

PRESIDENT: Speaker Marvel, shall we recess for just a short while and then I think we only have about one more bill that has come in? About ten minutes? We will stand in recess until about...no, we had better not recess, just at ease. Yes, because we don't want to recess for that short period of time. We will be at ease then for about ten minutes. The Chair recognizes Speaker Marvel.

SPEAKER MARVEL: I would like to make my daily speech and that is that we are stalled now once again. We have got bills that are about ready to come out of the bill drafter's office. We can not do a thing with them until you sign them and put them on the Clerk's desk. So those of you who have legislation that is ready to be processed, will you please give them to the Clerk and if necessary, contact the bill drafter and urge them to get the bills out too. We have got to get the bills out so that they can be referred so that they can then proceed on their normal path and we are helpless unless you can get your bills out and get them signed.

PRESIDENT: All right, we will now stand at ease for ten minutes which will be about twenty minutes till eleven.

EASE

PRESIDENT: The Legislature will come back to order. The Clerk will continue reading new bills. Would those of you who desire to have any bills introduced this morning had best get them in because we are going to adjourn rather soon. So I would urge you to get them to the Clerk's desk at once, otherwise we are going to adjourn.

CLERK: Read LB 92-98 by title for the first time as found on pages 117-118 of the Legislative Journal.

PRESIDENT: One more, if there are any more to bring up to the Clerk's desk, bring them up right now. I have been advised if you would like to have your bill be number 100, get up here quickly. We are offering all kinds of inducements to bring them up at this time. We can't offer any discounts though.

CLERK: Read LB 99 and 100 by title for the first time as found on page 118 of the Legislative Journal.

PRESIDENT: Are there any other bills? We have got a couple more here and then I will call on Speaker Marvel to have a few words.

CLERK: Read LB 101 by title for the first time as found on page 118 of the Legislative Journal.

LB 51, 63, 74, 94, 106, 113A, 150, 154,
190, 195, 225, 261, 272, 281, 284A, 351,
409, 418, 421, 426, 466, 229

March 12, 1981

Mr. President, some items to read in, LB 113A by Senator DeCamp. (Read LB 113A for the first time by title.) LB 284A by Senator DeCamp. (Read LB 284A for the first time by title.)

Your Enrolling Clerk respectfully reports that she has on this day presented to the Governor LB 51, 150, 195, 272, 409 and 154.

Your Committee on Education reports 63 indefinitely postponed. (Signed) Senator Koch.

Your Committee on Public Works reports 229 to General File and 94 General File with amendments. (Signed) Senator Kremer.)

Your Committee on Banking reports 421 to General File with amendments. (Signed) Senator DeCamp.

Your Committee on Public Health reports 261 and 466 to General File with amendments.

Mr. President, Senator Nichol would like to print amendments to LB 74 in the Journal. Banking, Commerce and Insurance Committee sets hearing. Senator Koch would like to print amendments to LB 190. Senator Kilgarin asks unanimous consent to be excused tomorrow. I have notice of priority bill designation of the Speaker. Your Committee on Banking, Commerce and Insurance reports 426 to General File with Amendments. (See pages 882 through 896 of the Legislative Journal.)

Mr. President, Senator Schmit would like to have the Ag and Environment Committee tomorrow morning at eight o'clock in Room 1520, Ag and Environment Committee tomorrow morning.

Mr. President, your Committee on Government, Military and Veterans Affairs reports 281 to General File with amendments; LB 351 General File; LB 418 to General File; LB 106 as indefinitely postponed; and LB 225 as indefinitely postponed. Those are all signed by Senator Kahle as Chairman.

Mr. President, the Business and Labor Committee will have an Exec Session at 1:00 p.m. today in Room 1019; Business and Labor at 1:00 p.m. today.

Mr. President, Senator Vard Johnson asks to be excused tomorrow.

this. It is an illegal act and licenses can be revoked if it can be found that such acts are engaged in. I, at this time, would ask the body to support the committee amendment.

SPEAKER MARVEL: Senator Higgins, do you wish to speak to the committee amendments?

SENATOR HIGGINS: Yes, sir. I would like to ask Senator Johnson a question.

SENATOR VARD JOHNSON: Senator Higgins.

SENATOR HIGGINS: Senator Johnson, how long would you revoke a realtor or a real estate agent's license because of these things?

SENATOR VARD JOHNSON: Well, Senator Higgins, you almost have to reacquaint me with the real estate act. At this time there are twenty-eight reasons why a real estate license could be revoked. It is my understanding, and I am just adding a twenty-nine, it is my understanding that the revocation or suspension will go on for such period of time as the Real Estate Commission believes is warranted given the circumstances of the particular act that is engaged in, and that is existing law. My law didn't change that in the least. When they find this particular violation, then the revocation will go on for whatever period of time the Real Estate Commission thinks is appropriate.

SENATOR HIGGINS: I just wanted to point out to you and the rest of the body that I know of one real estate agent in Omaha who has had his license revoked or suspended probably three, four, five times, many times for cheating people, out-and-out cheating them, and so I am just wondering if your bill is really going to cure your problem because revocation of a license for thirty days doesn't do that much, you know. I am not against your bill. I am just saying maybe you ought to put something in there about how long, and if it is a first, second or third offense. Thank you, Senator.

SPEAKER MARVEL: Senator Johnson, was your motion to...

SENATOR VARD JOHNSON: Adopt the committee amendments.

SPEAKER MARVEL: ...adopt the committee amendments? Okay, that is the issue before the House. Is there any further discussion? All those in favor then of Senator Johnson's motion vote aye, opposed vote no. Record the vote.

CLERK: 26 ayes, 0 nays on adoption of committee amendments.

January 8, 1982

LB 229, 94, 727-729

SPEAKER MARVEL: The motion is the advancement of LB 229. All those in favor of that motion vote aye, opposed vote no. Telecommunications bill. Have you all voted? The Clerk will record the vote.

CLERK: 32 ayes, 0 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is advanced. Do you have something to read in?

CLERK: Yes, Mr. President, two new bills, LB 727 (read title); LB 728 (read title); LB 729 (read title). (See pages 179 and 180, Legislative Journal.)

And, finally, Mr. President, I have a notice of hearing cancellation offered by Senator Schmit on a gubernatorial appointment previously set.

SPEAKER MARVEL: Senator Beutler, are you ready for LB 94?

SENATOR BEUTLER: Yes, Mr. Speaker, I would like to proceed with it.

SPEAKER MARVEL: Okay.

CLERK: Mr. President, LB 94 offered by Senator Beutler. (Read title). The bill was first read on January 12 of last year. It was referred to the Public Works Committee for hearing. The bill was advanced to General File. There are committee amendments attached, Mr. President.

SENATOR BEUTLER: I would just take the committee amendments.

SPEAKER MARVEL: Senator Kremer.

SENATOR KREMER: I will yield to Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, the committee amendments are simply...it is a technical amendment to correct an error in the original drafting of the bill and so I would ask the indulgence of the body to simply adopt the committee amendments which is the bill, which would be the concept in the bill then, and then we can vote the bill up or down.

SPEAKER MARVEL: We are talking about the committee amendments, right?

SENATOR BEUTLER: Yes, I would just ask the adoption of the committee amendment. The committee amendment is the bill.

SPEAKER MARVEL: The motion is the adoption of the committee amendments to LB 94. All those in favor of that motion vote aye, opposed vote no. The motion is...okay, record.

CLERK: 27 ayes, 0 nays on adoption of the committee amendments, Mr. President.

SPEAKER MARVEL: The committee amendments are adopted. Now, Senator Beutler, do you wish to explain the bill?

SENATOR BEUTLER: Yes. Mr. Speaker, members of the Legislature, LB 94 contains really one simple concept, but before I explain to you what the concept is, let me go back and talk a little bit about NRDs and what they are for some of the new people and for some of the city boys, city persons, excuse me. But I think it will be helpful to understand how LB 94 fits into the scheme work of things. I have passed out to you, and it may be helpful for you to look at the map of Nebraska which shows the breakdown of the Natural Resource Districts in Nebraska. There are twenty-four of them and the names of the districts themselves reveal to you the bases upon which they were originally set up, Upper Niobrara, Middle Niobrara, Lower Niobrara, North Platte, Lower Platte North, Lower Platte South. In short, the Natural Resource Districts were set up geographically based on surface water basins. There was a breakdown of different surface water basins, and at that point in time when this was done, it was the perfectly logical thing to do because most of our water problems revolved around surface water problems. But then an event occurred which is really kind of a rare and beautiful event in human development, the invention of the center pivot irrigation system, and all of a sudden a state which was rich in ground water from the beginning could make use of that ground water, and from having only a few thousand ground water irrigation wells, we have come in a ten year period to the point where we have somewhere just under 70,000 wells pumping ground water. So what I am saying is the districts were set up to deal with surface water but there main function has become to deal with ground water. Now the legal significance of the Natural Resource Districts is important to understanding LB 94, too. They are, in effect, kind of sovereign nations when it comes to the control of resources and ground water quality and ground water quantity within their geographic areas. We have complete, almost complete, local control in Nebraska on these types of questions at this particular point in time. The problem that develops is this simply put. The districts physically geographically are drawn along surface water basins but the ground water that they are seeking to protect underlie all or most of the NRDs, and of one pool of ground water, much of which is

interconnected, one pool underlying not just one NRD but two NRDs most of the time and oftentimes many of the NRDs, and the fact is that if you stick a straw in one part of that ground water reservoir in one NRD and you stick another straw in it over in a second NRD, you are both sucking water out of the same pool. So it follows that if you put a straw in one NRD and you take water out but you don't put any straws in the second NRD, the first NRD takes all the water. So what we are getting to is basically this. If one NRD resolves that a control area should be set up, that the taking of ground water has to be controlled to the extent that it should be taken only so fast over a period of years such as we have done in the areas marked out in dark on your map, then you can see the potential controversy arising when across the political boundary in the very next NRD, same ground water pool, they refuse to put on controls. So that arguably those who take the responsible action and set up a management area or a control area, you see, Senator Schmit, I am already anticipating the inevitable, those who take the responsible action are, in fact, under the policy we have now going to be punished for that unless they have some mechanism for trying to encourage the adjoining NRD, the adjoining NRD to participate in the control area. So LB 94 does one thing. It says that an NRD which has set up a control area may request the Director of Water Resources to hold a hearing as to whether there should be a control area in the adjoining NRD, in the area of an adjoining NRD that adjoins a control area, and it sets up a mechanism whereby this can be done so that there is cooperation between the NRDs. At this point in time, I can't honestly say that there is a feud in any particular area in the state on this question but I think common sense tells us that the situation will arise inevitably and in the not too distant future. So I am asking you before you have the pressures of your local NRD, or before you have to take sides on a particular issue, to reach a policy decision on the floor of this Legislature that allows for the arbitration of these kinds of disputes and that is basically and simply and the only thing that LB 94 does. Thank you.

SPEAKER MARVEL: The Chair recognizes Senator Kremer.

SENATOR KREMER: Mr. Chairman, members of the Legislature, the records show that I did vote to bring this issue out on the floor and I want to make some comments. The original legislation that set up the control areas, LB 577, had this very provision in the bill. There was intense opposition and the contingent area made the statement it is none of the business of the area that is going under control or going under control. Because of that opposition it was taken out

January 8, 1982

LB 94

of the original bill and Senator Beutler, of course, does present the side of it that I am pretty much in favor because a certain area, a certain NRD can go under control but an adjacent area can refuse to do so but yet they are causing the problem just like the one that is going under control. So there is an argument on both sides. Some say it is none of their business, and perhaps it is. At least for now, Senator Beutler, I am going to support you.

SPEAKER MARVEL: Senator Schmit.

SENATOR SCHMIT: Mr. President, members of the Legislature, you know, the trouble with Senator Beutler is he comes up with a good idea once in awhile and I support him, and then he gets the idea that maybe I am going to go all the way with him. There comes a time, Senator Beutler, when we have to part with our friends if we think they are making a mistake. I support the concept that was finalized in LB 577 for the reasons that were given by Senator Kremer. Not that it isn't any part of anyone's business what we do in adjacent Natural Resource Districts but your description, Senator Beutler, of using a straw to suck the water out of a basin is not quite exactly right. There is a vast amount of difference between the underground water reservoirs of the various NRDs and a pool of water as you might refer to it. I think what is more important is this. What you are doing if you move this bill in the present form is that you are in effect saying that any one Natural Resource District, if we want to go to the extreme, and I just as well start with that and then we will back up if necessary, when we go to the extreme we say that a single one or two NRDs decide to become a control area, that they can then by the implementation of LB 94 extend that control area clear across the state. Every area is contiguous to something else, and if you assume that the Upper Republican is going to extend into the Middle Republican, eventually into the Twin Platte, Tri-Basin, Lower Republican, now I know somebody is going to say, well, that isn't going to happen because of the variation of the underground reservoir and the aquifer, but the facts are these, that the Natural Resource District is not required by statute to determine that there is any connecting factor between the various aquifers. You are referring in this bill to contiguous surface acres, and when you do that, you have for all practical purposes taken away from the adjoining Natural Resource District its autonomy, its reason for existence. You could if you wanted to start with a small area in one part of Nebraska and go clear across the entire state and have the entire State of Nebraska in a control area. I recognize Senator Beutler's concern and Senator Kremer's concern about the possibility of what

6402

can happen but I would suggest that it is a far more desirable system for the adjoining Natural Resource District to request its own hearing and to request to have a control area designated than to have an adjoining district request that control area to be established within a neighboring district. It is a little bit like out telling the State of South Dakota, you know we don't like the way you are using your water and you ought to do this and this, while we continue to allow millions of acre feet of water in Nebraska to rush unimpeded to the sea. And so it is always easier to tell someone else how to handle their problems than it is to handle your own but idealness is also directly proportional to the distance from the problem and I think if you will stop and consider that if there is a serious problem here in the Upper Republican, for example, that the Board of Directors of the Middle Republican are going to consider that problem and they will take that action necessary to protect that water. If you feel they are not going to act responsibly, what is responsible? Is the one set of directors more responsible than the other because they happen to do that which I or Senator Beutler wants them to do. I think not. Responsibility is responsibility by an elected board to a constituent for the resources of that district. I do not think that I would want to adopt the premise that I had more responsibility in a neighboring district than I have in my own as an elected person, and I think we are saying here if we move this kind of a bill that one NRD has a lesser judgment than another. I do not think we want to say that. I am opposed to the bill.

SPEAKER MARVEL: The Chair recognizes Senator Sieck.

SENATOR SIECK: Mr. President, members of the body, I have had some firsthand experience in this particular issue. If you look on you map in the northwest corner, not the northwest but the northeast corner of the Upper Blue, a little jog that sits up there, this is actually an underground aquifer of the Lower Platte South in the Valparaiso area. The ground water problem is actually in effect in the area that is colored, but in the Lower Platte South it is not, but we did have some problem in the Lower Platte South area, so we called and asked the Department of Water Resources to hold a hearing in the immediate area knowing that there could be a problem existing in that area. The results of that hearing was that the Department of Water Resources did not feel that the area within the Lower Platte South was eligible for a control area. So what the Upper Blue did then was not to administer control within that particular area even though there was a problem because of the underground aquifer. And as I see it we have done what Senator Beutler is asking us to do and I would hate to see

the Upper Blue area come in and control another area which could happen as I see this thing developing. So I would have to stand opposed to it because I do feel that what he is trying to do is being done. In the Lower Blue they have initiated a control area and I think you will find that the same things are happening there and they have actually initiated a control area and I think the present law says that you can, if you have a problem, you can join your other district if you care to and if you feel that you are in need of a development within your area by a petition and you can do that. So I really question the need of the law so I am going to oppose it.

SENATOR H. PETERSON: Mr. Chairman and members of the Legislature, I, too, would stand to oppose the legislation. I happen to be in the area of the Central Platte. I have attended their board meetings a number of times. I know they are in the process of determining at what stage they might consider this kind of action. They are setting forth criteria on the basis on which they would do it. I think the NRDs are responsible subdivisions of state government and it appears to me that what we have got before us right now is a very fundamental basic philosophy. Do we believe that the state ought to make these decisions or do we believe that local people ought to make the decisions? My humble observation is that local people know their own problems much better than anybody on the state level and I just feel that what we are doing is opening an opportunity for real discord between the districts. I note by the record apparently that the Natural Resource Association, the Association of Natural Resource Districts are opposed to the bill and it would just seem to me that it would be foolish for this legislative body to adopt the bill.

SPEAKER MARVEL: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, I rise to support Senator Beutler. I was very pleased to see that Senator Kremer supported Senator Beutler or supports LB 94. Now you see, fellow Senators, Senator Kremer and I have something that the rest of you don't have which includes Senator Schmit. We are...and our districts have control areas. We know what they can do, what they can accomplish. We know how good they are and I say to Senator Schmit, people aren't going to cry "Wolf, wolf", and have a control area if they don't need it which I believe you implied. Everybody stands up and says and wrings their hands, we have got to do something about water, and now just because Senator Beutler is from Lincoln and he comes up with a water bill, I don't think we ought to look down

January 8, 1982

LB 94

our noses at him because I feel he has come up with a good one and I commend him for this one. So I say this, if you haven't made up your mind or if you need some sort of a...something to follow, listen to Senator Kremer. He has been here and in water for many, many years and in a control area. I am new down here and I am in a control area. I know how the people react. They like it. They want to put more controls on themselves. They have actually asked our NRD board in some areas to lower the number of inches of water that they can have. They realize their problem. They want to help themselves. So when you look at this map, you look at the Upper Republican, I have three counties. So maybe there is a county next door and this vast pool of water is halfway between the counties, I think we ought to be able to ask and request that that county join us. It will have public hearings. We will go through all of the steps. Nobody will be cut out. So this is a good bill. It isn't going to hurt anything so I would like to ask you to support LB 94. Thank you, Mr. President.

SPEAKER MARVEL: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, Senator Schmit, may I ask you a question please.

SPEAKER MARVEL: Senator Schmit.

SENATOR SCHMIT: Yes, Senator Nichol.

SENATOR NICHOL: When one of these areas wants a designated area, that is usually the area that has a problem, isn't that true?

SENATOR SCHMIT: If the Board of Directors of the Natural Resource Districts request an area, they assume they have a problem, yes.

SENATOR NICHOL: That is the area that has the problem?

SENATOR SCHMIT: That is right.

SENATOR NICHOL: All right, now instead of the place that has the problem inviting a next door neighbor to come in with them, why would it not be reasonable to have the next door neighbor be notified of a designated area that is to be formed and all of the contiguous areas be notified so that the contiguous areas, if the water is to be sucked out of the aquifer, will know about it and can visit with the area that wants the designated area instead of the way this particular bill is written? Would that make more sense?

SENATOR SCHMIT: I think it is more acceptable, Senator Nichol, because it doesn't take from that Natural Resource District, whatever NRD then that Board of Directors their responsibility. They are notified of it, they can review the information. They can act upon it. But I think I that would be deeply resentful if I were serving on a Natural Resources Board and a neighboring NRD said, "Well, the Lower Platte North have not fulfilled their responsibility. We think they are a bunch of clucks. So would you go ahead and ask for a hearing."

SENATOR NICHOL: Well, would this not also happen if this were law, if I had a problem in my district and your district is next to mine, why would I want to even notify you that I was creating a designated area? What would be the incentive for me to even tell you? While on the other hand, if I was wanting a designated area and it might affect your area, you should be notified so that you can call the meeting rather than me who is wanting to get your water from you anyway, why should I bother, what would be the incentive for me to let you know that I was even getting a designated area?

SENATOR SCHMIT: Well, the purpose of the control area, as I understand it, Senator Nichol, is to, if it is adopted, to be able to adopt rules and regulations governing the withdrawal of ground water. So we will say the Upper Republican has a problem and they want to limit that control and they think that the area in the adjoining area, Middle Republican, should be included also. They ask the Director of Water Resources to declare that also available for a control area. I don't think that is necessary for them to act for the adjoining NRD Board. I think if we are going to do that we have removed the reason for the existing individual boards. I just think...I will tell you very frankly what I think it is. It is an excuse where I can impose my wishes as an NRD or an individual or a board of director on the neighboring NRD Board and certainly I think we have seen in the past where there have been attempts made to declare control areas that have not been upheld by the director. But I think that we have got to understand that these boards of directors we have got to assume are going to act responsibly. If there is a problem in my area, that board will ask for it. I don't think that the contiguous area in another NRD that is under the supervision of another board of directors is going to sit there asleep knowing that they have a problem in that area. If they have a problem, I think they will act upon it.

January 8, 1982

LB 94

SENATOR NICHOL: Okay, thank you, Senator Schmit. Senator Beutler.

SPEAKER MARVEL: You have one minute.

SENATOR NICHOL: Thank you. If I wanted to designate a control area in my area, why would I want to even bother to tell you I thought I was getting some of your water from your area?

SENATOR BEUTLER: Senator Nichol, I am not sure I understand your question but let me put it like this. If I am going to declare a control area in my area, I am going to be hesitant to do that if I know that right across the geographic boundary they don't have to set up a control area and they can continue to use our water. So I don't want to put controls on my own people if the people next door can continue to suck out our water uncontrolled. So what I am saying is in order...if we want to declare a control area on our own people, then it is only fair that there should be some mechanism right across that political boundary whereby they can participate in the control. Otherwise why would the NRD Director next door make a decision to declare a control area because he knows that his people will get more water because there is a control area next door. So he doesn't want to declare a control area.

SENATOR NICHOL: Okay, let me ask you this. If you are in one district and you want a control area, does that control area apply to the whole district or can you have a ten acre plot where you have a control area?

SENATOR BEUTLER: You can declare a part of a district to be a control area.

SENATOR NICHOL: Then the NRD can take it from one area and put it in that small...or restrict one area and not the other, right?

SENATOR BEUTLER: Yes, the NRD can restrict one area and not the other.

SENATOR NICHOL: Okay, thank you.

SPEAKER MARVEL: Your time is up. Senator Vickers.

SENATOR VICKERS: Mr. President and members, I rise to support Senator Beutler. I am also very happy to find out that there are certain members of this Legislature

that this year have so much trust in the Natural Resource Districts Board of Directors. I hope that they remember to have that much trust later on when other water legislation comes up. It just seems to me that what Senator Beutler is asking this body to approve is not that unreasonable. I think it needs to be pointed out again, as Senator Beutler did earlier, that the requesting district has to have a control area itself first. They have to be addressing their situation first before they can ask their neighboring district to address a perhaps similar situation. I think it also needs to be pointed out that it is certainly not automatic. The same hoops have to be jumped through as far as the hearing in front of the Director of the Department of Water Resources and in the final analysis the control area is established by the Director of the Department of Water Resources and the boundary line is drawn. So the neighboring district that asked for the control area cannot arbitrarily on their own create a control area in a neighboring district. They have to prove that there is a reason for a control area, and as Senator Beutler just answered Senator Nichol, it seems to me reasonable that this process be allowed to take place so that the hearing process can begin and come to its conclusion whatever it might be. Now as far as the issue of local control is concerned, I think we need to recognize that all those directors including the directors that are asking for the control area are elected by their local people also and I think it needs to be recognized also that we are all using out of the same pond out there in many places. It was mentioned earlier about Upper Republican and the Middle Republican. Well, it seems rather odd to me that both the representative from the Upper Republican, Senator Haberman, and myself from the Middle Republican both agree on this issue and yet other members on this floor are using that as an example of what might happen. I am not scared of it and I take it that Senator Haberman wasn't either. So I support Senator Beutler in LB 94.

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

SENATOR SCHMIT: A question of Senator Beutler, please.

SPEAKER MARVEL: Senator Beutler, do you yield?

SENATOR SCHMIT: Senator Beutler, in the event that the director should allow the hearing should be held in a contiguous area in an adjoining Natural Resource District and it should be found that there should be a control area established in that adjoining area, which board of directors then will adopt the rules and regulations for the control of that ground water?

January 8, 1982

LB 94

SENATOR BEUTLER: The board of the district that is being asked to form the control area.

SENATOR SCHMIT: In other words, if Senator...let's just assume that in the Lower Platte South asked for a control area in the Lower Platte North and they were granted the need for a control area. The Lower Platte North Board of Directors would have to adopt the controls, is that right?

SENATOR BEUTLER: Yes.

SENATOR SCHMIT: All right, then suppose that the Lower Platte North said, "Well, you know we never thought there was any reason for a problem in the first place. We resent the Lower Platte South imposing this control area upon us" and they did not adopt controls of any kind that were in any way conducive to those which the neighboring district thought were necessary. Is there any penalty that can be applied upon the Lower Platte North Board of Directors? Suppose they chose to ignore that situation.

SENATOR BEUTLER: Senator Schmit, as you are well aware, in all areas of the law, we depend upon people obeying the law. We don't assume that there is going to be mass disobedience to the law. In Nebraska I hope you are not implying that you would think the board of directors would do that.

SENATOR SCHMIT: But the law requires the Natural Resource District Board of Directors of the Lower Platte North to by rule and regulation design the controls that would protect that water. Suppose they say, "Well, we don't see any problem." Or in any case they would adopt controls much less stringent than the Lower Platte South, what mechanism do you have to say, "Well, that is not sufficient enough"? Can the Lower Platte South then come back on the Lower Platte North, are we going to be back in court again and say, "Hey, those rascals are still pumping our water"? What are you going to do about that?

SENATOR BEUTLER: The problem will be worked out, Senator Schmit, with the Director of Water Resources and with the Natural Resources Districts involved. I don't see any problem in that particular area. I see what you are saying that they are not going to be happy about doing it but the technical problems involved in working out corresponding types of controls, that is provided for in the bill. If you are saying that they are simply going to disobey the law, well, you can say that about (interruption).

SENATOR SCHMIT: They don't have to disobey the law, Senator. They don't need to disobey the law. All they have to do is to say in our opinion we do not need controls as stringent as the Lower Platte South has imposed and, therefore, we are not going to do anything. I think what you are doing here, Senator Beutler, and I don't want to embarrass anyone by asking how many tens of thousands or hundreds of thousands of dollars have been spent now by one Natural Resource District litigating with another Natural Resource District. It was never the intention of this Legislature to create that sort of a situation but it has developed. We have found situations where hundreds of thousands of dollars are being spent now in litigation between two Natural Resource Districts who disagree about how to conserve our resources and, frankly, I don't think in fairness to Senator Beutler they are so concerned about conserving as they are about who gets to use them, and so as a result we see these people that keep glancing toward the Platte River all the time and Senator Kremer about has me convinced that he is entitled to some of that water. But the point I want to make is that I don't see where we have anything to gain from this mechanism, because if the Lower Platte North does not feel deeply enough about the imposition of a control area to do it on their own, they are certainly not going to adopt restrictions that would in any way, shape or form conform with the idea of the Lower Platte South, and so I don't see that we are going to gain anything. It sounds good in theory. In practice I do not believe it will work, Senator Beutler.

SPEAKER MARVEL: Senator Beutler, do you wish to close?

SENATOR BEUTLER: Yes, Mr. Speaker.

SPEAKER MARVEL: Yes, your light is the only light on.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, let me point out to you one very important political fact that exists in this state right now and that political fact is that all elements involved in the water disputes in this state are at the present time committed to local control. It doesn't matter who you are talking about on the Public Works Committee, it doesn't matter who you are talking about in the Legislature, there may be one or two who don't feel this way, but by and large we have all committed ourselves to seeking solutions to our water problems through mechanisms involving local control, and what I am suggesting to you today is the means of preserving local control because the fact that the local NRDs are autonomous and the fact that the pools of water underlying different NRDs is the Achilles heel of this system, if you do not correct that

problem, the local control system will not prevail in the State of Nebraska and I will predict that today. Look at the states of the United States of America. How far have we come in solving the water problem and the reason we haven't come very far, and we haven't, is because each one of those states is autonomous and because each one of those states will not give up any of its autonomy and, by golly, you know what is going to happen. The federal government is going to step in here in just a couple of years because we are not doing the job ourselves, and within the State of Nebraska that analogy holds. Lower Platte North, Lower Platte South, technical problems, maybe there will be technical problems, but what is the alternative? That the people in the other NRD to continue to get the benefit of the water while those who establish control areas suffer although we are talking about the same underlying pool of water. What equity in that is there to an individual in a control area? He is hurt once by having controls put on him. He is hurt twice by having the guy right next door, maybe across the road, have no controls at all, a completely inequitable situation. It is not an easy process under this bill by which an adjoining NRD could be forced to have a control area. There has to be a hearing. There has to be a proof that there is an effect. There has to be proof that it is the same underlying water. There has to be proof of the need for a control area, the same proof that had to be presented to the Director in the case of the first NRD. So it is the same Director holding the hearing for both of the NRDs. There is no reason to expect that the same Director would come to a different conclusion, and if he did come to a different conclusion, then the second NRD wouldn't have to worry because the factual situation would be different. Let me just point out in closing, think back again on Senator Sieck's example. I come to a different conclusion from his example. He says that part of his NRD didn't declare a control area, didn't put an area in a control area because, because right next door the directors wouldn't declare a control area. So even though Senator Sieck's NRD needed that control area in a certain portion of the district, they didn't declare it because the next door NRD wouldn't cooperate. There is a first glaring example of bad policy that is occurring because we have not solved the problems of how to relate the NRDs and I urge you very strongly to take a step forward for what is, in fact, the preservation of the local control system. Thank you.

SPEAKER MARVEL: Senator Schmit, your light was on and I have neglected to indicate that Senator Beutler was closing. Do you wish to make closing remarks? Part of this, I have

held up in an attempt to find members of the Exec Board so we could have them commit themselves on the bills that are being processed today so we have to hold the group here until Senator Lamb gets back. Senator Schmit, you don't have any remarks?

SENATOR SCHMIT: Well, I have some but I didn't think I could give them to you. If you will let me speak, I will give them to you. It won't take very long. I just want to say one thing and that is I warned you before about the cost of litigation and the warning fell on deaf ears a number of times. I am warning you now. You are opening another can of worms and this is not a personal reference to Senator Beutler, because I know you are sincere in your efforts, but this is not a water conservation act. This is going to be the lawyers retirement act because you have already got that going in some instances and it is going to encourage further litigation. You will recall a year ago on a bill here when I tried and tried and tried to convince you that you were asking for trouble if you didn't pass the bill. You chose not to pass the bill, and as a result, the Natural Resource District was found wanting in court, had to pay a substantial judgment, tremendous cost. They don't have the money. They are going to be tapping the Development Fund to help pay that. We have got I think a million bucks they are talking about putting into the Development Fund this year. Ladies and gentlemen, it is not going to cover it. We are talking about trying to put fifty million dollars into the Development Fund and I am for it but you are going to get into litigations to the point where you absolutely accomplish nothing. It just doesn't make sense and I think you have to really look at it from the standpoint...Senator Vickers says I hope you have all this confidence in the local boards when the time comes sometime in the future. Let me say this, there are times when they are going to meet the responsibility, times when they are not, just as on this floor at various times we meet our responsibilities and sometimes we may not face up to it.

SPEAKER MARVEL: Senator Schmit, your time is up.

SENATOR SCHMIT: Thank you, Senator.

SPEAKER MARVEL: Senator Beutler. Senator Beutler, the Chair recognizes you to close and we will give you some extra time since we gave extra time to Senator Schmit so the floor is yours.

SENATOR BEUTLER: Mr. Speaker, I appreciate the opportunity.

January 8, 1982

LB 94, 455

I think all of the arguments have been made and the last argument has to do, of course, with the lawyers retirement fund. What can I say? All I can say is I'm doing this for \$4800 a year so I don't have a real big interest in lawyer retirement funds. Thank you.

SPEAKER MARVEL: The motion before the House is the advancement of LB 94. All those in favor of that motion vote aye, opposed vote no. Have you all voted? Senator Beutler. Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, the issue is an important one. I would ask for a Call of the House and a roll call vote please.

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

CLERK: 23 ayes, 2 nays to go under Call, Mr. President.

SPEAKER MARVEL: The House is under Call. All legislators please take your seats, unauthorized personnel leave the floor, and record your presence. Senator Kremer and Senator Schmit, would you please record your presence. Senator Haberman. Senator Hoagland, would you please record your presence. Senator Carsten, will you please record your presence. Senator Newell, will you please record your presence. Senator Labedz, will you please record your presence. We will now proceed with the roll call vote. Will all legislators please take your seats, unauthorized personnel please leave the floor. (Gavel) Call the roll.

CLERK: (Roll call vote taken. See page 181, Legislative Journal.) 19 ayes, 21 nays, Mr. President.

SPEAKER MARVEL: Motion lost. Do you have any other business, Pat? Let me announce this first. You have on your desk a memorandum from our office in regard to a Passed Over category. I suggest you take it with you and we probably will have some examples next Monday. The Clerk has some items to read.

CLERK: Mr. President, your committee on Business and Labor gives notice of hearing for Wednesday, January 20.

Mr. President, Senator Haberman would like to print an amendment to LB 455 in the Legislative Journal.

SPEAKER MARVEL: Mr. Clerk, I want to make an announcement