. You do not mention the fact, Senator Hoagland, that you are trying to use the principal of actual acres as a method of land use control. Now there are persons who would agree with you. The individual who does not choose to develop land would like to have an actual acre allocation perhaps of 3 inches per acre. If he owned 30,000 acres and he had 3000 acres under irrigation, he would still have 30 inches per irrigated acre, but you have to own 30,000 acres in order to irrigate it. Now if you find an actual small farmer who has 300 acres and you allocate 300 acres, he can only...3 inches per owned acre, he can only irrigate 30 acres. Absolutely impractical. If you want to use it as a land use measure, say so. If you want to use it as a method of allocation

of water, that is different. You only apply irrigation water upon irrigated acres. That is why it is in there that way. It was thoroughly discussed. It was debated, argued, will continue to be debated I am sure, but it gives the Natural Resource District an effective tool to limit the application of water in an area where that water is limited, based upon the amount of water that is there, the needs, etcetera. You made a reference to a proposal that will favor one type of equipment over another. I am amazed, Senator Hoagland, that you would be an advocate of an inefficient method of irrigation. Surely, we are to take advantage of new technology, most of us have done it.

SENATOR HEFNER: You have one minute left, Senator Schmit.

SENATOR SCHMIT: Another point I want to make is this. The old ditch type of irrigation which all of us used at one time or another has been abandoned for another reason. You cannot possibly take care of it any more. It is labor intensive, extremely labor intensive. Now someone said once if you wanted to limit irrigation, you should outlaw the pivot system. Well, you might try that, Senator Hoagland. It would be just the same thing and make about as much sense. I suggest you vote against the Hoagland amendment. Thank you very much.

SENATOR HEFNER: Senator Lamb.

SENATOR LAMB: Mr. Chairman and members of the Legislature, I also rise to oppose the Hoagland amendment. What we are really talking about here is what is fair. I contend that it is not fair just because I have developed the irrigation on my farm that my neighbor who for some reason or another has not yet developed it would be precluded from developing irrigation. Now that is the final result of what Senator Hoagland is proposing, is that whoever gets there first and has a lot of irrigated acres then the water will be allocated on the basis of what is already there. The other person who has not yet started to irrigate would not have any allocation, therefore he could not irrigate and I submit that that is not a fair situation, that the water should be distributed to my neighbor who has not yet put down a well on the same basis it is distributed to me. I think it is a very essential fairness issue and I would oppose the motion for that reason.

SENATOR HEFNER: The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President, I think I have discovered the flaw in our water problems. I was listening to Senator Hoagland and Senator Hoagland said, this will protect the small farmer with only 3, 4, 5 sections of ground. And I suddenly realized that Peter probably isn't that familiar with small farmers. I know quite a few small farmers and 3, 4, 5 sections of farm ground is a pretty good hunk of territory. What...5 sections would be 3000 plus acres, and if Peter is premising his water legislation and his various proposals upon these fundamental misunderstandings of what the world is like out there, then possibly we should be a little cautious before we immediately adopt legislation to protect "the small farmer with only 3, 4, 5 sections of ground." Most small farmers in my territory would be awful happy with even one section of farm ground, even less than that they would be pretty plumb happy with, most of them. So that may be wherein the problem lies, a complete misunderstanding of what really exists out in the world he is trying to change.

SENATOR HEFNER: The Chair recognizes Senator Wagner.

SENATOR WAGNER: Mr. Speaker, members, I have a question of Senator Schmit, if he would, please.

SENATOR HEFNER: Senator Schmit, will you yield?

SENATOR SCHMIT: Yes, Senator Hefner.

SENATOR WAGNER: Senator Schmit, a little bit ago you made some comments about land use planning and this is kind of a concern of mine because I think many times we try to get some land use planning in some water legislation, and now my question to you is, the bill the way it sits without the amendment is basically just water legislation and nothing to do with land use planning. Is that right? Would you care to respond to that?

SENATOR SCHMIT: The bill is a water legislation bill, that is right, Senator Wagner. The matter of land use is one which has to be determined by each individual land owner based upon his own assessment of the capability of his land and the manner in which he wants to use it.

SENATOR WAGNER: Thank you, because I think in the past we have had other legislation where they have tried to put it in pollution, that pollution is a factor to get like land use planning. In my area the attempt was made

to have a control area. Another county is trying to zone an area out there for land use planning. This legislation here would let them have a management area. I think it basically solves their problem. My point is if they want land use planning, they can come straight-forward with legislation that deals with that. Therefore, I would oppose this amendment and the other amendments that are in the Journal too. Thank you.

SENATOR HEFNER: The Chair recognizes Senator Burrows.

SENATOR BURROWS: Mr. Chairman and members of the body, I also would oppose the amendment. The discussion is centered around as if the only alternative for the farmer was to go to a center pivot if he was ditch irrigating and the amount of water was reduced. There are other alternatives and the main one that ought to be looked at is a shift to grain sorghum and soybeans that can raise decent or good crops with minimum amounts of water. We have had a state and we have had maybe some of the people from the University speaking of irrigation as if it were only corn as a crop that could be grown. Well, that is the big thing, if we get into water management, we are going to have to look at in the State of Nebraska and that is alternate crops. Sorghum in southeast Nebraska almost any year can raise a good crop, a near top yield with three to five inches of additional water from irrigation. As you go west it takes a little more than that. But we have the crops that are alternatives to corn and when the limitation on the amount of water comes down, when you have to put less water on it to maintain an underground supply, different crops are the main thing we have to look at. I think we have got to look to the University for the lead for what we write in law here, and they are not even recognizing really, many of the people there, the real choices we are going to have to make down the road as our water is depleted, and I think the Legislature is going to have to take the lead and maybe get the ideas out and get...and hope that the University will take the lead in pushing crops that take less water than corn, not necessarily just that top yield for that top dollar take. Sure, corn is the king of irrigated crops, but if we have to use less water, the alternative is not necessarily a center pivot. It can be less water by going to grain sorghum, soybeans and these crops that will get top yields and maybe more profitable yields than what corn will when you are pushing for that maximum yield under the high costs of energy and high costs of fertilizer. I would urge the body to reject the Hoagland amendment. I feel that Senator Hoagland simply doesn't understand it from the farmer's point of view what is going on out here



in agriculture, and maybe listen a little more to the farmers that are working on the bill. Thank you.

SENATOR HEFNER: The Chair recognizes Senator Hoagland for closing on his amendment.

SENATOR HOAGLAND: Thank you, Senator Hefner. You know, once again there have been a lot of accusations thrown around about that this is a wild idea and an impractical idea. Senator Schmit says this represents land use control, if Hoagland wants to use land use as a method, why doesn't he say so. Well, you know, I don't like to go around waving lists in the air because it reminds me of the late 1940s when Senator McCarthy was waving a list in the United States Senate, but let me do take an opportunity to wave one thing in the air right here, and this is the comments and recommendations of the Natural Resources Commission. I mean, there is nothing wild or impractical or off the wall about this. We have a four-volume study here that we spent hundreds of thousands of dollars of state funds to complete due to Senator Kremer's leadership. And let me read you what the Natural Resource Commission says we ought to be doing...the reason the Natural Resource Commission essentially is the father of this amendment. It says that alternatives 8(b) and 8(c) in the report here deal with the controversial issue of whether groundwater allocations should be based on the irrigated acres or irrigatable acres. The commission believes this issue should be resolved at the local level rather than by the Legislature and therefore opposes both alternatives. Each NRD should be able to decide for itself whether to base allocations on the irrigated or irrigatable acres. Each NRD should be able to decide itself. Now that is what our own rural oriented agriculturally dominated Natural Resource Commission says the law should say. That is what this amendment does. This amendment doesn't represent land use control. If this amendment represents land use control, why then the Groundwater Management Act represents land use control because under control areas Natural Resource Districts have always had the authority to allocate on any basis they want, not only on one basis of irrigated acres which Senator Schmit in his speech conceded favors one kind of irrigation system, favors one kind of development over others. Now this is a reasonable proposal. Senator Vickers' memorandum which he distributed earlier makes it clear as to how the small farmer who has 3, 4, or 5 quarter sections of land, and I misspoke earlier, I meant to say quarter sections of land, would be prejudiced and would be forced to install irrigation systems if he wants

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LB 259, 375, 603A, 831,  
909, 919A

to preserve his full rights to use the water underlying his land. There is nothing impractical about this. This is the recommendation and the product of the Natural Resources Commission, and I would urge this body to adopt it. Thank you, Mr. President.

SENATOR HEFNER: Those of you that support the Hoagland amendment please vote aye, those that oppose vote nay.

CLERK: Senator Hefner voting no.

SENATOR HEFNER: Record vote. Record.

CLERK: (Read the record vote as found on page 831 of the Legislative Journal.) 8 ayes, 19 nays, Mr. President, on the motion to adopt the amendment.

SENATOR HEFNER: The amendment lost. Yes.

CLERK: Mr. President, very quickly, if I may, your committee on Urban Affairs reports LB 909 advanced to General File with committee amendments attached. (See page 832 of the Legislative Journal.)

New A bill, LB 603A, by Senator Cullan. (Read title.) LB 919A by Senator Landis. (Read title.) (See pages 832 and 833 of the Journal.)

Mr. President, the Urban Affairs Committee will meet in Executive Session at 10:30 underneath the north balcony. That is Urban Affairs 10:30 underneath the north balcony.

Your Committee on Business and Labor will have an Executive Session at 10:30 in the West Senate Lounge. That is 10:30 this morning in the West Lounge, Business and Labor.

Senator DeCamp would like to print amendments to LB 259, and I have a letter asking unanimous consent to print a notice in the Journal. (See pages 833 and 834 of the Journal.)

Mr. President, the next amendment I have to LB 375 is offered by Senator Hoagland. It is found on page 636. (Read amendment.)

SENATOR HEFNER: The Chair recognizes Senator Hoagland.

SENATOR HOAGLAND: Mr. President, out of deference to the time restraints we have here what I would like to do

with the Chair's permission is to withdraw amendments 3 and 4 and go to amendment 5, and then that will be my last amendment today. I feel I have a responsibility to present these amendments that are advocated by the Natural Resources Commission and will just limit the debate to the three that I think are the most important if the Chair will allow that. So...I prefer, of course, to have all five adopted but evidently that is not going to be the situation so what I will just do is go to the 5th amendment and we can talk about that for a while if that is all right.

SENATOR HEFNER: Permission granted.

CLERK: Mr. President, the next Hoagland amendment is found on page 637.

SENATOR HOAGLAND: Now again, colleagues, I would urge you to look at page 637 of the Journal where the purpose and the content of amendment number 5 is set out, and in this connection I would like you to look at the handout of the comments and recommendations of the Natural Resource Commission and you will see written in the margin there on the front page the language which...from which this 5th amendment is taken. Now let me just read what the Natural Resource Commission says with respect to the issue of whether each NRD should be required to develop management plans for its area and to attempt to ascertain the size of each aquifer in the area. "To implement this policy the commission recommends all Natural Resource Districts be required to submit groundwater management plans to the Department of Water Resources by a certain date and update them periodically. Plans could be based on the best information currently available. Development of a groundwater model would not necessarily be required. Provision will have to be made for financing the preparation of these plans." Now there are two problems as I see with the way 375 is written right now in this particular area. Number one, the plans are not mandated and number two, there is no financing provided to underwrite the plans. Now if we are going to have plans developed by the Natural Resource Districts that will truly set out the nature and extent of the groundwater reserves and the surfacewater reserves in their area, we are simply going to have to give them additional funding to do a good and competent job. So this amendment 5 not only mandates the plans but it also gives the Natural Resource Districts some additional funds so it will be sure that the plans that are developed are indeed worth it. Now again it is a local control amendment. Again, it is an amendment that will permit us to get

even a better handle on what our groundwater resources and reserves are to give the NRDs the kind of information and the kind of tools they will need to make intelligent decisions about how to allocate groundwater if indeed that is necessary in their area. And, of course, in many areas of the state allocation will not be necessary to preserve the agricultural basis of our economy in the next 20, 40 and 60 years. Mr. President, I would ask that this amendment be adopted.

SENATOR HEFNER: Senator Lowell Johnson.

SENATOR L. JOHNSON: Mr. President, I would have a question for Senator Schmit.

SENATOR HEFNER: Senator Schmit, will you yield to a question?

SENATOR SCHMIT: I yield, Senator Johnson.

SENATOR L. JOHNSON: Senator Schmit, as you are aware, I am sure, and some of the other members of the body, there has been some concern expressed in my own district that LB 375 might affect surfacewater appropriations. This is mentioned here in Senator Hoagland's amendment. And I would just like to ask you if it is your understanding that LB 375 does not amend or repeal any of the other provisions of Chapter 46, Article 2.

SENATOR SCHMIT: You are entirely correct, Senator Johnson, it has no impact upon those sections of the law which you are referring to.

SENATOR L. JOHNSON: Thank you very much.

SENATOR HEFNER: The Chair recognizes Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, in previous amendments Senator Hoagland spoke long and somewhat eloquently about the necessity and the desirability of local control. He felt that was very important that the local districts have the ability to determine whether or not they want to go by the basis of the irrigated acres or actual acres. Now he turns right around and he says, local control is not any good, the Legislature shall mandate...the Legislature shall mandate that each individual Natural Resource District shall create a management plan. Kind of strange, Senator Hoagland, that you want it both ways. When it suits your

purpose to have it one way, you want local control. When it suits your purpose to have it the other way, then you want state control, depends on how the shoe fits, I suppose. I want to say also that the bill as presently drafted provides the Natural Resource Districts with the adequate funding, the same amount of funding that a control area has if it chooses to enter into a management plan. What you are doing here, Senator Hoagland, is that you are saying that every district by virtue of only drawing a plan shall thereby be eligible for the levying of the additional property tax. Now I have talked to a number of the Natural Resource District managers. They intend to draw those plans themselves if they need one. They do not anticipate any great expense as has been pointed out by Senator Kremer, DeCamp and many others on this floor. Those plans are to be drawn with the basic personnel available in the district at this time. They are not to be drawn by engineers and consultants and etcetera, possibly attorneys. They are to be drawn by local management people. There is no need for the funding that you have proposed for the drawing of the plan. If they do actually enter into a plan and declare and outline an area, then the money is there...the money is there in the present legislation. So I would ask you again to oppose the bill...to oppose the amendment, I am sorry, because, Senator Hoagland, you are contradictory. Now you are asking for state control and you are mandating an additional property tax levy when the managers that I visited with tell me they will not need it. If they in effect enter into a plan, then the funds are there. I oppose the amendment.

SENATOR HEFNER: The Chair recognizes Senator Koch.

SENATOR KOCH: Thank you, Mr. Chairman and members of the body. A question of Senator Hoagland if he would yield.

SENATOR HOAGLAND: Yes, Senator Koch.

SENATOR HEFNER: Senator Hoagland, do you yield?

SENATOR HOAGLAND: Yes, I will yield.

SENATOR KOCH: The recommendations which you have placed before us, those recommendations were before the Public Works Committee, were they not?

SENATOR HOAGLAND: Yes.

SENATOR KOCH: On a number of occasions.

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LB 375

SENATOR HOAGLAND: We....everybody...(interruption).

SENATOR KOCH: My question is, when Mr. Holmquist was before the Public Works Committee last Friday, and you were quoting this document as though it was an absolute source of the position of the NRC, were you there for the testimony of Mr. Holmquist?

SENATOR HOAGLAND: I was presenting a bill over in the Government Committee, Senator Koch.

SENATOR KOCH: Thank you, Senator. I would remind you Mr. Holmquist appeared before the committee and he stated to our committee that it was unfortunate that Senator Hoagland wasn't able to be present because of another bill introduction, and he recommended and said very succinctly that Senator Hoagland he felt was misinterpreting, that it was unfortunate that he did not come to the NRC and find out the final recommendation, the thing that they were concerned about, and he feels that Senator Hoagland and I think...and I am not going to criticize Senator Hoagland but in the best way Senator Hoagland is being somewhat naive in terms of the final recommendations, and so therefore I believe we should allow 375 to continue, and that we should not be trying to go through the same discussions again on the life of aquifers and how we are going to save the water. That is going to have to be a problem we are going to deal with in the future. So, therefore, I cannot support you, Senator Hoagland, based on Mr. Holmquist's testimony the other day before the Public Works Committee.

SENATOR HEFNER: Senator Hoagland, do you wish to close?

SENATOR HOAGLAND: Yes. Senator Hefner and colleagues, you know, once again Senator Schmit in his eloquent remarks, and I won't quarrel with his ability to state his arguments well, is asking this body to reject the recommendations of the Natural Resource Commission and the product of the State Water Planning and Review Process. Now as I have indicated before around here on my desk somewhere I have got these four volumes right here that this Legislature spent hundreds of thousands of dollars to have developed. You have before you the comments and recommendations that I have handed out. Now, Senator Koch, Mr. Holmquist was talking about another bill, a state control bill that I have introduced that was being heard. He wasn't talking about this amendment, and I cited these comments and recommendations as supporting the concept that the State Department of Water Resources should be able

to directly impose a control area and directly impose a maximum allowable 1 percent depletion rate. And I personally believe in that concept. Mr. Holmquist said that these comments and recommendations do not support that concept a hundred percent and he is correct, they don't. But all of you can read these comments and recommendations in relation to this particular amendment. This particular amendment is drawn on the basis of these comments and recommendations, on the basis of this four-volume study we spent all this money to complete. And once again Senator Schmit is suggesting that we are going to reject these because these don't make sense, because they are not thought through, because the State Water Planning and Review Process was not representative of people around the state or whatever reason he might give. Now it seems to me again there comes a time, you know, Senator Kremer has provided the leadership and the funding and the planning of these studies. These have been under way for four or five years now. The results are finally coming in and I think it is time for this Legislature to support those results. Now I am not optimistic about the results of this amendment, but believe me I am going to be coming to this Legislature this year and next year and in future years asking it to implement the recommendations of the Water Planning Process as they are brought to us. I have held up an instream flow bill introduced last year. I have held it up again this year, so we can wait and see what the final recommendations are. And I am going to have an instream flow bill next year and it is going to implement some of the recommendations of the Water Planning Review Process and I hope Senator Schmit will support that bill next year. If Senator Kremer changes his mind and decides to run for reelection and is reelected, I hope he will support that bill next year, because, you know, we are spending lots and lots of money to have these studies done and this is one set of studies that I, for one, don't think should be left to collect dust on the shelf. Now you all can read these recommendations that are on your desk. This amendment faithfully incorporates these recommendations, Senator Koch, and I think if Senator Koch or others believe in doing something to effectively address this water problem, they are going to vote for this amendment. Now, Senator Hefner, I would ask once again this be a record vote. I am not going to ask for a Call of the House. I am not going to bring everybody in here, but I am going to ask that it be a record vote so you all know that your vote is going to be published in the Legislative Journal and it is going to be one of those votes that is going to count towards your attendance records at the end of the session. Thank you.

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LB 375, 604

SENATOR HEFNER: Senator Hoagland was closing on his amendment. Those of you that favor the amendment please vote aye. Those of you that oppose please vote no.

CLERK: Senator Hefner voting no.

SENATOR HEFNER: Has everybody voted? Record.

CLERK: (Read the record vote as found on pages 834 and 835 of the Legislative Journal.) 11 ayes, 25 nays, Mr. President, on adoption of Senator Hoagland's amendment. Mr. President, the next amendment I have is from Senator Cullan, and I understand he wishes to withdraw. Is that right, Senator? I have nothing further on the bill, Mr. President.

SENATOR HEFNER: The motion is to advance the bill. Any discussion? The motion is to advance the bill. Those that are in favor of it please vote aye. Those opposed vote nay.

CLERK: Senator Hefner voting yes.

SENATOR HEFNER: Has everyone voted? Record.

CLERK: Mr. President, Senator Cullan requests a record vote. (Read the record vote as found on pages 835 and 836 of the Legislative Journal.) 36 ayes, 1 nay on the motion to advance the bill, Mr. President.

SENATOR HEFNER: LB 375 is advanced. Now we will go to LB 604.

CLERK: Mr. President, I have no E & R amendments to LB 604. I do have an amendment from Senator Cope to the bill. It is found on page 759 of the Legislative Journal.

SENATOR HEFNER: The Chair recognizes Senator Cope on the amendment.

SENATOR COPE: Mr. President and members, a very short amendment. If you will turn to page 758, on page 3, line 5, 7 and 8, and what it is, it eliminates the installation of additional summer-winter air conditioning, that is with 309 funds. In other words, it doesn't...it strengthens 309 perhaps, I don't know, but it is very I think unimportant.

SPEAKER MARVEL PRESIDING



March 1, 1982

LB 375, 604, 604A, 682, 738

Your committee on Enrollment and Review respectfully reports we have carefully examined and engrossed LB 375 and find the same correctly engrossed, 604 correctly engrossed; 604A correctly engrossed, all signed by Senator Kilgarin. (See page 896 of the Legislative Journal.)

Mr. President, LR 215 is ready for your signature.

PRESIDENT: While the Legislature is in session and capable of doing business I propose to sign and I do sign LR 215.

CLERK: Mr. President, your committee on Government reports LB 682 advanced to General File with committee amendments attached; 301 as indefinitely postponed, both signed by Senator Kahle as Chair. Banking reports 738 advanced to General File with committee amendments attached. (See pages 896-899 of the Legislative Journal.)

Mr. President, the Revenue Committee will meet in executive session today at 4:00 p.m. in Room 1019, Revenue Committee Room 1019 at 4 o'clock.

Mr. President, just a reminder that the Appropriations Committee has changed their hearing for this afternoon from Room 1003 to Room 1520. That is Appropriations from 1003 to Room 1520.

PRESIDENT: The Chair would like to take this opportunity to introduce a guest of Senator Nichol who is standing right down here at the front, guest from Scottsbluff, Nebraska, Dr. Glen Vandenberg. He is under the South balcony. Doctor, would you stand and be recognized. Welcome to your Legislature.

CLERK: One final item, the Education Committee reports LB 709 advanced to General File with committee amendments attached. That is signed by Senator Koch. (See page 900 of the Legislative Journal.)

PRESIDENT: And we also have a guest of Senator Kahle under the North balcony, Dr. Ed Alderman, optometrist from Minden, Nebraska. Doctor, would you stand up and be recognized and welcome to your Unicameral. Dr. Alderman. The Legislature will be at ease for a moment.

EASE

PRESIDENT: The Legislature will come back to order and Speaker Marvel has some announcements to make at this time. Speaker Marvel.

March 5, 1982

LB 375, 69

CLERK: (Read LB 375 on Final Reading.)

SENATOR CLARK PRESIDING

SENATOR CLARK: All provisions of law having been complied with the question is, shall the bill pass. All those in favor vote aye, opposed nay. I would like to introduce to you 33 seniors. They are in the South balcony, or they were, from Yutan High, guests of Senator Schmit. Bill Campbell and Kim Benning are the sponsors. Also we have guests of Senator Kahle under the North balcony, Mr. and Mrs. Jesse Adkins and son, Chip, from Minden, Nebraska. They are the parents of Cathy Adkins, one of our Pages. Under the South balcony also we have Vernon and Adalee Allan of Scottsbluff; Henrik Follin, their Rotary exchange student from Denmark. They are under the South balcony. Welcome to the Legislature, all of you. The Clerk will record the vote.

CLERK: (Read record vote as found on page 1016 of the Legislative Journal.) 45 ayes, 0 nays.

SENATOR CLARK: The bill is declared passed. We will now take up LB 69. The Clerk will read LB 69.

CLERK: Mr. President, I have a motion on the desk.

SENATOR CLARK: Alright, read the motion.

CLERK: Mr. President, LB 69 was reconsidered, the vote on Final Reading was reconsidered on February 23 of this year. I now have a motion from Senator Marsh to return the bill to Select File for a specific amendment and the Marsh amendment is found on page 780 of the Legislative Journal.

SENATOR CLARK: Senator Marsh.

SENATOR MARSH: Thank you, Mr. Chairman and members of the Legislature, as I have told many of you in person and as you have read, the intent is to move LB 69 to Select File for the specific amendment which will be to strike all except the provisions for mandating that child care centers will use safety restraints for children which they are transporting. I will appreciate your support in returning LB 69 so that something may be salvaged from this piece of safety legislation. I urge your return for this specific amendment.

SENATOR CLARK: The question before the House is the return of LB 69 to E & R. All those in favor vote aye, opposed vote

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LB 807, 126, 525, 375

diverse subjects as fluoride, NRDs and a wide variety of others. There is one provision for school districts and that has to do with the question of district elections or at large elections that appears in Chapter 5, Section 108, but generally speaking, I do not know of a school's power to place on the ballot educational questions for the decisions of the voting public. I do not know that there is an initiative/referendum form for schools generally other than for their form of governance.

SENATOR BEUTLER: Okay, thank you, Senator Landis. Again, I would encourage you to support the bill.

SPEAKER MARVEL: Senator Landis, are you ready to close?

SENATOR LANDIS: I will only make this offer to the body. In the event you have questions about 807, I hope that you will pass this bill along and bring them to me before Select File. I have indicated to all parties that on Select File whatever amendments are appropriate I will attach and in the event you have questions about it, I will make every effort to see that they are answered clearly by the time this comes up for Select File discussion. Thank you, and I move the bill.

SPEAKER MARVEL: The motion before the House is the advancement of LB 807 to E & R initial. All those in favor of that motion vote aye, those opposed vote no. Have you all voted? Clerk, record the vote.

CLERK: 34 ayes, 0 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is advanced.

CLERK: Mr. President, if I may, I have a report of registered lobbyists for week of February 25 through March 4. (See page 1018 of the Legislative Journal.)

I have a study resolution offered by Senators Cullan and Koch. It would call for the Education Committee to conduct an interim study on the intellectual and mental capabilities and capacities of our youth. That will be referred to the Exec Board for reference. (Re: LR 241. See pages 1018-1019 of the Journal.)

Mr. President, Senator Cope asks unanimous consent to print a communication from the White House in the Legislative Journal. (See pages 1019-1020 of the Legislative Journal.)

Mr. President, LB 126, 375 and 525 are ready for your signature.

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LB 126, 375, 525, 877, 941

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business I am about to sign and do sign engrossed LB 126, engrossed LB 525 and engrossed LB 375. The next bill is 941.

CLERK: Mr. President, LB 941 offered by Senator Clark. (Read title.) The bill was read on January 19 of this year, referred to the Banking Committee for hearing. The bill was advanced to General File, Mr. President. I have no amendments to the bill.

SPEAKER MARVEL: The Chair recognizes Senator Clark.

SENATOR CLARK: Mr. President, members, I can talk as long or as short as you'd like on this bill. What it probably should have been in the first place is a revisor of statutes bill. All this does, LB 87 of the '79 session was clearly amendatory. This section is 45-114 to 45-158 but instead they were placed in part (E) labeled "Collection Procedures." We have contacted the revisor of statutes on this and the revisor says the only thing that is needed is this particular bill for her authority to put in the statutes the way it should be in the first place. I would move for the advancement of 941 to E & R.

SPEAKER MARVEL: The motion is to advance the bill to E & R for engrossment. All those in favor vote aye, opposed no. Have you all voted? Clerk, record the vote.

CLERK: 31 ayes, 0 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The motion is carried. The bill is advanced. The next item of business, LB 877.

CLERK: Mr. President, LB 877 by Senator Rumery. (Read title.) The bill was first read on January 18 of this year. It was referred to the Public Works Committee for hearing. The bill was advanced to General File, Mr. President. I have no amendments to the bill.

SPEAKER MARVEL: Senator Rumery.

SENATOR RUMERY: Mr. President, members of the Legislature, this is a rather simple bill. It simply provides an opportunity for people who have drivers' licenses in Nebraska who are working outside the state or outside of the country, have an opportunity to renew that license without coming back to their home county to do so. The provisions are made that they can...and they can also do this ninety days ahead if they are here and they know they are going to be gone while their license

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LB 126, 375, 525, 686, 809, 869

SPEAKER MARVEL: Underneath the south balcony as guests of Senator Richard Peterson from Pierce, Nebraska, Mr. and Mrs. Bill Stanacek and daughter, Shannon, and Sue Wickman and Elisa Sorano who is an exchange student from Mexico. If you are in the room, will you please hold up your hands so we can see where you are. Yes.

CLERK: Mr. President, the Government Committee would like to hold an Executive Session underneath the north balcony upon adjournment today. That is the Government Committee. Senator Beyer would like to print amendments to LB 686 in the Legislative Journal. (See pages 1024 and 1025 of the Legislative Journal.) Mr. President, Senator DeCamp offers explanation of vote. And your Enrolling Clerk has presented to the Governor for his approval LBs 375, 525 and 126.

SPEAKER MARVEL: The next item is 869.

CLERK: Mr. President, LB 869 offered by Senator Stoney. (Read title.) The bill was read on January 18, referred to Miscellaneous Subjects, advanced to General File. I have no amendments on the bill, Mr. President.

SENATOR STONEY: Mr. President and members of the Legislature, I can spare you my speech if Senator Chambers would agree to spare you his, and maybe we could do something with this bill. He says, oh, no. Well, that doesn't surprise me. Ladies and gentlemen, what LB 869 attempts to do where LB 809 attempted to deal with the youth that would use altered identification in purchasing alcoholic beverages, in the case of LB 869 it addresses that person that provides through manufacture or production of this identification this illegitimate identification to youth. Now it is my understanding even here at the Nebraska State Fair there are youth who can through paying a certain fee purchase an identification that would verify that they are of legal age. What this bill would do as the other one would is to establish a minimum. There is no minimum at the present time. It is a Class III misdemeanor as it was in the instance referred to in LB 809. This would establish for a first offense a person that would be charged and convicted of this offense a 24 hours in jail, a \$100 fine. A subsequent offense and conviction would result in 48 hours or a \$500 fine. Ladies and gentlemen, this...well, I will leave it at that. I move that the bill be advanced.

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature,

March 11, 1982

LB 672, 126, 375, 525

favor vote aye, opposed nay. Record the vote.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of Senator Beutler's amendment.

PRESIDENT: Motion carries. The Beutler amendment is adopted. Any further amendments?

CLERK: Nothing further, Mr. President.

PRESIDENT: Senator Goodrich.

SENATOR GOODRICH: I move the bill be advanced.

PRESIDENT: Motion to advance LB 672 to E & R for Engrossment. Any discussion? Who requests a machine vote? Senator Vickers, all right, machine vote has been requested. All those in favor of advancing LB 672 vote aye, opposed nay. Go to the board. Motion is on the advancing to E & R for Engrossment of 672. Have you all voted? Well, Senator Goodrich, do you want to close the afternoon out with a Call of the House to make sure everybody is here to say goodbye for the weekend, or.....?

SENATOR GOODRICH: Wait a minute, just a second, I think I have got a green one coming here. I need one more after this one too. Okay.

PRESIDENT: Record the vote.

CLERK: Senator Wesely, do you want....you do? Senator Wesely requests record vote, Mr. President.

PRESIDENT: Record vote has been requested, Mr. Clerk.

CLERK: (Read the record vote as found on pages 1145 and 1146 of the Legislative Journal.) 25 ayes, 13 nays, Mr. President.

PRESIDENT: The motion carries, LB 672 is advanced to E & R for Engrossment. Anything further to read in at this time?

CLERK: Mr. President, Public Works is going to hold an Executive Session underneath the north balcony upon adjournment. That is Public Works underneath the north balcony. Governor Thone has communicated to us that LBs 126, 375 and 525 were signed by me on March 10th, 1982.

Mr. President, Special Order scheduling by the Speaker.  
(Re: LB 726.)