

January 16, 1981

LR 5

Taiwan, and to answer Senator Wesely's question, is it going to make Red China unhappy? Are they going to call me or Senator Remmers naughty names for voting for it? I don't think so but they are going to be aware of the fact, they are going to be aware of the fact that this particular state which they have to rely on for agricultural products, too, isn't going to play the game of, we want to be your friend so we stab our old friend in the back. We will export grain to any of them and food, but not on terms of tit for tat, stab old friends for new friends. I urge you to support the resolution.

PRESIDENT: The question before the House is the adoption of LR 5. All those in favor vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: 35 ayes, 3 nays on adoption of the resolution, Mr. President.

PRESIDENT: The motion carries. The resolution is adopted. Anything to be read in before we go into introduction of bills?

CLERK: Well one thing, Mr. President, your committee on Urban Affairs would like to have an executive session for Monday, January 19, 1981, upon adjournment.

Mr. President, your committee on Ag and Environment whose chairman is Senator Schmit gives notice of public hearing in Room 1520 for Friday, January 30. (See page 199 of the Legislative Journal.)

PRESIDENT: We are ready then for agenda item #5, introduction of new bills. Mr. Clerk, you may proceed with the reading of the new bills to be introduced today.

CLERK: Read title to LB 229-233 as found on pages 198-200 of the Legislative Journal. Mr. President, in conjunction with that bill we have a communication from the Governor advising the Legislature as to the intent of the bill and the supplemental appropriations required by various state programs. That will be inserted in the Legislative Journal. (See pages 203-204.)

Read title to LB 233-246 as found on pages 200-203 of the Legislative Journal.

Mr. President, your committee on Public Works gives notice of hearing for January 30 and February 6 and that is signed by Senator Kremer as chairman.

LB 253, 89A, 243, 262,
291, 295, 330, 333,
408, 422, 433, 496

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CLERK: Mr. President, new A bill, LB 89A, offered by Senator Marsh. (Read.)

Senator Kremer would like to give notice of cancellation of public hearing scheduled for LB 408 next Thursday.

Mr. President, your committee on Ag and Environment whose chairman is Senator Schmit reports 333 to General File; 243 to General File with amendments; 253 General File with amendments; 291 General File with amendments, (Signed) Senator Schmit. (See page 676 of the Journal.)

Your committee on Banking whose chairman is Senator DeCamp reports LB 330 to General File with amendments.

Your committee on Public Health whose chairman is Senator Cullan reports 262 indefinitely postponed; 295 indefinitely postponed; 422 indefinitely postponed; 433 indefinitely postponed and 496 indefinitely postponed, (Signed) Senator Cullan. (See page 676 of the Legislative Journal.)

Mr. President, Senator Lamb wants to have a meeting of the Executive Board tomorrow morning at eight o'clock in Room 2102, the Executive Board tomorrow morning at eight o'clock, in 2102.

Senator Koch asks to be excused, Friday, February 27th.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Okay, we are ready for item #5, Select File. You will note that there is a designation of one hour and then we will move to item #6 which has to do with reconsideration of LB 143. Okay, Mr. Clerk.

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LB 477, 291, 311, 355, 56,
157, 157A, 158, 200, 243,
280, 371, 407, 427, 427A

SENATOR PIRSCH: Okay, ther are. . . .

SENATOR WESELY: Or based on what sort of effort did you. . . .

SENATOR PIRSCH: There are three states which presently have about the same thing, Wisconsin, California and I'll look up the other one, Connecticut.

SENATOR WESELY: Okay, thank you. I would just like to rise in support of the bill. I think that clearly this is an effort that needs to be undertaken by the State of Nebraska that for to long we have ignored the problems that have been experienced by our witnesses and victims of crime and certainly want to commend Senator Pirsch for her efforts in this area. It seems to me that the bill is a step in the right direction.

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

SENATOR PIRSCH: Yes, thank you Mr. Speaker, I'll close just by saying that I am proud to have had Nebraska in the forefront in helping other victims and I think that this will be a continuation of our sincere desire to help those victims and witnesses in the criminal justice system. I urge your passage of 477.

SPEAKER MARVEL: The motion is to advance the bill, 477, all those in favor of advancing the bill vote aye, opposed vote no. Have you all voted? Record.

CLERK: 27 ayes, 0 nays on the motion to advance the bill Mr. President.

SPEAKER MARVEL: Motion is carried, bill is advanced.

CLERK: Mr. President, you Enrollment Clerk respectfully reports that she has presented to the Governor LBs 291, 311, 355 and 56.

Committee on E & R respectfully reports that we have carefully examined and re-engrossed LB 290 and find the same correctly engrossed. 157, 157A, 158, 200, 371, 407, 280, 427 and 427A, all corrected engrossed. (signed) Senator Kilgarin, Chair.

Senator Schmit would like to print amendments to LB 243 in the Journal, Mr. President.

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LB 243, 249, 346

Mr. President, I have amendments to LB 243 from Senator Schmit, an amendment from Senator Vard Johnson, LB 346, an amendment from Senator Hoagland to 249. (See pages 1344-1345 of the Journal.)

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Now can I move we adjourn until nine o'clock tomorrow morning?

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed no. We are adjourned until nine o'clock tomorrow morning.

Edited by:


Mary G. Turner

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LB 253A, 466, 243

SENATOR HOAGLAND: I would like to have a vote up on the board here on this bill if I might.

SENATOR CLARK: A record vote has been asked for, machine vote. All those in favor vote aye, all those opposed vote nay. Have you all voted? It takes 25 votes to move the bill. Once more, have you all voted? Record the vote.

CLERK: 25 ayes, 6 nays on the motion to advance the A bill, Mr. President.

SENATOR CLARK: The bill is advanced. LB 466.

CLERK: Mr. President, a series of amendments to the bill. First are E & R amendments.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to 466.

SENATOR CLARK: Move to accept the E & R amendments to 466. All those in favor say aye, opposed. They are adopted. What do you have on the bill?

CLERK: Mr. President, the next motion I have on the bill is to indefinitely postpone. That is offered by Senator Chambers. That will lay the bill over.

SENATOR CLARK: The bill is laid over for one day. We will go to item #6. Are you ready with yours? All right, we will just pass it over today then. We will go to #6, LB 243.

CLERK: Mr. President, LB 243 was a bill introduced by Senator Loran Schmit. (Read.) The bill was first read on January 16. It was referred to the Ag and Environment Committee for hearing. The bill was advanced to General File. There are committee amendments by the Ag and Environment Committee, Mr. President.

SENATOR CLARK: Is Senator Schmit in the room? Senator Wagner, do you want to take the... Here he is, Senator Schmit.

SENATOR SCHMIT: Mr. President, members of the Legislature, the amendment, committee amendments change the provision of the requirement that eminent domain cannot be used in instances of 50% and more use of the structure to a terminology calling for a 50% benefit performance. That is the only change and I move the adoption of the amendment.

SENATOR CLARK: Senator Chambers, on the committee amendments.

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SENATOR CHAMBERS: Mr. Chairman, I just have one question I want to ask Senator Schmit. I will ask him at this point. Then I won't have to discuss the bill any more. Senator Schmit, is it true that there is a lawsuit pending and the passage of this bill will affect the outcome one way or the other?

SENATOR SCHMIT: I don't believe the passage of the bill, Senator, would have any impact upon the lawsuit because of the fact that the case is in court right now. In fact, it might clarify...it might reduce the ambiguity that exists today.

SENATOR CHAMBERS: That is all I had to ask. Thank you, Senator Schmit.

SENATOR CLARK: Senator Kremer.

SENATOR KREMER: May I ask Senator Schmit a question, please?

SENATOR CLARK: Senator Schmit.

SENATOR KREMER: Senator Schmit, my question is almost exactly the same as Senator Chambers' question. I inquired about this the other day, I think yesterday it was, and I was informed that it definitely would. Now I don't know how to explain the difference in the answer.

SENATOR SCHMIT: Well I would just like to say this, Senator Kremer, I think we just had almost an identical situation in a preceding instance on the bill that Senator Labeledz introduced. There is a case pending in court there and the Legislature took action to resolve an issue that is pending and I think that the same situation exists here. There is a question as to whether or not the issue is a viable one and I think that the question can be handled in this manner.

SENATOR CLARK: Senator Kremer.

SENATOR KREMER: Well the reason I am concerned, as I understand there is something over a million dollars of monies belonging to the state and various subdivisions of government that could be affected. If this does affect the case that is in court today is the reason I wanted that answer. So I understood Senator Schmit to say it would not in any way, in his opinion at least, affect the outcome of that case. Thank you.

SENATOR CLARK: Senator Carsten.

SENATOR CARSTEN: Mr. President, I would like to ask Senator

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Schmit a question relative to the amendments if I may.

SENATOR CLARK: Senator Schmit, will you yield?

SENATOR SCHMIT: Yes, I will yield, Senator.

SENATOR CARSTEN: Senator Schmit, who and by what criteria is the percentage of recreation measured or decided?

SENATOR SCHMIT: Senator Carsten, that determination is made at the present time, for example, the engineers who designed the structure in most instances have to assign certain benefits based upon the various cost benefit ratios. For example, I served for a dozen years as a member of the Watershed Board of Bellwood. Every structure that was built had to have a cost benefit performance standard and we simply took into account the benefits from flood control, drainage or any other criteria and totaled them up and we do the same thing for the recreational benefits. The Watershed Board, the NRD Board, engineering firms, all of them would have to work together on this but they have to reach an agreeable benefits performance ratio.

SENATOR CARSTEN: Okay, one more question, Mr. President. Is there any participation by Game and Parks in the determination and the building of these that are of dual purpose? Any financial participation or is it all under NRD funds?

SENATOR SCHMIT: Well that would probably depend upon individual instances, Senator. I am sure in some instance there might be some participation but in others the Natural Resource District might construct the entire structure and then frequently is operated with some sort of agreement with Game and Parks. The operational portion is usually handled by Game and Parks once the Natural Resource District has completed the structure.

SENATOR CARSTEN: It would appear to me, and as I understand, it is 50% is in the amendments. Is that correct for recreation?

SENATOR SCHMIT: Yes, although I do have an amendment that I am going to offer, Senator Carsten, to raise that to a maximum of 75%.

SENATOR CARSTEN: Okay, thank you, sir.

SENATOR CLARK: Senator Hoagland.

SENATOR HOAGLAND: Senator Schmit, would you yield to some questions, please?

SENATOR SCHMIT: Surely, Senator.

SENATOR HOAGLAND: Now, Senator Schmit, I just passed out a two and a half page memorandum for Mr. Williamson on Nebraska Natural Resources Commission stationery and he indicates that the bill as written would apply retroactively to put on the shelf, the Oliver Reservoir project and the Willow Creek project. Now is it my understanding that your amendments would no longer give the bill retroactive effect so that those two projects would be cancelled?

SENATOR SCHMIT: No, first of all the bill would not cancel those projects. Secondly, the amendments that I have drawn that would raise the requirement from 50% maximum recreational benefits to 75% maximum recreational benefits would remove the problem for the Willow Creek project because I also provide for a maximum structure size of five hundred acres. I exempt the structures over five hundred acres so that would exempt that structure. The Willow Creek project can proceed, or pardon me, the Oliver project can proceed under any conditions. It is not going to change. The only thing that might be changed is that they would have to negotiate with the landowner, they can either negotiate with the landowner for a sale of the property or they can negotiate for an easement and the landowner has agreed to provide an easement which is exactly what other adjoining landowners have done in that area. It seems a little bit ridiculous that several landowners can negotiate an easement with a Natural Resource District and the other landowner is precluded from having an easement.

SENATOR HOAGLAND: So what you are saying is that with respect to the Oliver Reservoir project the Natural Resource District's eminent domain authority would be taken away by effect of this law but that the owner that has been objecting so far would voluntarily grant an easement.

SENATOR SCHMIT: I am saying that the owner would be in a position to negotiate the easement with the Natural Resource District. The Natural Resource District would not have authority to condemn property in the Oliver project area.

SENATOR HOAGLAND: Now do you know whether the owner is going to be willing to negotiate with the NRD over that?

SENATOR SCHMIT: The owner has indicated willingness to negotiate and provide an easement.

SENATOR HOAGLAND: But if he refuses to provide the easement or if the NRD will not pay him the money he wants, he will still be in a position to hold up the project. Won't he?

SENATOR SCHMIT: No, the project would not be held up, Senator, because it is not that important to the entire project. They

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would still be able to use the lake. They could use the bulk of the shoreline. The only part they would have to negotiate would be that portion that is in the one landowner's area.

SENATOR HOAGLAND: Now, Senator Schmit, is the Oliver project one where land owned by the Singleton people is involved?

SENATOR SCHMIT: That is right, Senator.

SENATOR HOAGLAND: And have the Singleton people been in touch with you about bringing this bill to the floor of the Legislature?

SENATOR SCHMIT: The Singleton people never once talked to me about it, Senator. I was interested in this type of legislation for a number of years and I think a year ago Senator DeCamp had a similar bill. I took the bill or I indicated an interest in the bill and the lobbyists for the Singletons did assist me in the preparation of this material because it did apply to their particular case.

SENATOR HOAGLAND: But the bill as written essentially would give the Singleton people what they want, Senator Schmit. Is that right?

SENATOR SCHMIT: The bill as written is designed to protect the individual landowner from the eminent domain powers of a Natural Resource District being enforced for the purpose of obtaining land for recreational purposes, a provision which we took away from Game and Parks a number of years ago.

SENATOR HOAGLAND: Okay, and it would at the same time protect the Singleton people from having their land taken by eminent domain for purposes of the Oliver Reservoir project.

SENATOR SCHMIT: It would protect all landowners in the State of Nebraska equally.

SENATOR HOAGLAND: Including the Singleton people?

SENATOR SCHMIT: I see no reason to exclude the Singletons.

SENATOR HOAGLAND: Thank you, Senator Schmit. That is all the questions I have.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: I will speak to the bill itself, Senator Clark.

SENATOR CLARK: All right, thank you. Is there any further discussion on the committee amendments? If not, all those

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in favor of the committee amendments vote aye, all those opposed vote nay. Have you all voted on the committee amendments? Have you all voted on the committee amendments? Senator Schmit, I am going to have to call the vote.

SENATOR SCHMIT: Mr. President, I would like to ask for a Call of the House, please.

SENATOR CLARK: A Call of the House has been asked for. All those in favor of a Call of the House vote aye, all those opposed vote nay. Record the vote.

CLERK: 12 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All senators will return to their seats. All unauthorized personnel will leave the floor. Would everyone check in, please. Senator Lowell Johnson, Senator Warner, Burrows, Cullan, Wiitala. Senator Vard Johnson. Senator Schmit, do you want to authorize call-ins? We will authorize call-ins. This is on the acceptance of the committee amendments to 243.

CLERK: Senator Fowler voting yes, Senator Beutler voting yes, Senator Kahle voting yes, Senator Chronister voting yes, Senator Hefner voting yes.

SENATOR CLARK: Record the vote.

CLERK: 26 ayes, 3 nays, Mr. President.

SENATOR CLARK: The committee amendments are adopted. On the bill itself, do you have any amendments on the bill? Go ahead and explain the bill, Senator Schmit. The Call is raised.

SENATOR SCHMIT: Mr. Clerk, do you have another amendment on the bill?

CLERK: I have several, Senator. Would you like...yours is the next one if you want to take it up.

SENATOR SCHMIT: I would like to offer that amendment at the present time if I could, please.

SENATOR CLARK: Would you explain the bill first?

SENATOR SCHMIT: Okay. Mr. President and members of the Legislature, LB 243 was introduced by myself because I feel very deeply about the dangers that are inherent when we grant the powers of eminent domain to any subdivision of government.

I think all of us are aware of the fact that there are some instances where the taking of private property is necessary. When that happens it is very important of course that every possible protection be provided to the landowner, the homeowner or the business owner. Over the years this Legislature has sought strenuously to provide as much protection as possible. We recognize that taking of property is a very traumatic event and that even though we try as a legislative body to guarantee that the individual will not suffer damage economically, oftentimes it is difficult to compensate the individuals as we would like to do. Therefore, a couple of years ago this Legislature saw fit to provide that when property was taken, that more than just the ordinary purchase price might be involved. For example, the relocation cost, the dangers, the cost of transporting equipment, many other problems were taken into consideration. Nonetheless, repeatedly, time after time I have had people come to me and say, my land was taken. I was given a sum of money and told to go out and buy other land. It was impossible to replace the land for the sum of money that was provided to me. I think that we know that in instances where a partial taking of property is involved, that it is sometimes even a more difficult problem to try to replace or compensate the individual. An instance where a partial property taking would seriously jeopardize an operation, for example, or jeopardize a business or the ability of that business to perform as it has been functioning can oftentimes seriously impact upon the individual's livelihood. There is no doubt in anyone's mind that when this happens that individual ought to be compensated. I have long felt and this Legislature took action a number of years ago to take away from the Game and Parks Commission the right to take property by eminent domain for the purposes of recreation. We said, in effect, that the director of Game and Parks, Mr. Mahoney, a very competent individual, a very concerned individual, a former member of this body, was not going to be allowed under any conditions to condemn land for the purpose of recreation. Then at the same time because of the peculiar nature of the Natural Resource Districts we allowed the Natural Resource Districts to take property by eminent domain for the same purpose. Now it is a strange corollary that on the one hand we have denied to that individual and that agency who are responsible for providing recreation the right of eminent domain for recreational purposes and then we turn around and we give it to twenty-four agencies of government, twenty-four managers, God only knows how many directors and employees. I do not dispute the fact that in very few instances has this privilege been abused. Most of the Natural Resource District managers with whom I have visited, most of the directors have told me they would not think of taking property by eminent domain for the purposes of recreation. It is for this reason that I felt that

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there should be no serious objection and several years ago when we discussed the issue I thought it ought to almost happen automatically, that we would take away that authority. Now there comes a very real problem that is just with the Natural Resource Districts. Much of the responsibility of the Natural Resource Districts has been concentrated in the area of flood control. As a natural result of the control of floods, runoff dams are built. A natural result of impoundment of water is, whenever you have a puddle of water big enough to float on, swim in, fish in, wade in, water ski on some individual is going to want to take part of that. There is nothing really wrong with that. So it was felt by this Legislature that there ought to be the opportunity for the Natural Resource Districts and sometimes in cooperation with Game and Parks the opportunity to develop those projects for recreational purposes for the benefit of the public. Since public funds were expended we ought to be able to achieve maximum use. I have been here now in my thirteenth year. I was here when the Natural Resource Districts were organized. As I recall, it was the intent of the Legislature to create the districts for the primary purpose of conserving soil and water. The secondary benefits, recreation, were appreciated but it was not the intent of the Legislature, it was not the intent of the body as I recall, that we use the Natural Resource Districts as a principal vehicle for providing recreation for the people of the State of Nebraska. It was felt, and I agree, that there are many multipurpose projects with those benefits that accrue to those projects, that can very well justify the expenditure of public funds, but to build a structure for recreational purposes alone with tax dollars and the taking of that property by eminent domain at a time when funds are in scarce supply almost flies in the face of reality. I might suggest to my good friends in the front row, Senator Higgins and Senator Labez, that the Papio Natural Resource District has some concern now about this project although they had originally voted in support of LB 243. It is not my intention to hamper the Natural Resource Districts from carrying out their legitimate responsibilities. If Senator Murphy were here, he would like to recount for you the construction of a tennis court by a Natural Resource District, hardly considered to be a soil or water conservation measure unless you consider that by covering the soil with concrete it is no longer going to blow away or wash away but not the principal purpose for which we were organized. There are other instances frequently, I should not say frequently, fortunately very few, but those instances are in every case an infringement upon an individual. I think it is important that we recognize that the State of Nebraska and the subdivision of government is in the peculiar position where, if I as a landowner

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opposed their taking of my property, I must finance both sides of a lawsuit if I take them to court. As a taxpayer I finance the Natural Resource District and then as a taxpayer and a landowner I have to finance my own legal cost. It is only if the court should award damages in excess of 15% greater than offered by the Natural Resource District or if we can prove that the Natural Resource District did not negotiate in good faith can the landowner recover his cost. Now I think you all recognize and then there is no reason in the world why the subdivision of government cannot just refile the case. Their funds are almost, I should not say inexhaustible but from the standpoint of the subdivision they are tremendously greater than those of the individual.

SENATOR CLARK: You have a minute and a half left.

SENATOR SCHMIT: The reason for this bill is to point out that problems have occurred. Senator Hoagland refers to the Oliver project. I suggest that that project is exactly identical to the situation that exists in the City of Omaha where people were being threatened and all of a sudden this Legislature took action and said we are going to be sure to do what we can to stop this danger to the people of the State of Nebraska and the citizens of Omaha. Now in this case there is just one individual, one landowner. Is that one landowner's rights not as sacred as are the rights of a hundred and seventy one job owners and Mr. Kalmanovitz? I think they are equal and I think that in this case we need to protect the right of that individual. We need to point out that the bill allows for the construction of a project by a willing buyer, willing seller. It allows for the construction of a project if 75% or less of those benefits are recreational and the bill as I will propose an amendment...(interruption.)

SENATOR CLARK: Your time is up.

SENATOR SCHMIT: ...Thank you, Mr. President.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: I would like to speak to the main bill, Senator Clark, please.

SENATOR CLARK: You are on the bill.

SENATOR BEUTLER: Oh, I'm sorry, I thought we were on... Senator Schmit has not introduced his amendment yet?

SENATOR CLARK: No, we are on the bill right now. He was just explaining the bill.

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SENATOR BEUTLER: Okay, in that case, Mr. Speaker, members of the Legislature, I would like to very strongly oppose the bill. There are a number of unanswered questions as well as a number of comments that I would like to make. To begin with I think I would like to ask Senator Schmit a question or two if I could.

SENATOR SCHMIT: Yes, Senator.

SENATOR BEUTLER: Senator Schmit, with regard to the bill, there is no grandfather clause for any projects that have begun already. Is that correct?

SENATOR SCHMIT: Absolutely not.

SENATOR BEUTLER: Absolutely not. With regard to the Red Willow project as I understand it, somewhere in the neighborhood of 900 thousand dollars has already been spent for the development, for the beginning, for the feasibility study and the beginning of the development of that project. Would this bill mean that that money would be wasted as a practical matter in the sense that obviously they could not get eminent domain rights in this situation on a voluntary basis?

SENATOR SCHMIT: I am not sure that project...is that the project that will have surface acres of about six hundred acres, Senator Beutler?

SENATOR BEUTLER: I think so.

SENATOR SCHMIT: Okay, the amendment that I am offering will exempt projects over five hundred acres so that project would not be impacted.

SENATOR BEUTLER: Okay, so under your amendment that project would not be impacted.

SENATOR SCHMIT: That is right.

SENATOR BEUTLER: Are there any other existing projects or projects upon which money has already been spent that to your knowledge would be impacted with your amendment?

SENATOR SCHMIT: There would be no impact upon the Oliver Lake project because the Natural Resource District can operate that project. They can fish and swim and boat and water ski on that lake. The only thing they would have to do if they wanted to use that small portion of shoreline that belongs to Mr. Singleton, they would have to either negotiate an easement or purchase the land from him.

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SENATOR BEUTLER: Okay, so to your knowledge there are no projects in this state that have begun and upon which we would spend, be wasting money if the bill were passed?

SENATOR SCHMIT: Well first of all, the answer is no. I won't take any more of your time.

SENATOR BEUTLER: Okay, thank you. The comment that I would like to make really basically is this. I don't think this is a situation where we want to tie down the NRDs too closely across the state to one particular figure. I think this is a good area, a good example where we need to have a lot of local flexibility and the reason I say this relates in part, in my mind, to the tax sources that are being used to fund these different projects. Now I come from the City of Lincoln, obviously. The City of Lincoln itself probably contributes somewhere in the neighborhood of 75% of all the money that goes into our NRD. So the interest, primarily, of the City of Lincoln or the people of the City of Lincoln is in recreation. It is curious that we are taxing the people in the cities directly for natural resource developments which to a large extent do not benefit them. Now obviously it benefits them to some extent but what I am saying, that I guess the bottom line is this. In Douglas County, in Lancaster County, in the urban areas the primary interest is recreation but we are going along and helping with projects that are primarily rural in orientation in many cases but I think a fair return for that is from time to time going ahead with projects that do have a very substantial recreational value. There is much justification for that in areas like Lancaster County...

SENATOR CLARK: You have one minute left, Senator Beutler.

SENATOR BEUTLER: ...Douglas County, where the urban people are contributing the predominance of the money and, therefore, I think they should get some return out of that themselves. I think that local control is important here and that if the compensation problems that Senator Schmit is talking about are the main problems, then perhaps what we should be doing is directing our attention to a solution that looks at the compensation formula and adjusting that so that, in fact, the landowners do get fair compensation for their land rather than trying to operate through modification of the eminent domain clause. Thank you.

SENATOR CLARK: Amendment on the desk.

CLERK: Mr. President, the first amendment I have is from Senator Schmit and the amendment is on page 1337 of the Journal. (Read.)

SENATOR CLARK: Senator Schmit, before I call on you here I would like to introduce 50 students from the Elkhorn Hill Rise School, Elkhorn, Nebraska. They have three teachers with them from Senator Wiitala's district. Would you hold up your hands, please? They are in the North balcony. Welcome to the Legislature. Senator Schmit.

SENATOR SCHMIT: Mr. President, members of the Legislature, the amendment I have offered here is one which I think should resolve the fears of all of you. The amendment provides that you can't use the power of eminent domain by a Natural Resource District to acquire property for recreational purposes if the recreational benefits of that project exceeds 75% or if the project's size is less than five hundred acres. In other words, the projects that Senator Beutler referred to that are of vital interest to the City of Lincoln, those large projects which provide substantial recreational benefits can be acquired. It is the small project where a, usually it is an individual landowner that is in litigation with the Natural Resource District where they would not be allowed to use those benefits. Senator Beutler, I am amazed at the comment you made that the people of Lincoln, Nebraska, for example, pay so much into their Natural Resource District and they don't get any benefits because you have been telling me for at least two and a half years now that the people of the urban areas are vitally interested in the soil and water across the State of Nebraska and I think that I am...you know, I am interested in the benefits of the University of Nebraska, UNO, all those things and I think that obviously there must be some concern about on your part or else 375 would have come out of Public Works Committee by now. So I know that you are interested in statewide issues. I think also we have to recognize that when you look at this issue you have to decide what you would do if you were in a similar situation. I had a landowner come to me just in the last few days. He has lost one farm for the construction of a pond and he says they are doing a fine job. Game and Parks is doing an excellent job of managing it. I take my hat off to them. I congratulate them, no problem. They are doing a good job. I am glad that it went the way it did. Then he said this last year the Natural Resource District came to me and asked for an easement to build another dam and I sold it to them for a dollar on the provision that they would put a four inch pipe in the structure and allow the water to come across the land as it had for thirty-nine years to water my cattle. After agreeing to that condition with the landowner, the Natural Resource District proceeded last summer, the first year the agreement was in effect, to shut off the water because they said there was not as much water running into the structure as they were letting out and the law prevented them from doing that even though the principal source of the water was in the base of the dam and

was unmeasurable. So here a landowner who willingly has given up one farm, willingly gave another easement for a dollar after having watered livestock for thirty-nine years from that source of water, after having tried to cooperate with people who I know to be reasonable, people who I respect and admire, suddenly found himself without water for livestock and had to move livestock from a pasture in a period of drouth because he didn't have water. Now, ladies and gentlemen, there is something about government authority. We all know what it is, that when you give that authority sometimes it creates abuses. When you take property by eminent domain, it is a final act. There is no more adjudication. There is no more benefits. It is gone. I think we need to recognize that there needs to be some limitations. Ladies and gentlemen, you can vote for this bill or don't vote for it but bear in mind that Natural Resource Districts, as the Game and Parks a number of years ago, will one day abuse the wrong people and we will find someone come roaring in out of the east and require and request and demand that this Legislature provide protection for the individual homeowner or landowner or businessman. It depends all upon whose ox is being gored. Ladies and gentlemen, I am as interested in conservation as any member of this body. I have served for twelve years as a member of a watershed board. I never drew a dime for the expenses that I incurred during that period of time. We never condemned any property. We never took land without willing buyer, willing seller and we got easements for a few pennies or a few bucks. When to begin to take property from people for conservation purposes or when you need an easement, farmers for the most part are willing to give it for a minimum cost but if you take it for a purpose of recreation, the cost increases and justifiably so. If I want, if Senator Beutler, Senator Hoarland, my other friends in the city want to spin around my farm and my lake, that is fine with me but there ought to be some compensation for the individual who gave up the property and I think that none of us would argue with that. The ability to use eminent domain puts the individual in a very unfair position. Now you can sit here today, you talk about the lobbying forces that exist in this Legislature and outside. As I said earlier, the majority of the Natural Resource Districts would never use it, will never use it, don't have to use it, prefer not to because there are other ways. If you will review the booklet that I gave you, the Natural Resource Districts were given twelve responsibilities. Only one of them deals with recreation. The balance of them deal with the more important areas, the conservation of soil and water, the natural resources of this state. Senator Kremer drew the law well and I respect him for it and none of us, again, none of us oppose the utilization of the structure or the water impoundments as a side

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benefit, as an additional benefit but when it comes to the principal benefit I think we should review it. There will never be enough dollars to control all of the soil and water erosion that we need to control in this state. Are we going to go to the taxpayers of this state and ask for 10 million dollars for the water development fund and say that we need more than 7½ million dollars of those funds to be used for recreational purposes? I don't think so. I wouldn't have the nerve. I don't think anyone else does. When I ask for money for water development funds I think it ought to be used for water conservation, water impoundments, land treatments, minimum tillage, terraces, retention dams, all of those structures. All of those structures are very productive and very effective in soil and water conservation. By the time you lock water behind a dam, ladies and gentlemen, it has already moved from its point of impact upon the soil. I know that there are people here today who see no harm in the NRDs. Soil and water conservation is a sacred cow but let me tell you, ladies and gentlemen, when it comes budget time on this floor that sacred cow is going to be as dry as a fourteen year old cow who hasn't had a calf in five years because you are not going to get any milk from that cow and so what are you going to do? Where are you going to get the money for those projects? You are not going to get any. Are you going to let that money be used to provide, as Senator Beutler said, recreation? Or are you going to go up in those hills, in those sandhills and in those other areas and do the good conservation work that many of our people...

SENATOR CLARK: You have one minute left.

SENATOR SCHMIT: ...are capable of doing? I think I have talked too long already, Senator, thank you.

SENATOR CLARK: I don't know who wanted to talk on the amendments. These are on the Schmit amendments. I am going to call the names and see if you want to talk on them. Senator Koch, do you want to talk on the Schmit amendment?

SENATOR KOCH: Thank you, Mr. Chairman. First of all I would advise Senator Schmit and others that I do not favor the intent of LB 243. When we start reaching into the grab bag for magic numbers, his amendment as I recall was anything less than 500 acres. Is that correct, Senator Schmit?

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: I'm sorry, Senator.

SENATOR KOCH: Your last amendment, was that 500 acres or less?

SENATOR SCHMIT: Yes, Senator, any cannot be used on any structure of 500 acres or less within the surface....

SENATOR KOCH: In other words, any surface structure of water beyond 500 acres is not affected by the intent of this legislation?

SENATOR SCHMIT: That is right.

SENATOR KOCH: Thank you. I would like to state from some statistics I have here when you get down to the issue of trying to determine value of a structure in terms of soil conservation, water conservation or beneficial uses for recreation and this comes from the district that Senator Schmit mentioned a moment ago, that one time, and I have their correspondence in my file, Papio Natural Resources District. They have since relooked at that position according to the correspondence I have of March 11 and this is what they state in the letter from the director. "The bill sets no standard for determining applicability in the multi-purpose acquisition. For example, a combination of the fee for a barrow pit in an area with a high water table may involve a 100% use of the property for barrow during construction followed by a 100% use of the resulting lake after construction for recreational purposes." They go on to say, "Expressing any such limitation in terms of percentage can only lead to confusion in application in the absence of some objective or empirical way of expressing proportions of use or purpose." I believe what we are doing here is we are placing NRDs in a very difficult position. I have visited with members of NRDs who have been in positions, not only state leadership, but national leadership. A good friend of mine from Franklin who looks at 243 as a very destructive product as far as NRDs are concerned. Now I also have a letter from the Maple Creek people who have a concern and they tell me that taking land from someone is plunder. I submit to you that when we built the interstate across this nation, that had, we had one person who refused to be a willing seller and that type of thing that we would have had an interstate so far. Then we would have had a gap. We would go back to a road that was not of that type. Senator Schmit has a bill for the Public Works Committee, 375, and, Senator Schmit, we are trying to work on it to get it out here where NRDs are given considerable authority in terms of management, that type of thing. Now you come with this type of bill which I really believe is going to impede the progress of NRDs and I have no evidence yet where they have arbitrarily or capriciously used condemnation in terms of what they are about. In addition to this, I submit to you that we have bills here we want to take cigarette tax to build water structures. We are saying we are way behind and we

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need hundreds of those if we are going to help our system of preserving water and saving surface water. Now anytime you put a dam in of any kind it can become somewhat recreational, fishing, possibly a little pontoon out there of some kind. They have been used by people for some recreational purposes or for use of leisure time. So, Senator Schmit, I generally agree with you on these issues but on this one I have to oppose you. I don't believe 500 acres is a reasonable figure. If you want to get down to 10 or 12 or 15, that might be more applicable.

SENATOR CLARK: Senator Cullan. Not here. Senator Newell, do you want to talk on the Schmit amendment?

SENATOR NEWELL: Mr. President, I just have a quick question if I could of Senator Schmit.

SENATOR CLARK: Senator Schmit, will you yield?

SENATOR SCHMIT: Yes, I will yield.

SENATOR NEWELL: Senator Schmit, you know, we have had over the years a series of Attorney General's interpretations about all these various classifications and so forth and every time I turn around you get a new opinion about the question of constitutional classifications. I just had a little question raised, now there has been questions on 882 and those kinds of distribution formulas, a little question raised on 205, the arson investigators bill, whether you can do it just for Omaha instead of statewide, etc., etc. Have you asked the Attorney General for an opinion about your categories, your classifications?

SENATOR SCHMIT: No, I have not, Senator.

SENATOR NEWELL: Do you think it might be useful to offer, to ask that kind of question before we proceed very far in the process with this kind of an amendment?

SENATOR SCHMIT: Well I thought about it, Senator, but I think that the Legislature has been given authority to make decisions and I don't think there is anything wrong. We have done this many times and we have established criteria and I see no concern. I am not concerned.

SENATOR NEWELL: Thank you, Senator Schmit. Senator Beutler, would you answer a question?

SENATOR BEUTLER: If I can.

SENATOR NEWELL: Senator Beutler, did you look at the classifications that are set out by the Schmit amendment?

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SENATOR BEUTLER: Have I looked at the classifications?

SENATOR NEWELL: Have you looked at it where we are talking about acre feet and we are talking about certain other percentages and so forth in terms of recreational activities? Do you think there may be some questions or some constitutional questions about that kind of classification system? Have you looked at it in any detail?

SENATOR BEUTLER: I just saw it today, Senator Newell, and offhand I don't know of any constitutional questions but I really can't answer that very specifically at this point in time.

SENATOR NEWELL: Thank you. Senator Hoagland is up doing something else. Well I think that it would be important and maybe very valuable to find out whether or not this kind of a classification system can be justified. I know that we have had problems with classifications in the past and maybe before we get too far along offering these basic compromises we ought to see whether or not they will hold if such a bill moves along. So I just offer that point of caution to the body and I thank you.

SENATOR CLARK: Senator Hoagland, did you wish to talk on the Schmit amendment? All right. Senator Kremer, on the bill, all right. Senator Lamb. He is not here. Senator Sieck, on the Schmit amendment.

SENATOR SIECK: Yes, Mr. President, members of the body, I would like to make a couple of comments on what Senator Schmit commented on. He commented on a subject that is kind of dear to me and it is on a road structure up on the Seward-Saunders County line. I am very familiar with this project and I happen to know that the individual that he is referring to did not sign an agreement with the landowner who provided the structure, the site and the permission to give three acres of land to make the road straight and make a lot better improvement. I also happen to know that that individual got \$1,000 from the ASCS to dig a well so he could supply water to his livestock and I also know that all that would have needed to have been done was this individual would have signed this agreement and the water would have been released because the owner of that property agreed to release that water and I think we should know the true facts when we say something, and I just don't appreciate something that is not true and I know this is the fact. And on land treatment, he says this has a minority position. I can assure you that every Natural Resource District in the State of Nebraska has that as their number one priority. If you look in their one and six year plan you will find every last one of them has that as their

priority and I think this is number one. The reason we hear about these recreational projects, anytime you get into eminent domain, you are going to hear about it and we hear it. We received many letters last year but who were they from? They were just from a very few individuals but they really send the letters out to us. But I will talk about this later, but I just wanted to clear the air on these two items. Thank you.

SENATOR CLARK: Senator Carsten, do you want to talk on the Schmit amendment?

SENATOR CARSTEN: I only want to ask Senator Schmit a couple of questions relative to it, if I may.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Yes, Senator.

SENATOR CARSTEN: Senator Schmit, as you know we have been looking at the possibility of taking water out of the Missouri River with a project down in southeastern Nebraska and it would appear at this point that strictly for pumping it out without some degree of reservoir ability it certainly is not feasible. If that ever becomes a reality down the road, it would appear that we are going to have to have some reservoirs, probably not large, but many small ones that may even be on the individual farm or maybe a couple of farms or something like that. I would not visualize them being extremely large. What does your amendment, and I may want to put a few fish in, if I have one on my own farm which is a recreational portion for my friends, myself if I see fit, what does your amendment do to that type of a situation, where we bring that water up at probably off season, of the navigation season, for storage for use the next year and under those kind of circumstances? Would you answer that for me? That is our concern right at the moment.

SENATOR SCHMIT: What is the principal purpose of the transfer of the water into the basin?

SENATOR CARSTEN: Basic transfer and storage of water would be for irrigation the following year without a question.

SENATOR SCHMIT: Senator, that would be, as far as I am concerned, the reason for the movement of the water, not the recreational benefits but that would be secondary. I am confident that my bill would have no impact upon this.

SENATOR CARSTEN: All right, thank you very much, Senator Schmit.

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SENATOR CLARK: Is there any further discussion on the Schmit amendment? Senator Chronister, did you want to talk on the Schmit amendment?

SENATOR CHRONISTER: Mr. President and members of the body, I rise in support of the Schmit amendment. I like our NRDs. They are doing a very commendable job but I think that we have to direct our energies and our dollars to the conservation of soil and let that be our primary purpose. And, Mr. President, if I have any more time, I would yield it to Senator Schmit if he so desires.

SENATOR CLARK: Senator Schmit is going to close. Senator Schmit, do you want to close on your amendment?

SENATOR SCHMIT: Mr. President, members of the Legislature, I would like to ask Senator Sieck a question.

SENATOR CLARK: Senator Sieck.

SENATOR SCHMIT: Senator Sieck, what is the name of the individual to whom you referred?

SENATOR SIECK: Okay, Mr. Floyd Hudkins and the primary owner of the land where the reservoir was on was Howerter.

SENATOR SCHMIT: And will you explain to me the provisions whereby he was allowed or given money to drill a well and did he or did he not move the livestock from his pasture because of the lack of water?

SENATOR SIECK: He very likely did but all (interruption).

SENATOR SCHMIT: Then the NRD turned the water off?

SENATOR SIECK: No, they did not. The water was not turned off. It was just allowed a trickle to go through but, basically, all that would have needed to have been done was Mr. Hudkins should have agreed to the project and he did not agree with Mr. Howerter to release water at a certain level. What happened is Mr. Hudkins released more water than was really needed so they shut it down to a trickle sized stream.

SENATOR SCHMIT: Who decided it was more water than what Mr. Hudkins needed? Whose decision was that?

SENATOR SIECK: To shut the water down? This was (interruption).

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SENATOR SCHMIT: Who decided Mr. Hudkins wanted more water than he was (interruption).

SENATOR CLARK: We can only have one at a time talking please.

SENATOR SIECK: Yes. Mr. Hudkins.

SENATOR SCHMIT: Thank you, Senator Sieck. Mr. President, members of the Legislature, I don't like...I am not in the habit of having my integrity challenged on this floor. I think that Senator Sieck came precariously close to doing that and I will say this. Mr. Hudkins is a man of honor. Mr. Hudkins has explained it to me in the manner in which I explained it to you. I will check with him and I will bring the facts back to you, and if they are not as I have told you, I will tell you so. It is entirely possible that Senator Sieck is correct. I gave the facts to you as I knew them to be and as I believe them to be. This is not the only instance that has occurred in that same Natural Resource District. I have had complaints other than that also. I want to point out also, and I suppose that someone is going to challenge that, that irrigation rights have been denied to landowners who have provided easements for dams after the crop was planted and after it was planted for irrigation purposes. We can argue all day long, ladies and gentlemen, about the technical points that Senator Sieck has raised. You can decide who is right and who is wrong at a later date. The point I want to make is this, that if this Legislature believes that in a time of shortage of funds it is in the public interest to expend funds for recreational purposes where the benefits of that structure exceeds seventy-five percent, then so be it. But let Senator Sieck and let someone else explain that to the taxpaying public, and when you go to that water development fund and want to increase it for water development purposes, ladies and gentlemen, you are going to have a hard time. I don't think the Budget Committee is going to pump. I think they are going to say, very rightly so, let Mr. Mahoney come to us for recreational purposes. He has done very well by this Legislature and he knows how to handle those funds. We have done one thing, we have taken from the Natural Resource District, from the Game and Parks Commission the right of eminent domain for recreational purposes and we have granted it now to 24 autonomous entities and it is much more difficult to supervise the 24 than it ever was an individual Game and Parks, and if you cloak it in the aura of respectability...

SENATOR CLARK: You have one minute left.

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SENATOR SCHMIT: ..of soil and water conservation, you can get away with anything. There is no reason, no reason in the world why this amendment, in the first place the amendment ought to be adopted because it is going to give you more latitude than the existing bill so I would hope you would adopt the amendment, and then argue about whether or not you want to kill the bill. But I would think that before you do that you ought to place yourself in the position of the individual landowner who is finding his property condemned. There is 55 million acres of land in the State of Nebraska, more or less, give or take a few. I find it impossible to believe that there is not sufficient area available for recreational purposes without condemning an individual landowner's land. Ladies and gentlemen, I ask that you adopt the amendment.

SENATOR CLARK: All those in favor of the Schmit amendment vote aye, all those opposed vote nay. Have you all voted? Senator Newell, for what purpose do you arise? Record the vote.

CLERK: 25 ayes, 1 nay, Mr. President.

SENATOR CLARK: The Schmit amendment is adopted. Do you have anything else on the bill?

CLERK: Mr. President, Senator Sieck moves to indefinitely postpone LB 243.

SENATOR CLARK: Senator Sieck.

SENATOR SIECK: Mr. President, members of the body, I do stand opposed to 243 and I do have this kill motion on this bill and I want the members of this body to know that this is my motion, not the NRDs. I did get information from them but this is my decision and it was my decision because I have been with the Natural Resource Development from the beginning. I also was with the Salt Valley Watershed District from its beginning and I have seen what we could do and what we have done and I can also say that this was never abused, and there was a few cases where I saw there was a possibility that it might be abused, and I stepped in, and this wasn't from a Natural Resource District, this was from the Corp of Engineers where we, as individuals, did not have much power but I did step in and I got a correction for that particular landowner. And, of course, I am going to tell you that the Corp of Engineers is a lot different than a Natural Resource District. They have full authority. Even the Salt Valley Watershed at that time did not have authority to say whether you could or could not. They were just the

sponsoring agency. But in the Natural Resource District when a condemnation comes before them, that board of directors has to make that decision and they are dealing with their people. I know that Senator Schmit is for water projects and so am I. If we are going to do anything in the State of Nebraska to correct what is happening, we are going to have to have a lot more of them and we are always going to find individuals that will not give. I was directly involved because I actually did the negotiating on a lot of projects and I am going to tell you it is a difficult thing to go into a home and say, "Here, we want to build this project", and that individual blows his top and says you are going to build it for recreation when we was not. It was practically for flood control, but anytime you put water on somebody's land, there is going to be recreation involved. One of the most ridiculous provisions of the bill that I see is the retroactivity and that is primarily for the Oliver Project. That project is now completed other than the issues in the court of the Singleton ranch. I feel this is special legislation. Before this project was built, the Singleton was like any other ranch or any other farm. When the project was completed, he saw the value of developing it as a development area, and if this had not been a part of the project, it would have lost a lot of its potential as far as recreation was concerned. This project had the endorsement of the people in that particular area and I am sure that when we build a project, and I have had experience in many, we do not want to give up the property. I know that is a fact and it is difficult but yet I haven't seen anyone who I have dealt with that did not come out the better end of the deal. Now in this particular case it was because of a potential monetary gain on the individual's part. I don't feel that in this instance that he was going to lose his home or anything of that nature but it was because of the gain that he could develop on his part. You cannot blame that individual for trying but you have to respect the people of that community and their efforts and what they have come forward with in developing a project that was defunct and coming up with a viable project. Another item that I feel is very unclear in LB 243 is the multiple structure that is for floodcontrol, water recharge, irrigation and recreation. You could possibly kill the whole project because it is very difficult to define recreation as such. I know now since the amendment passed that it is seventy-five percent for recreation, that eminent domain cannot be used. It doesn't say that you can't buy the property by other means. I believe individuals with legal assis...(RECORDING MACHINE MALFUNCTIONED - Approximately eleven feet.)....six hundred acre category and I believe I

heard Senator Schmit say that this structure would not be involved. Well, then we are not even helping the people up on the Willow Creek area which I received a tremendous amount of letters and response from. I would like to make a little comparison. I think there was some mention of the Maple Creek Project and I have got a letter on my desk here from the opposition or promoters of the bill that says Maple Creek doesn't want this. I can assure you that Maple Creek is dead. The local people spoke. They didn't want the project. There is no money allocated for this. It doesn't have a project design or nothing. It just was in the planning stage. The people spoke. The Board of Directors listened and the project will not go. Personally, I feel that was a good project and I can assure you that if I had been in that area I would have fought for it because we built a similar project in the area that I was responsible for and that is the North Oak Project which is in Saunders, Seward and Lancaster County. I can assure you that project is completed, other than one small structure which will be built this year, and the reason it wasn't built sooner was because we couldn't get the land treatment above it. Everyone of the projects that are built in these type of projects require seventy-five percent of the land be under treatment.

SENATOR CLARK: You have one minute left.

SENATOR SIECK: So you don't build a project until that time. I would like to make an example of a project that I was directly involved with just before I became a state senator and that is one just south of Valparaiso. I actually got the land rights and I tell you it wasn't easy but I can assure you that most of the people in that particular area I can face and shake their hands and be welcome. The prime individual on that project was a very wealthy individual and he got burned on the Branched Oak Project and he was very, very angry and here he was involved again and all he wanted was his private recreation area but the site was established and the site was established because there was recreation involved besides flood control and this was one of twelve structures and it was the largest of the total and it was involved at a hundred acres. I understand Schmit's amendment would take this out now.

SENATOR CLARK: Your time is up, Senator Sieck. Senator Remmers.

SENATOR REMMERS: Mr. Chairman, members of the body, I oppose Senator Sieck's amendment to kill 243. I think that 243 is an important bill that we need to pass in

this session of the Legislature. First I want to look at the purpose of NRDs. I always thought the purpose of NRDs was primarily for soil and water conservation, land treatment, flood control, items of that kind. Sure, in some of those instances there are some secondary benefits to recreation. I hear the comment that the city areas pay the taxes for the NRDs. They pay more taxes than the rest of the area. I would hesitate to get into that part because I don't think we have an issue before the Legislature where there is taxes involved that some area does not pay for something where it does not receive any value but I think the city areas will receive value. We have all been concerned about soil conservation. I don't think there is any issue that is more important to survival than conservation of soil and water if we are going to have food down the road. So I think it is a just expenditure of their taxes to be used in this area. We speak of the power of eminent domain and I know that the power of eminent domain is necessary in some cases but I don't believe there are very many cases where a person who has become, shall we say, a victim of eminent domain is satisfied with the settlement. Very seldom does it compensate him for all the things that he has given up in it. He is not a willing seller and while we do need powers of eminent domain I think they need to be used carefully. When we speak of powers of eminent domain for a highway or for a power line or for water lines, I think you are talking about something entirely different than power of eminent domain for recreation. There are other options when we are speaking of recreation. Generally there are not very many options when you are talking about a right of way for a four lane highway or for a power line or for water line. I think the history of eminent domain as used by the Game and Parks Commission should tell us something about how people feel about the rights of eminent domain. We have heard the comments that it is impossible to go to court and defend...for the NRDs to defend their position when we say that half of the benefits, or as now with Senator Schmit's amendment, that not more than seventy-five percent of the benefits must be for recreation, and yet on the other hand they turn around and justify the payment of the building of the project to begin with on recreation. If they can justify the building of a project by the benefits of recreation, then why cannot it be defended in this sense? I don't think that is a very consistent stand. We are also saying that very few projects today could be justified without the recreational benefits. I am wondering where we have been looking. When I look around in my part of the country I see tremendous need for land treatment, for grade stabilization, for water conservation, flood control and I think if they are saying they can't

find projects to use for NRDs to build without recreation or without recreation carrying more than half of the benefit, I just wonder where we are looking. Are we looking at the great big project that makes news that the public recognizes or do we overlook the small projects that probably do more good in the long run? And I am sure they do more good. I think that land treatment, proper land treatment, will do more good for recharging the sub-surface water than any lake will but, of course, they are not quite as dramatic. When we start taking an individual's property for recreation, I think we need to go slowly. I realize there are some situations where we need the power of eminent domain but I think it must be used (interruption).

SENATOR CLARK: You have one minute left, Senator Remmers.

SENATOR REMMERS: Thank you.

SENATOR CLARK: Senator Lamb.

SENATOR LAMB: Mr. President and members of the Legislature, I rise to oppose the kill motion. I guess I would say that I did not plan to make a statement but as a result of some of the things Senator Beutler said I am a bit alarmed and almost offended. Senator Beutler said in effect, I believe, that since the Lincoln area produces most of the money for the Natural Resources District, then, and I hope I am not misquoting him, he said something to the effect that therefore the people in Lincoln should be able to go out there and have a right of eminent domain to establish recreation areas no matter what you are doing to that local farmer. And I can't accept that, and this is the sort of thing that is going to happen if we continue in the way that we are going. I think I heard Senator Beutler say he didn't say Lincoln, he said NRD, but when you have an NRD which is dominated by a metropolitan area or I guess Lincoln is not a metropolitan area but an urban area, then you have basically the same thing. You have the situation where this farmer no longer has the right to bargain. That land is taken and the price that is paid is determined by the court and I think Senator Remmers made a very good observation, that eminent domain is needed in this country, no doubt about it, for the essential services, for the essential services that we all need, such as, the roads and the power lines, but when we get into the situation where we are using it for recreation, then we are an entirely different ball game and there is nothing to stop the NRD which is controlled by the City of Lincoln, for example, from establishing a recreation area if that is what they so want. Even if they don't have the power of eminent domain for that purpose, they can

go out there and they can negotiate, and if they can't do it in one area, they can do it in another area, and if they can't agree on a price, then they can increase that price until they do buy that land. So it is not an impossible situation. There can be recreational projects without the eminent domain power. This is something that needs to be scrutinized very carefully. I understand that there are arguments on both sides of this issue. I fully realize that and I would like to admit at this point that I have some reservations on one point in this situation and that is the Oliver Project. I am not entirely satisfied with the way the bill handles that situation which is already under development. This is a sort of a problem I have with the bill but I certainly do not believe the bill should be killed at this time or any time and that we need to very carefully monitor the power of eminent domain. I urge the bill not be killed.

SENATOR CLARK: Senator Hoagland.

SENATOR HOAGLAND: Mr. President, colleagues, I would like to rise in support of Senator Sieck's motion to kill this bill. I think Senator Sieck's remarks are well taken and they were well stated and there is little I can add but let me go ahead and try anyway to give you the reasons why I think it is important, particularly from an urban legislator's point of view, to see that this bill not progress any further. Now I think first we need to lean back and take the long view, the long view that so many of us in the Legislature are inclined to take from time to time in committee hearings, and that in particular is that surface water storage as a general matter is exceedingly important to the future of agriculture in Nebraska and to the future of proper water use in Nebraska. I have heard my good friend Senator Schmit so often say how important it is to keep the water in the state, how we have got to store it in the underground, in the groundwater reservoirs or we have got to store it on the surface of the ground and we really can't let it run out. Now I can remember so well a tour that Senator Wagner took about eleven of us on in his legislative district two years ago when he spent a day and a half with friends of his and members of the local boards showing us around the Farwell Project and a number of the people who are sitting in this body today were there and we really enjoyed very much the hospitality of the people in the St. Paul area and enjoyed listening to how proud they were about all of the various advantages the Farwell Project had brought to their particular area of the state. And those advantages, of course, were all related to water storage and they included aquifer recharge. They included

substantial irrigation benefits of that project which brought a lot of economic advantage to that part of the state that it hadn't had before. It involved interestingly enough the creation of a lot of wildlife habitat. I remember Senator Wagner pointing out to us that wildlife is now more plentiful around St. Paul and around the Farwell Project than it had ever had been prior to the creation of that particular project. Now Senator Schmit has had an amendment adopted to this particular bill which excludes from the condemnation prohibition large projects but does include smaller projects. Now as far as I am concerned the smaller the project the better, because if we have a lot of small projects put out around the state, why the aquifer recharge benefits are going to be spread out around the state. There is going to be more wildlife benefit as we have smaller projects around. There is going to be more access to recreational facilities by a wider number of people than if we have just a few large projects spotted various places around the state. So I would take exception to Senator Schmit's amendment to the judgment that it is implicit in that amendment that somehow smaller projects are worse than larger projects. I think the opposite is true. Now with respect to this business of seventy-five percent recreation and this whole question of how the benefits are computed, prior speakers have argued that this is ambiguous, that it may be unconstitutional because how can you take a section of the Nebraska code and have it depend on computation of benefits. Most of us, frankly, and I am included, don't really understand how the benefits are computed. I know that recreational benefits are a factor, flood control benefits are a factor, irrigation benefits are a factor. In some instances groundwater recharge can be a benefit and in some instances the sediment control can be a benefit but those matters are really for the experts in determining how those things are to be done. And I think one of the problems with this particular bill is we genuinely do not understand how...

SENATOR CLARK: You have one minute left, Senator Hoagland.

SENATOR HOAGLAND: Thank you, Mr. President. ...how a meat axe approach is going to apply in saying that anything seventy-five percent or over as far as recreational use is concerned is not permitted. Now I have some other things that I want to say, so I will put my light back on to address this issue again but let me just say in closing that it is important particularly, I think, to the eastern one-third of the state that recreational benefits not be excluded because recreational benefits automatically are going to jump when you are talking about a project near Omaha or

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Lincoln because that is where the people are and we do have a dearth of recreational facilities around Omaha or Lincoln and I hate to see anything that would cut down the number of projects that are within one or two or three hours drive from those urban areas. Thank you, Mr. President.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I, of course, rise in opposition to the kill motion. I want to tell you very frankly I would hope, I know that some of you have been very busy, but I would hope you would read a little bit of the proposal I placed upon your desk, page 2. I want to recite for those of you who have not read it the principal functions of the Natural Resource Districts as outlined by the Legislature: Number one, erosion prevention and control. Number two, prevention of damages from floodwater and sediment. Three, flood prevention and control. Four, soil conservation. Five, water supply for any beneficial use. Six, development, management, utilization, conservation of groundwater and surface water. Seven, pollution control. Eight, solid waste, that should be solid waste disposal and sedimentary drainage. Nine, drainage improvement, channel rectification. Ten, development and management of fish and wildlife habitat. Eleven, development and management of recreational and park facilities. Twelve, forestry and range management. Ladies and gentlemen, those are the twelve objectives that we outline for the Natural Resource Districts. All of a sudden we are saying the only thing that is important is recreation. Senator Hoagland refers to the eastern third of the state. There is miles and miles and miles of shoreline, both river and streams and lakes, in those areas. I can tell you very honestly that I have seen no dearth of those facilities in this eastern part of the state. I have seen no reluctance on the part of people to travel to other parts of the state to take advantage of those. I know that he says he supports and he is interested. I understand the importance of surface water storage. I applaud that, Senator Hoagland, and I hope that includes the support of the Norden Dam structure. I know that there are many of us here in this body today who are definitely, and I think all of us are definitely concerned about those important aspects of soil and water conservation which was the original responsibility of the Natural Resource Districts and all of a sudden there are people who are arising and saying that if a project is one hundred percent for recreation purposes it ought to be okayed. Ladies and gentlemen, the City of Omaha just, I don't know if they passed a bond issue for a \$4 million

recreational project or not. I applaud them if they did but that is the way those projects ought to be handled. That is the way they ought to be funded. I have no objection, as I said before, to the multipurpose structures. Fine, more power to them. I have some on my farms and I can tell you they are used by a lot of people. I have never fished in my life. Someday maybe I will, for a living, I suppose, if things don't get better in farming but the point I want to make is that I am glad to see people come out and hunt and fish. I have never denied my city friends, including Senators Hoagland, Beutler and all the rest of you, access to the farm for hunting and fishing purposes. There has never been a No Hunting sign on any of my land nor will there be. I have had offers to lease my land from wealthy people but I have not done so because I think the public is entitled to some place to hunt and fish. Reference was made by Senator Sieck to the fact that up here in this one project area one very wealthy individual was hard to deal with. Well, isn't a wealthy man entitled to the same kind of protection under the law as one who is not wealthy? And I think I know a little bit about that situation. I wonder what...

SENATOR CLARK: You have one minute left, Senator.

SENATOR SCHMIT: I wonder what would happen to a person who is not wealthy. Do you suppose he has the same right to protect himself as everyone else? I don't think so. Think about yourself. Do you want to take a subdivision of government to court? I can tell you very frankly, ladies and gentlemen, you won't enjoy it. It will be a very uneven contest. Think about the unevenness of it. Think about the rights of the individual. We talk a lot about those rights on this floor but the rights of the individual ought to take precedence here over the rights of the public. Those needs of the land for public use are no problem. There has been a power line across my farm, down the center of it, for more than forty years. No problem. It is necessary.

SENATOR CLARK: Your time is up.

SENATOR SCHMIT: But as far as recreational use should not be a right of eminent domain.

SENATOR CLARK: I would like to introduce to you two people underneath the balcony over here, Mrs. Roger Pribyl of Milligan, mother of Carol Pribyl, one of our Pages; Mrs. Mark Becker of Exeter, aunt of Carol Pribyl, and they are guests also of Senator Maresh. Will you stand and be recognized please? Welcome to the Legislature. Senator Goll is next.

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167, 271, 317A, 326, 483

SENATOR GOLL: Mr. Chairman, members of the Legislature, the hour is late. I have no prepared minutes but I just want to say as one who has been involved with an NRD development very closely, very personally, that I would stand in opposition to Senator Sieck's motion. I know people that are on the NRD boards, know them personally. They are fine people. They are elected by us. They do a job. They do it to the best of their ability, and though it is no time to become dramatical, when you say "eminent domain" to me, it is like running in front of that big red bull out in the pasture and no fence within a good three wood shot, and as far as I am concerned, Senator Schmit, the ratio should have been fifty percent instead of seventy-five, and I think we have got to look at this question with a lot of sincerity and purpose in our views. I am for the bill. I am against the proposed kill amendment. Eminent domain is bad. Thank you, Mr. Chairman. It is 11:58 a.m.

SENATOR CLARK: I think we are going to stop right here and we are going to continue this afternoon with priority bills on General File so we will continue with this bill, after the Clerk reads some things in, at one-thirty.

CLERK: Mr. President, Senator DeCamp would like to print amendments to LB 483; Senator Kremer to LB 326.

Mr. President, your Enrolling Clerk respectfully reports that she has presented to the Governor LB 17, 59 and 167.

Your committee on Enrollment and Review reports LB 22A correctly engrossed; 158A correctly engrossed; 317A correctly engrossed; and 271 correctly engrossed. (Signed) Senator Kilgarin.

SENATOR CLARK: Senator Cope, would you like to recess us until one-thirty this afternoon?

SENATOR COPE: Mr. President, members, I move we recess until one-thirty.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed nay. We are recessed until one-thirty at which time we will take up General File priority bills.

Edited by Arleen McCrory
Arleen McCrory

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LB 3, 243

RECESS

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Record your presence please. Will you record your presence please so we can begin the afternoon's agenda? Record.

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

SPEAKER MARVEL: Do you have something to read in?

CLERK: Very quickly. I have some amendments from Senator Newell to LB 3 to be inserted in the Journal. (See page 1412.)

And pursuant to our rules, Mr. President, I have the session employees expense report. That will be inserted in the Journal as well. (See page 1411.)

Mr. President, when we left the bill this morning, LB 243, there was a motion to indefinitely postpone. That was pending. That was offered by Senator Sieck.

SPEAKER MARVEL: The Chair recognizes Senator Sieck.

SENATOR SIECK: Yes, Mr. President and members of the body, I did address myself once to this bill. I would like to address myself again. Senator Schmit talked about the criteria in his sheet of what the NRDs are going to do, what they are obligated to do. He is entirely correct as they are listed. That is what they are obligated to do and I think that is what they are doing. I want to make that very clear with you, that is what they are doing. The recreation is just a very minor thing as far as the NRDs are concerned, very minor, but yet they have to have this instrument, this certain, what do you call it, qualifications to do such as land treatment, pollution and all that. This is all a part of it and when we wrote the NRD law this was a part of it. Why was it written that way? Because they took over the conservancy districts which were formed to implement the 566 program and this was mostly in rural areas. And then another thing that happened was that we implemented, the Legislature did, the watershed district which was a large district encompassing this particular area and you maybe can call that special legislation but it wasn't as such. There could have been a water district formed anywhere but this was legislation to give the power to that operating board the authority to levy a tax. In the conservancy district, it was two mills and they also gave them

the authority of eminent domain in order to accomplish their projects. It is as simple as that. The watershed district was given this same authority and their mill levy was limited at one mill, to accomplish the project which we now see around the City of Lincoln. Now we talk about recreation and that is why the urban people are for it. I want to assure you that all of the project built within the Salt Valley watershed, the benefits and the cost-benefit ratio was strictly flood control, very, very, little benefit as far as recreation. But I can also assure you if we would have this amendment attached, as Senator Schmit proposes, we would have had many court battles, ~~that~~ that it was recreation, and I have heard it many, many times from several individuals, "You are building it just for recreation", even though the cost-benefit ratio was strictly for flood control and none else. Yet they said it was built for recreation. Today if you go to Pawnee Lake, Twin Lakes, Branched Oak, you will say a hundred percent of that project is built for recreation for that is how it is used but the actual reason for that project was flood control and I can assure you that some of those individuals in those projects, if they would have had any leg to stand on on the recreational factor, they would have fought that to no end, and that goes with a lot of smaller projects. Of course, now we have eliminated the larger project with that five hundred acre surface acre thing. Again I can assure you that we are going to have projects in the Upper Blue that are going to be six hundred, seven hundred acres, if we are going to catch that surface water that leaves the Blue River basin and we need it up in that area. We need those water projects. We need it to give supplement water to the underground water.

SPEAKER MARVEL: You have thirty seconds.

SENATOR SIECK: We are losing that water in that particular area and I want to emphasize that we do need these projects and I don't think we should jeopardize and cause bad legislation as I feel this is doing. I have a lot of confidence in the Natural Resource Districts and that is the reason I have got my kill motion up here and I think the primary purpose again is land treatment and every one in that area knows it and they are trying their best to do this. Thank you. I will talk later.

SPEAKER MARVEL: Senator Kremer.

SENATOR KREMER: Thank you, Mr. Chairman. I was going to blame you for not recognizing me all morning but I just found out Senator Schmit has been turning my light off.

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So I appreciate the privilege this afternoon. I was going to speak against the bill but it is just as effective to speak in support of the kill motion so I will take that route. I speak in support of the kill motion perhaps for a different reason that many of have spoken to this morning. If there is one thing the Nebraska people have been saying, that is this, that we want to continue to develop irrigation as we know it in Nebraska, and in order to do that, as we look down the road and see what is going to happen, we have reasonable assurance we are going to come close to doubling the use of water and the requirement for water in the State of Nebraska. There is no way we can do this unless we stop some of the water that is leaving this state and store it. I have the same apprehension that others who are supporting the bill have indicated this morning. In fact, there is a project being planned in my district that is going to involve about three or four hundred acres of our own property. I don't like it, but I realize that if we are going to do it, we are going to have to do, some of us are going to have to give up something here and there. Now I don't think I could support the concept of taking the right away for condemnation if it were ninety percent and I will tell you why. No matter what it is, whenever there is one person that is objecting, he is going to take you to court. We know what that can mean, it means delay, delay, delay, delay. That has been demonstrated in the large projects as well as some of the smaller projects. Let me illustrate what one person can do. This morning I talked to former Senator Jules Burbach on the Mandan line that we need so desperately in Nebraska to meet this peak load that we are experiencing in the summer time. Senator Burbach said I now live in Hartington and last week I went back to Crofton, my former home, and he said I got clobbered like I never have before by my friends. Who were these friends that had supported him all these years? He said they were a couple of fellows that were involved with the Mandan line. It will cross their property and he said, "I really take a beating". Those fellows said in no way are we going to give up to the Mandan line. No matter what they offer us. Now if we are going to stop projects like that and like our water storage problems, we have got trouble like you never heard of. I think that most of the memberships at least of the NRDs are...they are rural people in most cases. They are reasonable people and neither do they want to condemn anyone's property. I wouldn't. None of us would. Sometimes the time comes when we have to. Now then I will agree that the purpose of the Natural Resource Districts was outlined very clearly by Senator Schmit. I agree with him, to all points. We have seen a change in things. Today you build a project and recreation just

jumps right in there whether you want it there or not. It is there. And my problem is this, if this bill passes, I am really concerned that it is going to be very, very difficult to build projects in the future and that is why I am troubled. I hate condemnation. It is a gun in the back. We all know that. Without it we couldn't do some of the things we are going to have to do and that is what bothers me. Consequently I will have to support the kill motion and Senator Schmit knows that. I have talked to him about it and so he is not surprised. I cannot support the bill and I do support the motion to indefinitely postpone. Thank you. Now, Loran, you can turn my light off if you want to.

SPEAKER MARVEL: Senator Hoagland.

SENATOR HOAGLAND: Mr. Speaker and colleagues, I would just like to make a couple of additional remarks because I was not able to finish my thoughts entirely this morning about some of the ramifications of LB 243 which concern me particularly. Now, as I was indicating earlier, you know, none of us are experts and it is awfully hard for us to know what recreation benefits mean, or flood control benefits or how those computations are made, but I do know that the closer you get to an urban area because of the population areas around and the number of people in that particular part of the state, why the recreation benefits calculus automatically goes up and it is my understanding that by excluding recreation as a grounds for condemning land, it is going to make it virtually impossible around the urban areas where we are in such dire need of recreation facilities anyway to be able to have any projects undertaken pursuant to these condemnation authorities. Now, Senator Kremer made very well a point that I intended to make and that is I think we can trust the locally elected NRD boards. Let's let them make these decisions. They are locally elected people. They are going to act responsibly all the time, basically, and I think an argument Senator Lamb raised before lunch about the urban areas being able to impose their will on the rural areas and take land away from them by condemning them for recreational purposes is incorrect to this extent. It is going to be that locally elected NRD in that rural area that is going to make the condemnation decisions. So I really don't think that is a fair argument, unless of course, we are talking about the Papio NRD which does include the urban area in Omaha but that doesn't extend very far away from Omaha. Now earlier I talked about how we can't really understand what all this means because we don't know how these computations are made. Now I would like very much to call your attention to

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a memorandum that I distributed before lunch to members of the Public Works Committee from Dale Williamson. It is a two and a half page memorandum that he sent over following some testimony before our committee on LB 527. And I would really encourage you to read that carefully because a lot of people who are very knowledgeable about this issue, including Mr. Williamson and the members of the Natural Resources Commission, are strongly against this particular provision. The most important part of Dale's memorandum is the last third of the memorandum where he describes those projects that are currently under way, in other words those completed projects that could not have been completed had LB 243 passed in its original fifty percent form. Now I was talking to a gentleman over the lunch hour who is very much in support of this bill who indicated to me that the Clatonia project which is in Senator Burrows Legislative District is indeed an excellent project that has provided all sorts of flood control benefits and recreational benefits and other kind of benefits. Now according to Dale the Clatonia project simply could not have been built if LB 243 in the fifty percent form had been constructed, the same with the Crystal Lake recreational project in Senator Marvel's District, and the same with the Cub Creek project in Senator Lamb's District, and the same with the Maskenthine Flood Control and Recreation project in Senator Chronister's District, and the same with the South Fork project in Senator Remmers' District, and the same with the Summit Lake project which I understand is very close to Senator Goll's property in Senator Goll's District, and the same with the Walnut Creek Flood Control project in Senator Maresh's District. Now Mr. Williamson is asserting that if the fifty percent standard had stayed in none of these projects could have been built where condemnation authority would have been needed to completely purchase all the land. Now we don't know what effect this seventy-five percent provision is going to be but all of you who really want to take a thoughtful approach to this issue, and I know that most of us do in this body, I would really encourage you to read this memorandum and to think through these issues and understand the extent to which this bill, perhaps even in the seventy-five percent form, and I don't know that, could and probably will significantly hinder the development of future surface water projects. Now I indicated earlier the extent to which this is going to impact even more severely on the eastern one-third of the state. So I really hope the urban legislators will stand up and take note and realize that this is going to impact on us more severely than it will people elsewhere. So, just in conclusion because of the long range policy importance of developing as many surface water

storage projects as we can throughout this state for irrigation, for aquifer recharge, for all the various benefits that we have, I would urge you to support Senator Sieck's kill motion. Thank you, Mr. Speaker.

SPEAKER MARVEL: Before we proceed, we welcome from Kearney State College, guests of Senator Cope and Senator Kahle, underneath the North balcony, Mary Jo Oust, Maureen McCaw, Scott West, Robert Mattan and Marshall Nelson. Where are you located? Will you hold up your hands? Welcome. From the one who is celebrating his birthday today, it is our privilege to welcome 13 students from Pender, Nebraska, high school, Gene Lauritsen, instructor, and they should be in the North balcony. Are you up there, down there? Welcome to the Unicameral. Senator Burrows.

SENATOR BURROWS: Mr. Chairman, members of the body, I urge you to oppose the kill motion. The issues that have been discussed here, many of them, were pointed at the fifty percent which no longer exists in the bill, which presently means that seventy-five percent of the use only can be recreation. That has made a tremendous difference on the impact of the bill. On a lot of Senator Hoagland's discussion, most of those projects would have flipped between the fifty and seventy-five percent. Now first of all, let's not forget the bill is pointed at eminent domain and I think it is quite a serious consideration when this Legislature gives authority to basically take one man's livelihood for another man's fun and games, and we are talking recreation, basically. It is one thing to give the right of eminent domain when you are talking about flood control that is going to and probably primarily save urban areas from floods, and we are talking about something there where the impact of the large dollar amounts is primarily coming to the urban areas. From what some of my urban colleagues said this morning, I would take it you were thinking of rural lowlands when you talk about flood control but Lincoln and Omaha are the two cities that have the most impact by flood control. This was the original premise of the bill. It wasn't just a rural Senator's bill. We went and stored... we store the land and take the farmer's land to build the lake to provide the flood control for the urban and town areas of the state. Basically that has been the primary impact along with soil conservation and all the other aspects of the bill, but when you talk about eminent domain, you do not stop these projects necessarily. You might stop them at some of the costs that have been hammered over the farmers' heads by the use of eminent domain because when that farmer goes to negotiate,

he knows that when you get into the courts, the attorney fees are going to be paid by the taxpayers and the farmer is going to pay his own so they have got a tremendous leverage over him but the large project is certainly not cut off because the Natural Resource District does not have eminent domain. If they are willing to sincerely negotiate and develop better relationships with the farmer, there are plenty of projects out there hunting for the funds with cooperative NRD boards without using eminent domain. What you are really talking about is the eventual tool, the club over the farmer's head, to make him settle for the price the Natural Resource manager and the board decide on, and in many of these cases, they are talking about what would be the sale value and they come in and take a farm, split it up, and that farmer doesn't have an option of buying another farm to maintain his livelihood, but we don't compensate normally for anything involved in this. Maybe it isn't totally unfair to attempt to compensate him beyond the normal market value of that farm if it disrupts his operation and forces him out of business. It is another angle I don't think people have looked at. You really are taking in a lot when you provide eminent domain for the Natural Resource Districts to bypass what basically we didn't give the Game Commission. I think you should look seriously at this bill and vote down the kill motion and vote the bill ahead and simply make the Natural Resource Districts more responsible to all the taxpayers in it, the farmers, and work in a fashion where they don't use that club over the farmer's head to get the project through. We are talking about a little club we give them and they want it and many of us want to take that club away, at least partially away, so they have to negotiate in good faith with the farmers when they develop projects, especially when those projects are pointed entirely for recreational purposes. Thank you.

SPEAKER MARVEL: Senator Schmit.

SENATOR SCHMIT: Mr. President, members of the Legislature, I would like to call your attention to a couple of items. I don't think the Legislature ever intended that this body would grant to the Natural Resource Districts the authority of eminent domain for recreational projects. If you review the record, item #3, flood prevention and control, that is what I thought we were giving them the right of eminent domain for. Do you suppose for just a moment that we would give the Natural Resource District the right of eminent domain for erosion prevention and control? Can they come on my farm, condemn the property, build terraces, seed it to grass, and take possession because I have an erosion problem? I think not. That is one of the projects. How

about prevention of damages from flood water and sediment? Questionable, at least. How about pollution control? The water runs four directions off of my home farm in Summit Township. Can someone say you are polluting the Blue, the Platte, the Missouri, and therefore we are going to take Section 12. We are going to seed it to grass. We are going build terraces on it. We are going to condemn that property. We are going to control that erosion. We are going to do it now, stop it. If so, where do you stop? You had better start at the Missouri and go to the Colorado line. I think we need to recognize that the Natural Resource Districts are taking property for recreational purposes by default because we were silent in the law. We did not specify those parameters. That is what I am attempting to do at the present time. I am attempting to outline the areas, the parameters that can be utilized. LB 243 encourages cost-effective multipurpose structures. That is what it does. LB 243 encourages conjunctive use of the water, both flood control and recreation. That is my intention. LB 243 encourages basic soil and water conservation because the more small and medium sized structures we have, the more conservation we are going to have. It encourages the willing buyer, willing seller, the cooperative agreement type projects, the type that Senator Sieck and I both have had a lot of experience with and which we both know works best. LB 243 already would give the urban people more access to parks and recreation services because of the development prospects that we have for seventy-five percent, seventy-five percent of the recreational benefits. Now someone says you can't determine the benefits. Let me tell you this, ladies and gentlemen, I have served on the watershed board. Everytime that we proposed a project we had to convince the federal government before they would pay for that project that the benefits were there. You can calculate the cost of flood control, the benefits of flood control. You can calculate all those other benefits. They are a matter of dollars and cents. Of course, they can be challenged. Anything can be challenged. Senator Kremer spoke of the slowdown by the judicial process. That is what we call due process. Now do we want to take away the right of an individual, the rights of an individual? We continually bring in the other, the public purposes. No question about the right of eminent domain for public purposes. As I said, I have got a 345 kilovolt line across my farm. It has been there forty years. I have run into it with the combine auger. I have run into it with the cultivator. I have flown under it, over it, into it several times almost. I have scared the life out of myself but it is there. I don't dispute it. Do you know what we got for that when it went in? \$20 a structure.

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SPEAKER MARVEL: One minute.

SENATOR SCHMIT: No problem. The Pandan line I think needs to be built. No problem, if it is a public purpose. The super highways, if they need to be built, build them. No question. We are talking about the purpose of for recreation. We are saying if it is more than seventy-five percent recreational, then maybe you ought to go to a flood control project or an erosion control project, grade stabilization project, land treatment project, minimum tillage projects, these tree planting projects, many other projects that can be more cost effective, more productive, better attuned to soil and water conservation and possibly do a better job for the public also. Just one more thing, you know we outlined that we can use trees and forestry as an objective of the Natural Resource Districts. Is the Natural Resource District going to be allowed to condemn my property to plant trees on it? I think not. We need to set the parameters, ladies and gentlemen, friends and colleagues. That is what LB 243 does and I think we need to give a signal to the Natural Resource Districts. That is what we are doing. I hope you vote against the kill motion.

SPEAKER MARVEL: The Chair recognizes Senator Sieck to close.

SENATOR SIECK: Mr. President, members of the body, with all the comments that were made this morning and this afternoon, and being a farmer in Seward County, representing Seward County and York County, and we have very little projects in that particular area, I still stand definitely behind the kill motion because I can see that we are going to slow up the projects. We have a project in York County, the School Creek project. It has only got sixteen percent earmarked for recreation but I can assure you that if there is one individual in there that doesn't want that project he is going to fight it to the end and prove that there is seventy-five percent and he will come and look at some of the projects that is built down here around Lincoln and he will see whether these projects, having that much recreation, and he will see that they are having that much recreation. Now I would like to talk about the Nemaha project. I can recall when we had the legislation on the NRD concept. That south gallery was filled with people from Southeast Nebraska opposed to the Natural Resource concept because they wanted to keep their conservancy districts and the conservancy districts is what gave them the power of taxing the two mills instead of the one that they have now and gave them the power of eminent domain, so that they could build their projects. This is what it is all about. There was a mention that the

mill levy could automatically be increased to three-quarter mill for these projects. That is untrue. The only place that you can collect another three-quarter mill is for groundwater conservation districts. The NRD at the present time has only one mill and that is all they can collect, and with that limited amount of money, I can assure you they are not going to build any recreation projects because their prime purpose, again, is conservation of our land and our water. The Oliver Project, I think that is why this bill was brought here. There is no question in my mind. That is the basic concept. I can recall a year ago these amendments were brought. They were trying to sneak them in. That is what it was here for. There is no doubt in my mind. The Papio project, now that board has been waiting. And I have a couple copies of letters where they feel maybe this one will have some effect on it but it is unclear. Now anytime you find something unclear, you are going to have a court battle and one of the bigger projects in the Papio is the R-616 project. I also heard that we are condemning for the Games and Parks Commission. Well, I will tell you, I just can't accept that at all. We have even difficulty, after we have a lake that is purchased by an NRD to get the Game Commission to manage it because they don't have that kind of funds. So we are looking to other areas because I feel that once you get into this area, and many of the NRD directors also feel this way, if we are going to manage recreation area, which was done in some other states, it is going to jeopardize the other parts of our program and we do not want to do this. So this is the reason they tried to get the Games and Parks Commission to manage that project, and why shouldn't they, if there is recreation there, why shouldn't they. We had a project just east of Lincoln, the Stevens-Callahan project and this was a project that I suggested as a buffer to the City of Lincoln. I did not think much of actually the projects or structures but there were two structures designed which had recreation in the design. But those people came to the Board of Directors meeting, they expressed themselves and they would rather have the land zoned to protect the streamflow of the Stevens Creek so that it would not jeopardize property. The Salt Vally District or the Lower Platte South Natural Resource District abandoned the project and are now working towards zoning that area, working with the City of Lincoln. This is democracy working. Another item on the Oliver Project, I hope you realize that the Educational Lands and Funds owned this property before the irrigation district was established. The irrigation district went defunct. The Educational Lands and Funds then received that property again. The only way they can buy that property is with

eminent domain. That is the only way they will accept it so they had to use it for that purpose when they bought it the second time. The Educational Lands and Funds were very fortunate. They sold some land twice because the first time the irrigation district bought it, it went defunct, the Educational Lands and Funds then retained the property again, and then it was sold again. So here the school districts got a lot of benefits. Now a lot of talk was about a farmer splitting his property up. That can happen whether we have flood control or whatever but there is a thing about severance damage and I know that has been carried out many, many times. Anytime property is broken up, that individual will get severance damage and I can assure you there is no one in the Lower Platte South that has suffered because of this. I have got another little item. We moved an individual out of the Branched Oak area. He move up to the Lower Elkhorn near Norfolk to set up in farming in that area. He now serves on the Natural Resource District Board in the Lower Elkhorn. He approves of the Willow Creek Project. Why? He said, "You people down in the Salt Valley area had farsightedness. You saw what it could do to the area. Why can't we do this same thing in my area?" And he actually had to pull up his stakes and move out, and I can also tell you that today that farmer, or that individual, whoever it is, who has to move is being paid for relocation cost. He is being paid to locate in another area. That didn't happen with a lot of our Lower Platte South Projects. That law wasn't here but today, if he is a renter, no matter what, he is going to get paid for all the cost that is involved and even some of the attorney's fees. Now this is where there is some question marks. I would like to see you kill this bill. I think it is ridiculous. I think it is going to hinder the work of building projects and I would recommend to definitely postpone 243. Thank you. I might add, vote green and you kill it.

SPEAKER MARVEL: The motion is to indefinitely postpone LB 243. All those in favor of indefinite postponement vote aye, opposed vote no. Have you all voted? Have you all voted? Senator Sieck.

SENATOR SIECK: How many are absent?

SPEAKER MARVEL: Five absent.

SENATOR SIECK: It is done. That is okay.

SPEAKER MARVEL: Okay, record the vote.

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CLERK: 12 ayes, 25 nays on the motion to indefinitely postpone, Mr. President.

SPEAKER MARVEL: Motion carried...motion lost. What is next?

CLERK: Mr. President, the next amendment I have is from Senator Haberman.

SPEAKER MARVEL: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, it won't take too long on this amendment and it is a very sensible amendment, very reasonable amendment, and I am sure that the majority of the members of this body will go along with it. I would like to draw you a little picture. I would like to have you picture in your mind a lake, not a very good lake. It has got a lot of cattle running around beside it and holes where the cattle have stepped around into it and left their little piles, and the dam is breaking down and it is going to be condemned. They are going to tear the dam out and let the water go as it is no good. It is not good for anything. So some of the people in the community of Kimball, Nebraska, get together and they say let's don't let that lake go. Let's do something about it. Let's have a Save the Lake campaign and see if we can't turn that lake into something. So the firemen, for example, go out and raise, the volunteer fire department, \$1200 to Save the Lake. Well, now word of this starts to pass around and there is a man that owns about a hundred and seventy acres around this lake and he kind of sits back in the bushes and he looks through those bushes and he sees what is going on over there and he sees where they are going to fix that lake up and they come along and he really doesn't want to sell his land and they said, "Well, we are going to take your land and we are going to give you \$80,000 for it", for one hundred and seventy acres of land that he lived thirty miles away from and that he didn't farm. He just left cattle run around on it. So he says, "Heck, \$80,000 isn't enough", so he goes hires an LL. Now an LL is a lobbyist lawyer or a lawyer lobbyist, whichever way you want to put it and they start to fight this thing and they fight through legislative bills and they fight it in the courts but to go on a little further. The local people raise \$300,000 to save this lake. The NRD puts \$228,000 into it. The federal government puts \$285,000 into it and a total of \$1.5 million has been spent to turn this lake into a recreation area and now that all of this has been done this man comes back and he says, "Aha! I want a third of it. I want a third of that and I want it for

free. I have already got it subdivided and I want to sell the lots and I am going to make a million dollars off of this thing and I don't care that the local people have their money or the state tax dollars or the federal tax dollars, he just wants to grab. An access road will have to be built by somebody and it won't be the open public lake that it was but there is the picture. So what does the amendment do? The amendment says that the bill is fine except it is not retroactive. It cannot go back and impose upon projects that have already been started and financed and I think that is fair. That is just exactly as if...if I smoked pot this year, I don't smoke pot, but if I did and then next year they passed a law saying that it is illegal and they come back and arrest me for smoking it this year because they pass a law next year. This is basically the same thing. So I ask you to support the amendment which says it does not affect those projects that have been financed and started because I don't think it is fair to pass legislation and make it retroactive and hurt the local citizens and give one citizen the use of local money, state and federal tax dollars and I ask for your support. Thank you, Mr. President.

SPEAKER MARVEL: Before we proceed with the next speaker, the Pages are passing out the addendum, the addition to the General File priority bills and, obviously, we aren't going to probably even get through this General File, but if you can just hang onto those, those will give you some idea of what we need to face next week, and totally, between today and the other list that you have, there are thirty-one General File priority bills which must be processed and this is simply to help you with a background of information. Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I discussed Senator Haberman's amendment with him. I understand his concern and I understand the concern that has been expressed a number of times, and as I have told Senator Kremer, if the bill stays alive I will try to do everything I can to work out solutions to their concerns but I think that...I would hope that some of you would have taken the time to have read the record on the Oliver Dam project, starting on page 22 of that document which I gave you. I want to say for the record that this project was not started a few years ago. This dam was originally built, and Senator Haberman alluded to that, in 1911. It was built as an irrigation dam and it operated that way for many years, and for the original project, they did not condemn the Singleton property, did not take the property. There was no reason to take the property. They felt at that time they

didn't need the property. Now I have handed out for your perusal a letter signed by Mr. Ferguson who is a member of the Natural Resource Board out there who said they don't need the property. Now I have been told, and I know that nothing is very often certain, but I think it is about a 9 to 4 vote, 9 in favor, 4 against, on the NRD board as to the taking of the property so it is not a unanimous consideration. Secondly, there has been some discussion as to what would happen if the NRD did not get all the money they needed to develop the property. They said the first part they would drop the development of is the Singleton land. That is what they would develop last, in other words. Another thing that they have discussed is there is an implication that if this bill becomes law that there would be no further use of that property. That is not true. The condemnation now covers all the land to the high water line. In some instances that is 200 feet from the Singleton property, to the present water line. There is a difference, I believe, of four feet in elevation. Some places it is only a few feet but the public will have access to shoreline all around this area including the Singleton property. They will have access to shoreline. They will have total access to the lake. If Mr. Singleton develops the property, he cannot sell the land to the waterline, to the complete waterline. The shoreline allows public access. The public can fish. They can walk on the beach. They can do all those things. Now there is some real concern relative to some of the statements that have been made as to whether or not the money will be lost. The money is not going to be lost, and on the contrary, I believe they were going to pay the Singletons \$80,000 for that land. The NRD will get \$80,000 back. They will get \$80,000 back. Now we have many instances, I am sure, where we have public development and private development working side by side. Is it all wrong that there be some private development on some of this land adjacent to the public area? I don't think so. It may well be, again, that it might be developed better. Now if you say we are afraid it is going to be developed improperly, then the zoning laws can apply. The county zoning laws can apply and regulate that. If you are concerned with improper development of that property, and that may be a definite concern, then certainly the zoning laws can be adjusted so as to develop that in line with the county board's thinking. The principal argument I want to advise you here is this.

SPEAKER MARVEL: You have one minute.

SENATOR SCHMIT: Senator Haberman is justly concerned about it impacting upon a project that has been started. Well,

there is another bill in this Legislature, LB 512, has to do with lien laws. If we pass that bill, it is going to impact upon a lot of existing contracts and they are going to work from that day forward. I could go into many, many other statutes, when we pass the law, it becomes effective and that is it. If we don't leave Section 2 in the bill or if we adopted the Haberman amendment, I am afraid there may be, Senator Haberman, ambiguity regarding the legislative intent because there would be, on the one hand a definite purpose relative to the use of eminent domain, on the other hand a specific exemption, and I am not sure that it would work. I would ask you to oppose the amendment and, Rex, I would certainly work with you in further detail. I am sorry I only saw the amendment just before lunch. If it doesn't pass, I would like to talk to you about it further, and I hope it doesn't pass.

SPEAKER MARVEL: The Clerk has an amendment on the desk.

CLERK: Mr. President, Senator Beutler moves to amend the Haberman amendment by deleting the words "construction bids were let" in line 8 and replace it with the words "funds have been expended or obligated".

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I am very much in favor of Senator Haberman's amendment which, as he stated, would make the application of this bill prospective rather than retrospective, that is it would not apply the criteria to projects where construction bids had been let in the past, prior to the effective date of the act. Well, the only thing I would like to do is refine Senator Haberman's amendment just a bit and go back a little bit further in time and say that the bill should not apply to any project for which funds have been obligated or expended prior to the effective date of this act instead of going back to just when the construction bids were let and the reason I want to do that, Senator Haberman, the reason I think it is important is because feasibility studies on these different projects run into hundreds of thousands of dollars and so I think you should go back far enough so that if a particular NRD has expended hundreds of thousands on a feasibility studies, that that project also should be exempt from the retrospective application of this bill. So that is, essentially, all that the amendment does. It is a refinement to Senator Haberman's refinement and it follows the same philosophy that his amendment follows which is simply once you have laid out the law to a political subdivision and they are

following that law in good faith, then it doesn't make much sense to go back and tell them, "Too bad you were following the law in good faith. You are going to waste these hundreds of thousands anyway". They acted in good faith in the past. They took their action as they saw action was reasonable, and if they have expended money on a project, I think they should be allowed to proceed and that we should not just automatically pass legislation which effectively wastes tens of thousands, and in a couple of cases hundreds of thousands of dollars that have been spent on designing projects and feasibility studies and that is the sum and substance of my amendment which I hope Senator Haberman can accept....which Senator Haberman does accept. Thank you.

SPEAKER MARVEL: Senator Sieck, do you want to speak on the Beutler amendment or the Haberman amendment? Senator Wesely. Senator Schmit, do you wish to speak on the Beutler amendment? Okay.

SENATOR SCHMIT: (Mike not turned on.) for the same reasons that I gave in opposition to the Haberman amendment. I want to point out again that the public is not going to be denied the use of the Oliver Lake Project. The Singletons have owned the land adjacent to this lake for almost forty years, I believe. During the time that it was used as an irrigation lake, of course, during the summer time the capacity of the lake was diminished for irrigation purposes and so, of course, it is also during the summer time that people like to use the lakes for fishing, boating and water skiing and you can't water ski on mud flats so there was never any opportunity to develop it when it was used as an irrigation lake. When the dam became unsafe and it was decided to become...again revert to farmland, the Singletons thought they might develop the property and they attempted to do so. I am not going to go into that lengthy detail but the point is they were not given that opportunity. But at the present time there have been funds expended. There will be no jeopardy to those funds. Those funds are intact. The benefits are there. I believe there is about seven hundred acres, maybe five to seven hundred, I am not sure which, of public land already under control of the Natural Resource Districts. Now remember this, the Game and Parks will have to come in there and administer this. They will have to maintain this. It won't be very long and someone is going to be coming again to the Budget Committee and they will have to have money for this. It is awfully easy for us to give Game and Parks obligations and not give them the money. It is easy to do this. It is a little bit like my family of ten children. They can obligate me far beyond

my ability and that is a little bit with the 24 Natural Resource Districts and the Game and Parks Commission, all of a sudden this project comes up and that one and the next one and where is the money coming from. Now I think you have to remember that if we are going to zero in on something, we ought to zero in all away across the board. As I said earlier about the previous bill, the mechanics lien law, when this Legislature acts, that is it. That is the law of the land from that day forward. It is true in every instance, whether it is the death penalty, whether it is the personal property tax fund, whether it is the lien law, whether it is the litter law, whatever you have. It is the law of the land. It is the law of the state. And to try to write those exceptions in there, I do not think serves the public purpose. You may have a multitude of problems that develop across the State of Nebraska as a result of it but the one point I want to lay to rest is this, the public is not going to lose the right to use that Lake Oliver Project. It is there. They don't lose the shoreline. They have got hundreds of acres of land upon which to camp and play and anything else they want to do. What we do provide is that in this one instance, this one family can develop the land from the high water line back as far as they own it.

SPEAKER MARVEL: You have one minute.

SENATOR SCHMIT: I would hope that you would not adopt the Beutler amendment. I do not think it is good law. I think it is going to add to the problems rather than to relieve them.

SPEAKER MARVEL: Senator DeCamp, do you wish to speak on the Beutler amendment? Call the question, do I see five hands? I don't see five hands so we will just...okay. The issue before the House is shall debate cease. All those in favor vote aye, opposed vote no. Have you all voted? Record the vote.

ASSISTANT CLERK: 16 ayes, 0 nays to cease debate, Mr. President.

SPEAKER MARVEL: Senator Beutler, do you want to close on your amendment?

SENATOR BEUTLER: Yes, I would, Mr. Speaker. I think this amendment, and basically Senator Haberman's amendment, is a matter of fundamental fairness and it is fairness that we should apply to the NRDs just as we would apply it to a private citizen. The Attorney General has issued an opinion which states that the law is with regard to private

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individuals, with regard to private parties, and this is the law as we would understand to be if we didn't have an Attorney General's opinion, that the law is that you cannot retroactively go back and harm the vested interest of private individuals by passing a new law now, and yet, in fact, in substance what we are saying right now unless we get the Haberman amendment is that we can pass a new law now and go back and harm the interest of the NRDs who acted in good faith under that law by essentially making hundreds of thousands of dollars that they have spent, turning that into wasted money. So all we are saying is that we should treat the public entities and the public officials and their constituents who acted in good faith under the prior law the same as we would be required by law to treat private individuals who acted in good faith under the prior law. That is all this amendment does and I think it is just a matter of basic fairness. Thank you.

SPEAKER MARVEL: We are now voting on the Beutler amendment to the Haberman amendment. All those in favor of the adoption of the Beutler amendment to the Haberman amendment vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 19 ayes, 9 nays, Mr. President, to adopt the Beutler amendment.

SPEAKER MARVEL: Okay, the motion carried. The amendment is adopted. What is the next item? We now vote on the Haberman amendment as amended. All those in favor of that motion vote aye, opposed vote...Okay, Senator Cullan, the Chair recognizes you.

SENATOR CULLAN: Mr. President, members of the Legislature, I guess I am not exactly sure what the amendment is like now and I guess I would ask Senator Haberman if he could just give us a brief minute to tell us exactly what the Beutler or what the Haberman amendment is like as amended.

SENATOR HABERMAN: Senator Cullan, the Beutler-Haberman amendment says that where a project for a dam or for a lake where money has been spent, where they have been started, where they have been planned and planning money has been spent, which in this amounts to hundreds of thousands of dollars all over the state, it says that it cannot be retroactive and stop that progress.

SENATOR CULLAN: Okay, thank you, Senator Haberman.

SENATOR HABERMAN: It is like we have grandfather clause about

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everything that comes to the floor of this Legislature.

SENATOR CULLAN: Okay, thank you, Senator Haberman.

SENATOR HABERMAN: We grand....

SENATOR CULLAN: Thank you. I appreciate very much your explanation. Mr. President, members of the Legislature, I would have to rise to oppose the Haberman amendment and I think those of you who voted this morning on Senator Labedz' amendment or concerns about the liquor bill would have to take, if you plan to be consistent, would have to take the same position. What we said this morning on that bill was that we were going to change the law and it would have the effect of affecting the litigation between the Liquor Commission, I guess the State of Nebraska, and Falstaff but what Senator Haberman is saying now is that the law should only apply in the future and that we shouldn't affect this change in policy that we are making as far as recreation projects are concerned should not apply to cases which have not been finally and completely litigated. I think that is very inconsistent. If the philosophy of LB 243 is good, and I believe it is and evidently most of you do, then I see no reason why it should not be good for a case that is currently pending and I hope that you would reject the Haberman amendment and advance LB 243 and be consistent in our application of these philosophies and concepts.

SPEAKER MARVEL: Senator Hoagland, your light is on. Do you wish to speak to the Haberman amendment?

SENATOR HOAGLAND: Briefly, Mr. Speaker.

SPEAKER MARVEL: We have got one, two, three, four, five, six, seven speakers. You have the floor.

SENATOR HOAGLAND: I would just like to make a couple of brief remarks in support of Senator Haberman's amendment. Now one of the most troubling concerns I have about LB 243 is that this entire piece of legislation essentially is a response to one particular situation. Now when a seventy-five percent amendment went on this morning, why that essentially allows the Willow Creek project but blocks the Oliver Project. Now before the lunch hour I talked about the Singleton family and the fact that they have been resisting the eminent domain proceedings for the Oliver Project up in their part of the state. Now, you know, the Singleton family went to the locally elected Natural Resource District and objected to the project and

the locally elected Natural Resource District decided to proceed. Then the family took them to court, in the District Court, and they lost. And they took them to court in the Nebraska Supreme Court and they lost and their representative who litigated that case for them, as their attorney, is also one of the principal lobbyists in favor of this bill, and I think it is really fair to say without being unfair to the Singletons or their counsel, and I respect their counsel greatly, that in many respects LB 243 is a bill directed to a specific situation and that is an effort to reverse a decision made in the District Court and in the Nebraska Supreme Court and block a project for which approximately \$1.4 million has already been spent, \$1.4 million has already been spent, and if we permit this bill to have retroactive effect, we are going to do two things. We are going to send a message to people that when they lose in the court system they can come in here with a special interest bill to cure their problems. The second thing we are going to do is we are going to make it impossible for that project to be completed as originally envisioned and, of course, the fundamental objection I have to the bill is, number three, we are going to deprive all future NRDs or all future projects of these authorities because of this one situation which this one particular group objects to. Now with respect to the first two considerations, if we are going to tell people that they can't expect to come in here everytime they get an adverse ruling in the Nebraska Supreme Court and get favorable legislation, why let's vote the nonretroactivity provision of this law so we can nip that problem at the bud. Now I know that the sponsors of this bill are saying as a matter of public policy this is good. Well, if as a matter of public policy it is good, why then let's have it apply to future projects but let's not give a retroactive effect which is going to, as I indicated earlier, encourage this process of continually coming to this body when people are unhappy with court decisions. Thank you.

SPEAKER MARVEL: Senator DeCamp. The question has been called for, do I see five hands? Okay, I see five hands. Shall debate cease is the question? Have you all voted? Have you all voted? The issue before the House is shall debate cease? Record the vote.

CLERK: 20 ayes, 6 nays to cease debate, Mr. President.

SPEAKER MARVEL: Debate has ceased. Okay...Senator Schmit.

SENATOR SCHMIT: Mr. President, I will be very brief. I just want to say, I believe Senator Hoagland said the case was lost in the Supreme Court. I don't believe the Supreme

Court has ruled yet, Senator Hoagland, and it was never tried in District Court. I think, as Senator Cullan has pointed out, that you want to apply the yardstick of equity when it applies to one instance and you don't want to apply it in the other. It is okay to save the brewery, and I was in favor of that, but it is not okay for someone to talk about saving a man's farm. I think that you ought to be consistent. I know it will not impact upon the Oliver Project. As I said earlier, the funds that have been expended have been invested and will be used for the public benefit. There will be not one dollar lost, not one dollar will be lost if LB 243 becomes law as it is drafted at the present time. The implication that because there is only one man involved or one family involved it's not important. Since when does that become the criteria? I think it is very important. I think it is a low day in this Legislature when the rights of one person are not important, or one family. We talked about the number of contracts that might be jeopardized. Well that is the same thing that is going to happen in a multitude of other instances if we pass a law in this Legislature. If we pass a law to outlaw the death penalty, the men on death row, are we going to go ahead and execute them? I think not. I think not. I sure in the dickens would not be in support of that. I think that we have to recognize that the law, if it becomes law, becomes law on a certain date and I want to say one more thing. If you adopt the Haberman amendment as amended by the Beutler amendment, do you think that any individual is not going to go into court and is not going to say the Legislature has spoken? It is the will of the Legislature that this is true. And what is the court going to say? I think the court is going to say the legislative intent is clear. We don't want that condemnation to be used in that manner. It is wrong and, therefore, I think the court would find for the individual. I would hope so. I think we have seen several instances recently, one in Omaha, others, in this instance, where it is necessary for this Legislature to respond to a need. I think we have done so. I think we have done so correctly. I believe that LB 243 is another opportunity for that to happen. I would hope, and Senator Hoagland says, anyone that doesn't like the law can come to this Legislature, doesn't like a court decision, can come to this Legislature. That is where many proposed bills come from, someone who doesn't like the existing situation. They want to change it. They come to one of us, to a lobbyist, a lawyer, they ask, if it makes sense, we work at it. I think that is the way the system is supposed to work. My concern about eminent domain has been documented for many, many years, and I don't think that it is fair for anyone to imply

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that it is only triggered by a single instance in western Nebraska. I have never seen the property. I have never been near it. I didn't know the people when I introduced the bill. I never saw them until the day of the hearing and I don't believe that it is going to make any difference, it will not make any difference to me what happens to them.

SPEAKER MARVEL: You have one minute.

SENATOR SCHMIT: When I first served on a watershed board, I said I would never be a party to condemnatory action. I didn't have to be and it worked well and it will work well today and that is the way we ought to proceed.

SPEAKER MARVEL: Now before we continue, it is my privilege to introduce three separate groups visiting us this afternoon. From Senator Kahle's District, 8 students from Wilcox High School, Wilcox, Nebraska, Ken Meyers, instructor, in the North balcony. Will you hold up your hand so we can see where you are? From Senator Wesely's District, Mr. and Mrs. Don Macke, Sr. and Don Macke, Jr. underneath the North balcony. Where are you folks? There you are. Welcome. And from the outstanding legislative district, the 33rd District, it is my privilege to introduce to you 46 students from Lincoln Elementary School, Hastings, Nebraska; Mrs. Phinney, Mr. Hohm, teachers, and they are in the North balcony and will you hold up your hand so we can see where you are? Welcome. Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I just want to make one brief comment with regard to this analogy that is being made between Falstaff and the present situation. I think there are a couple of very important distinctions. One distinction is that the farm people that we are talking about in this instance did not detrimentally rely on what the law was prior to this time and are not caused problems by their reliance upon the law. The law was the law. It was quite clear to everybody. Everybody knew what it was. In the case of Falstaff, they operated under what they thought the law said and the state told them the law was different. So I think there is a distinction to be made there. Secondly, the second most important factor, I think, is that in this case there is another group of people who have relied upon the law and that is all of the taxpayers in the NRDs who told their directors to go ahead and formulate these projects based on what the law said, the law which was quite clear, and they did that, and they entered into feasibility studies and they entered into agreements of one type or another that obligated them to spend hundreds of thousands of dollars. They relied on the law,

and if you pass the law and change it and say that it applies retrospectively, then you are punishing them for relying on the law which was very clear. They detrimentally relied. That is an important concept in the law and I think that is the one we are talking about right here and that is the reason that we don't allow the government to go back and take away rights that are vested in private individuals. If these were private individuals who had relied upon this law, there would be no question. We wouldn't have to stand up here and talk about retroactivity because it simply wouldn't be a question. It wouldn't be allowed. Constitutionally it is not allowed but we are only talking about it because in this case it is a political subdivision that has relied and spent the money but those people are taxpayers, too, and they have proceeded. So there is a distinction, two important distinctions between this situation and Palstaff and I hope you won't be fooled by that analogy. Thank you.

SPEAKER MARVEL: Senator Sleck. The question has been called for, do I see five hands? All those in favor of ceasing debate vote aye, opposed vote no. Have you all voted? The motion before the House is to cease debate? Okay, record.

CLERK: 26 ayes, 0 nays, to cease debate, Mr. President.

SPEAKER MARVEL: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, I will be very brief. I made the remark that almost everything that comes before us we grandfather when we start something new and about the only thing I can really come up with that we have grandfathered that makes a big impact is that we grandfathered attorneys. There is such a thing as book attorneys and educated attorneys. If you were a book attorney when they put the law in that you had to graduate from school, they let the book attorneys be attorneys. So there is a perfect example that you don't go back on everything and make people conform to a new law. Now, here is what the Natural Resources Commission said. "The acres in question includes much of the land necessary for development. Access to the reservoir along one-third of the shoreline will also have to be greatly restricted or perhaps even prevented". That is what we are doing, restricting and probably preventing access to this whole project. Enders Lake down around Imperial has cabins on one side only. They won't have any more cabins. None of the state lakes will have any more cabins. The Game and Parks Commission have put a moratorium on cabins. They cannot and will not be

built. So if we allow this to go through, we are going to ruin this lake because lots are going to be sold, cabins are going to be built, and it is going to ruin it for the general public. So I say there is nothing wrong when we pass a drastic piece of legislation like this as saying, "Fine, from here on out, this is the ball game. From here on back, if you have spent a \$1.5 million on all the rest of the projects, you are safe. Go ahead and finish it." I will appreciate your support for my amendment. Thank you.

SENATOR NICHOL PRESIDING

SENATOR NICHOL: We are voting on the Haberman amendment. All those in favor signify by voting aye, opposed nay. Senator Haberman.

SENATOR HABERMAN: We might as well go ahead and have a Call of the House and a roll call vote because we are not getting anywhere here.

SENATOR NICHOL: All those in favor of going under roll call, please signify by voting...Record.

CLERK: 16 ayes, 2 nays, to go under Call, Mr. President.

SENATOR NICHOL: The House is under Call. Will you please take your seats. The Sergeant at Arms please find those who are not here, unauthorized personnel please leave the floor. While we are doing this, I might announce to those of you who are interested, Senator Clark fell on a step this noon at the Ming Palace and we took him to the hospital. They x-rayed and he broke the small bone in his left leg and he is out of the hospital and home over tomorrow, and if you would like to visit him this afternoon or tomorrow, I think he would appreciate visiting with you. He is not in much pain now but he will go back into the hospital Sunday morning for a checkup or whatever they call it and they will operate Monday morning. So he will be out for about a week. I just thought if you were interested and he is not in a great deal of pain now, and if you would like to drop over and see him, I think he would appreciate it. Senator Maresh, you may leave to go visit him now if you would like. Howard Peterson, and Senator Fenger, Senator Cullan, Senator Chambers, Senator Carsten. We are just waiting for Senator Carsten. They are all here now. Do you want to proceed with the roll call vote? Senator Marvel is here though. He is in the balcony but he will be here for the vote. Roll call vote please.

CLERK: (Roll call vote taken. See page 1413, Legislative Journal.) 20 ayes, 18 nays, Mr. President, on the motion to adopt.

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SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: We have one more amendment to the bill.
The Clerk will read.

CLERK: Mr. President, Senator Koch moves to amend the bill.
(Read Koch amendment found on page 1414, Legislative Journal.)

SENATOR KOCH: Well, this is a serious amendment. Obviously we want to make certain that the NRDs, if they do condemn, that they are going to pay a fair price, and having looked at the Lincoln paper here the last couple of days finding how accurate the county assessors are in spite of the laws, I just thought this would be a good amendment to place right here. Very simply it says, when they go to condemnation procedures for any kind of project that they will not pay beyond the assessed value of the land as it's presently in the county assessor's office, and for all practical purpose, you know this will take away condemnation procedures of the NRDs. Obviously that is what we are hell-bent to do so we might as well put it in there and make sure it never happens under any conditions. So I ask for the adoption of this amendment.

SPEAKER MARVEL: Does anybody wish to speak to the adoption of the amendment? Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, other than being unconstitutional, I have no objections to the amendment. It has some noble purposes, however, it is unworkable, I think, and clearly unconstitutional. The person that sets the value of the land is somebody in Lincoln or somebody at the tax assessor's office, he may be right or wrong or whatever. That has no bearing on the value of the land in terms of a court determination in a condemnation suit and it just is illegal, blatantly illegal. So I guess I would urge rejection of the amendment.

SPEAKER MARVEL: Senator Koch, do you want to close on your amendment?

SENATOR KOCH: Yes, I do. Thank you. Since I have received my instructions from the Assistant Attorney General, obviously I wouldn't want to do anything in the face of unconstitutionality but I do want to remind you that those of you who didn't read it, the county assessors are again having trouble meeting our standards that we set two years ago, so I use this platform primarily to remind us that we have offered them computers but they constantly ignore it, but now because of great parcels they have to reappraise, they can't get it done because they are short of help. So I

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withdraw the amendment. Thank you.

SPEAKER MARVEL: The motion is to advance. Senator Chambers, do you wish to speak to the motion?

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, if you will allow me I would like to speak to Senator DeCamp just for one instance. Senator DeCamp, I would like to ask you a question. Did I understand you correctly to say that you would not vote for a proposition which is unconstitutional or were you just saying you wouldn't vote for this particular one?

SENATOR DeCAMP: What? I don't understand the question.

SENATOR CHAMBERS: If it is brought to your attention that a proposition before us is unconstitutional or has constitutional infirmities, are you saying that you would not vote for such a proposition?

SENATOR DeCAMP: Normally I don't, if they are clearly unconstitutional. However, maybe for you or somebody else I would make an exception, you know.

SENATOR CHAMBERS: Do you think you will feel this way Monday?

SENATOR DeCAMP: Uh-huh, which amendment? Is it about the one you read up there? I already withdrew that one.

SENATOR CHAMBERS: Right, but I mean will you still feel this way about constitutionality Monday, do you think?

SENATOR DeCAMP: Well, it is a long weekend, you know.

SENATOR CHAMBERS: Thank you.

SPEAKER MARVEL: Okay, the motion is to advance the bill. Do you wish to close, Senator Schmit?

SENATOR SCHMIT: I think, Mr. President, I need to close. I think that it is...it is a little difficult because I know that the bill is a controversial bill. I would just like to call attention to the fact that anyone can wind up at three o'clock on Friday afternoon with a bill and attempt to move it, and because of the fact that we have nine or ten excused absences, it is almost impossible to do any business. I would hope that you would advance the bill. I know there is some concern and some justifiable concerns. I have told you before and I repeat it again, I told Senator

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Haberman, I know he wants to try his amendment again. I have told him I will visit with him, and anyone else, if I can possibly work with them on the bill to allay some of their fears I will do so. I would certainly hope that you would advance the bill and I believe that it does give us some direction, does give us some guidance, establish some perimeters in the area of eminent domain. I think it is important that we do that. I ask you to advance the bill and I will try to work with you to do anything we need to do with it on Select File.

SPEAKER MARVEL: The motion is to advance the bill. All in favor of that motion vote aye, opposed vote no. Have you all voted? There are eight excused but there is still enough to vote if you want to vote. Have you all voted? Senator Schmit.

SENATOR SCHMIT: Mr. President, I hesitate to do it because I know people are scattered far and wide but I recognize that unless I go under Call, I am going to have difficulty getting the votes. I would ask the members be brought in.

SPEAKER MARVEL: Shall the Legislature go under Call? All in favor vote aye, opposed vote no. Record.

CLERK: 19 ayes, 0 nays to go under Call.

SPEAKER MARVEL: The Legislature is under Call. All legislators please return to your seats. Record your presence. Unauthorized personnel please leave the floor. Senator Fenger, Senator Cullum, Senator Beutler. Senator Howard Peterson, will you please record your presence? Senator Wagner. Will you all take your seats, then I can proceed with the roll call. Did you ask for a roll call vote? Call in votes are acceptable. We cannot proceed with the roll call until all legislators are in their seats.

CLERK: Senator Wesely changing from no to yes.

SPEAKER MARVEL: Do you want to proceed with the roll call or do you want to announce the vote? Okay, call the roll.

CLERK: (Roll call vote taken. See page 1414, Legislative Journal.) 23 ayes, 15 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The motion is carried. The bill is advanced. Okay, it has got 23 votes. It failed. Senator Chambe s, for what purpose do you arise?

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LB 243, 296, 298, 529

SENATOR CHAMBERS: To ask a question, Mr. Chairman. Now that it is fresh in everybody's mind, what becomes of this bill since it fails to advance? Does it go to the bottom?

SPEAKER MARVEL: It goes to the bottom of General File.

SENATOR CHAMBERS: Thank you.

SPEAKER MARVEL: Yes, sir.

SENATOR SCHMIT: Does it go to the bottom of the priority bills or the bottom of General File? I think we have had this happen before.

SPEAKER MARVEL: General File priority bills, the bottom.

SENATOR SCHMIT: Thank you, Mr. President.

CLERK: Mr. President, Senator Koch would like to print amendments to LB 298; Senator Cullan to LB 296.

Your committee on Ag and Environment reports LB 529 to General File with amendments. Signed Senator Schmit as Chairman.

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LR 58
LB 11, 243, 296A, 512

SPEAKER MARVEL: All those in favor of advancing the bill vote aye, opposed vote no. Record.

CLERK: 27 ayes, 3 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: Motion carried. The bill is advanced. Have you got some items to read in.

CLERK: Mr. President, a few. A new resolution by Senator Maresh, LR 58. (Read. See page 1437, Legislative Journal.) That will be laid over, Mr. President.

A new bill, LB 296A by Senator Cope. (Title read.)

Mr. President, Senator Fowler moves to reconsider the action of the body in its failure to advance LB 243. That will be laid over.

And, Mr. President, Senator DeCamp asks unanimous consent to add his name to LB 512 as cointroducer.

SPEAKER MARVEL: No objection, so ordered.

CLERK: I have nothing further on the desk, Mr. President.

SPEAKER MARVEL: Senator Kahle, do you want to recess us until one-thirty?

SENATOR KAHLE: Mr. Speaker, members, I move we recess until one-thirty this afternoon.

SPEAKER MARVEL: All those in favor of that motion say aye, opposed no. Motion is carried and we are recessed until one-thirty.

Edited by:


Mary A. Turner

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LB 58, 243, 283, 284, 346, 491

SPEAKER MARVEL PRESIDING

REVEREND LELAND WARREN: Prayer offered.

CLERK: Mr. President, Senators Marsh, Cullan and Kilgarin would like to be excused. Senator Howard Peterson and Hoagland would like to be excused until they arrive.

SPEAKER MARVEL: Do you want to record your presence please? Have you all recorded your presence? Okay, record.

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

SPEAKER MARVEL: Okay, item number what? Three?

CLERK: Yes, sir. Mr. President, we have the report of registered lobbyists for the week of April 16 to April 23. We have a gubernatorial appointment from the Governor for Mr. Swanson to the Environmental Control Council. Senator Nichol would like to print amendments to LB 346. (See pages 1549-1551 of the Legislative Journal.)

Mr. President, LB 58, 283 and 491 are ready for your signature.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business I am about to sign and do sign reengrossed LB 58, reengrossed LB 283, reengrossed LB 491.

CLERK: Mr. President, a request from Senator Haberman to add his name to amendments to LB 284, Request #2325 as cocointroducer. (See page 1552 of the Legislative Journal.)

SPEAKER MARVEL: Hearing no objections, so ordered.

CLERK: Mr. President, a new resolution, LR 62, offered by Senator Kahle. (Read. See pages 1551-1552 of the Legislative Journal.)

Finally, Mr. President, I have a message from the President of the United States addressed to the Clerk. (Read. See page 1552 of the Legislative Journal.)

SPEAKER MARVEL: Okay, we are ready for item #4, resolutions. I would like to make a statement before we start. Some of these items on the agenda we have confronted before. I hope when the confrontation takes place today we can limit debate and not repeat what has been said before.

CLERK: Mr. President, I have a series of Attorney General's opinions. The first is addressed to Senator Vickers regarding LB 243. I have one addressed to Senator Sieck regarding LB 243.

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LB 3, 243, 331

I have one addressed to Senator Beutler regarding LB 331. I have one addressed to Senator Goodrich regarding LB 3 and, finally, Mr. President, I have an Attorney General's opinion addressed to Senator Labeledz regarding a previously issued Attorney General's opinion. That will be inserted in the Journal. (See pages 1553-1566 of the Legislative Journal.)

Mr. President, Senator Fowler would like to withdraw his motion regarding the reconsideration of the failure to advance motion on LB 243.

SPEAKER MARVEL: Okay, the first item of business is item #4, resolutions, LR 60.

CLERK: Mr. President, LR 60 was offered by Senators Koch and Wagner. It is found on page 1529 of the Journal and would read as follows: (Read.) Mr. President, I have an amendment from Senator Koch to the resolution which would add a new whereas provision. After "public schools" in the last paragraph insert "and commends all public schools for observing Law Day."

SPEAKER MARVEL: Senator Koch, we are going to take up your amendment first.

SENATOR KOCH: I move for the adoption of the amendment, Mr. Speaker.

SPEAKER MARVEL: You have heard the motion. Is there any other discussion? All those in favor of the adoption of the Koch amendment to LR 60 vote aye, opposed vote no. Have you all voted? We are voting on the Koch amendment to LR 60. Record.

CLERK: 26 ayes, 1 nay, Mr. President, on the adoption of the amendment.

SPEAKER MARVEL: The motion is carried. The amendment is adopted. Senator Koch, do you wish to explain the resolution.

SENATOR KOCH: Mr. Speaker, Senator Wagner and I will just take a minute or two to explain the purpose of this resolution. We all have read the newspapers and know that recently...

SPEAKER MARVEL: (Gavel.) The Chair can barely hear what is going on in the room. I assume you have the same problem.

SENATOR KOCH: We all have read the newspapers recently and we know that a member of this body was invited to speak to a group of students in a community on the purpose and value

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LB 22, 22A, 144, 144A, 157, 157A, 158,
158A, 168, 168A, 188, 188A, 197, 197A,
204, 204A, 207, 207A, 243, 245, 245A,
317, 317A, 253, 253A, 292, 292A, 427, 427A

Mr. President, your committee on Enrollment and Review respectfully reports....your Enrolling Clerk reports that she has presented to the Governor those bills that were read this morning on Final Reading. (See page 1977 regarding LBs 207, 207A, 188, 188A, 144, 144A, 204, 204A, 197, 197A, 245, 245A, 168, 168A, 157, 157A, 427, 427A, 292, 292A, 317, 317A, 22, 22A, 158, 158A, 253, 253A, in the Legislative Journal.)

SENATOR CLARK: I would like to announce the guests of Phyllis Todd from Senator Beutler's District, Mr. Kim, Mrs. Kim and Mrs. Bae-Pusan from Seoul, Korea. They are under the south balcony. Will you stand and be recognized, please? They are in the south balcony. Welcome to the Legislature. LB 243.

CLERK: Mr. President, LB 243 was a bill introduced by Senator Schmit. (Read title.) The bill was first read on January 16, referred to Ag and Environment. The bill was considered by the body on April 10, Mr. President. At that time the committee amendments were adopted. There was an amendment from Senator Schmit that was adopted. The bill failed to advance on that date, Mr. President. I have nothing further on the bill.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I am going to ask you once again to consider LB 243. The bill was heard and discussed and debated at length. The previous time it was up it received 23 votes to advance on a Friday afternoon with about 27 or 8 people on the floor. I think that the fact that we have discussed the bill should perhaps wipe out any reason for a lot of lengthy debate. I know there are a lot of other bills that you want to get to today. I just want to say in reply to a piece of material that is lying on your desk, two and a half pages in length, which casts serious doubts about the problems that LB 243 can cause, I want to say this. You will recall that Senator Kremer and myself and along with several...at least 23 others in this body successfully added about \$2 million to the water development fund. There are rumors now that they may want to cut that back in the Executive Office to \$3 million from 4. That means that we will have about an additional \$800,000 in the water development fund, 50 cents per capita. Not exactly an overwhelming amount of public support I would guess for water development. My concern as I have indicated many times on this floor is this, if we are going to use funds that have been generated by a subdivision of government for

purely recreational purposes, then we ought to be up front about it and do so in the manner which is best adapted and that is to the Game and Parks Commission. I would like to also that we are not only talking about water projects. Former Senator Murphy spoke many times about the tennis court that was built up in his area, bicycle paths and other objects that are built with tax funds for recreational purposes. I do not dispute the value of recreational purposes being included in the public good. I know there is justification for money being spent for recreation. The point I am arguing and debating is whether or not the right of eminent domain should be used for the construction of a recreational project where those funds, or those benefits are a major portion of the value. I think not. We have limited funds in this state at the present for soil and water development. There isn't any reason in the world why we should not limit the use of those funds for the primary purpose of soil and water conservation. Now there is no reason why we cannot enjoy those recreational benefits that are a secondary benefit. But to construct them strictly as a recreational project I believe challenges the original concept under which we set out under the Natural Resources District responsibilities. We have a very limited amount of funds. We are not going to be able to use those funds in the best manner possible if we just devote them to recreational activities. Now there are those who say that if we don't allow recreational projects per se to be built, that the urban areas will not benefit. Well, ladies and gentlemen, last Sunday there was an extensive editorial in the local newspaper which pointed out the Supreme Court decision which says the water belongs to the public. It pointed out that the public had an interest and a right and a responsibility to the water that lies both underground and aboveground in Nebraska. I may have some difference of opinion with that opinion, but I want to say this that it is in the public interest to conserve soil and water in the State of Nebraska regardless of whether it is at Chadron, Nebraska or at Falls City, or anywhere in between. The public benefits when we maximize our dollars to be used in the best possible way. What I am trying to tell you is this, that if you allow the projects to be built that have more than 75 percent recreational benefits involved, you are going to limit the amount of dollars that can be used on projects where flood control is very important. Now there are those who are already enjoying the benefits of flood control projects in this city and in other metropolitan cities in the State of Nebraska. Those citizens rightfully do enjoy those benefits. I think that therefore we have a good reason to request and hope that

there would be projects built across the State of Nebraska where recreation was not the principal purpose of that construction. But we have amended the bill to a point now where if a project does not exceed 75 percent of the benefits for recreation, it can be built. Now, ladies and gentlemen, if there isn't enough justification for the construction of a project, that there be 25 percent of its benefits for some other purpose than recreation, then I do not believe that that is a wise use of public tax funds. I do not think in the first place that it is proper to condemn property, one man's livelihood to provide for another man's recreation. I have said that many times. It does not prevent the Natural Resource District from a willing buyer and a willing seller agreement. But if we allow the condemnation authority to continue unabated, we will eventually increase the cost dramatically of all projects and eventually there will be a very serious breakdown between the landowner and the Natural Resource Districts. Very few of the Natural Resource Districts would ever use the power of condemnation. To use it in an instance where it would exceed 75 percent of the benefits of a project I believe is unjustified. There are too many worthwhile projects that will never be constructed if we allow this to go on this present path. You can raise all kinds of issues if you like and some of those have been raised, some of them may be justifiable, but the principal bottom line is this, if you only have \$3 million to go into water development projects, should it be built for recreation purposes or should it be built and used for soil and water conservation purposes? At least 25 percent of it. In other words, out of the \$3 million we would appropriate this year, or \$4 million hopefully, \$1 million would have to be for some use other than recreation. Now I ask you, is that unreasonable? I think not. There isn't any person in this body or in the rotunda that can stand there with a straight face and tell you otherwise. And they have been there time after time after time and I am going to ask you once more again this afternoon to support this concept. We have had to take some licking and some public discussion I guess as to how we spend our money. Well, I don't think any of us can go back to our districts and say, yes, we put \$4 million or \$3 million into the water development fund but they can use the whole darn bunch of it for recreation purposes if they like. If we want to spend money on recreation, then let's properly appropriate it to the Game and Parks and have it up there where it is properly funded, properly administered, and properly managed, and not go through the sham of running it through the Natural Resource Districts. Now again I want to say in closing, this does not prevent the Natural

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Resource Districts from a willing buyer willing seller agreement. It will not prevent, in my estimation, any of the projects that are currently under way. It will not damage the Natural Resource Districts ability to handle water development projects that are legitimate, and I would hope that you would vote to advance the bill. And I would hope we would not have to take a lot of time on the bill, and if you have any questions, I would be glad to try to answer them. But the bill has been discussed and debated. There has been a kill motion on the bill which was unsuccessful. I think the bill is ready to be acted upon and I am willing to go ahead with it on that premise.

SENATOR CLARK: Senator Kremer.

SENATOR KREMER: Mr. President and members of the Legislature, I find it difficult to oppose LB 243 in many respects because I agree with about 90 percent of what Senator Schmit has talked about when he spoke in support of the bill. However, I can see nothing but problems down the road a ways on any project that is proposed. I hope I am able in a minute or two to impress upon this group how important it is that we build some storage in this state of ours. I have tried it before. I will attempt again. I have here at my desk a notice that a conference has been planned to take place in Minneapolis, Minnesota entitled, "The Water Crisis". The subtitle is this, "Who Gets the Last Drop?". I understand Senator Clark informed me that the conference has been called off because of the tremendous expense involved in calling a conference like this by the National Conference of State Legislators. However, it alerts us to what is before us in our country. I also have before me an article coming out of the Science '81 supplied to me by Senator Schmit, and I'm going to use it against you, Senator Schmit. The title of this particular article is, "Rationing a River", which alerts us again that most of our major river systems are overappropriated, the major ones, like the Colorado. That remains only one thing for us to do and that is take advantage of everything that we can to build storage and take of the rainfall, take of the unappropriated water if it's there and store it. Now our problem is this, every storage proposition that I know of that has been planned has someone that refuses to sell. So if this bill passes, if this bill passes, I can see some real difficulty in moving ahead into construction of the project, simply because it is almost impossible to determine how much value recreation shall have on the project. There is a film that's been put together by, and it's entitled... it's been put together by the Nebraska Water Resources

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Association. You ought to see the bill. I referred to it....I mean the film, I referred to it the other day. One of the things it emphasizes is this, the minute you build a project, automatically recreation jumps in and you cannot determine how much is recreation, no matter how you plan. And I can see only a challenge coming out of every project based on litigation in an attempt to try to stop this project, and if we do, it is going to delay and delay any project. The costs are going to go up and many projects will fail. This is my problem. This is my problem. I agree with Senator Schmit, we should emphasize the storage of water for flood management and for underground water development, and for the use of water out of these systems. I think we are heading for real trouble. I want to ask you this, who makes up most of the boards of directors in the Natural Resource Districts that have the responsibility of building these reservoirs? Most of them are made up of rural people, farmers, and you think that they are going to deliberately take land away from a neighbor of theirs unless it is justified. There are a number of projects in Nebraska now that are being planned that are going to be in real trouble. And I want you to be alert to that. Now if we mean business....

SENATOR CLARK: You have one minute left.

SENATOR KREMER: I will take 30 seconds. If we pass this bill and my predictions could be wrong, but I believe they are right, no matter what comes up in the way of a project it is going to be litigated. It is going to delay and many projects will fail. Were it not for that fact, I would agree with Senator Schmit a hundred percent, but I am going to alert you again we are headed for trouble. So I ask of you that once again you vote so we do not have quite enough votes. I will give you 23 even 24, but let's stay away from 25. Thank you.

SENATOR CLARK: Senator Sieck.

SENATOR SIECK: Mr. President and members of the body, I feel we have special legislation here. I feel that this is special legislation. It is earmarked for the Oliver Project. It is no way approaching the Willow Creek at the present time. There is an amendment on the bill that says the 500 acre or over is eliminated. Well that puts the Willow Creek out because it is a 600-acre project. And many letters are received from individuals, we're from Pierce, Nebraska opposing that project because of the eminent domain that was taking place, and supporting 243. They are not going to gain anything from this bill. They are

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left out, and furthermore, there is an allocation from the State Commission of \$900,000 for this project and it will go forward. Another group of letters that I received was from Maple Creek. That project is out. The Board of Directors from the Lower Elkhorn backed off of that project, even though it was a going project for many, many years. Today it is dead. Why? Because they did not have the support of the local people. And this is the proper way to operate, not trying to legislate and give us, or give the Natural Resource District a lot of problems and that is what we are going to do with this bill. I do feel truly that this is special legislation. I have got word that there is going to be an amendment on 239 which is the isolated roads project. This amendment also has retroactive on it. Why? Because the road was built and demanded by the courts even though Kimball County refused to build it, that this road be built. They spent a lot more money than they had, over \$400,000 to build that road. Yet they have to build it. And we got a retroactive clause on that bill so that that landowner does not have to pay for that project, actual reversal of the Oliver Project, where this is a retroactive clause on it so that the landlord will not have to give up his land...or the land next to Oliver Project. So there are several things that bother me. I have to agree with Senator Schmit on the eminent domain. To us in the rural area it is a dirty word, but I can assure you that the Natural Resource Districts don't use it unless it is absolutely necessary. And as far as tennis courts, golf courses, if we would say no eminent domain to build those, I would be a hundred percent for it because I don't feel that we should use it for that purpose. But when we talk about water projects, it is an altogether different story, and we are going to go to court. There will be litigation on every structure, I am sure. We have one in School Creek right now which is near Sutton in the Upper Blue area that is being planned. You know what? Those people are starting to object. They know that this thing is coming forward and if it passes, we are going to have an issue in court to prove that that is 75 percent recreation. Yes, there is recreation on it. The total amount is less than 20 percent in the cost benefit ratio, but how are you going to prove that it is 20 percent? It is almost impossible. I would like to refer to you what happened here about 20 years ago. We had a good Senator from Rising City, Senator Stryker.

SENATOR CLARK: You have one minute.

SENATOR SIECK: The Salt...or the watershed district law was before this body. The Saunders County people decided

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that they didn't want any part of the Salt Wahoo Watershed, so they convinced Senator Stryker to put an amendment on the bill as the vote of the people so would that large area go. Well, it so happened that Saunders County voted out of the Salt Wahoo Project and the drive was led by a newspaper man in that particular area. Now I just had word a couple weeks ago that that newspaper man said that was the greatest mistake we ever made. We could have had our area developed today but we have nothing in the Wahoo Creek because we didn't want to face the issue. Now what I am afraid of that this bill is going to do the very same thing. I don't feel that Senator Schmit realizes what he is really doing. he would say a hundred percent recreation I would go wholeheartedly with him, but when you break it down, you are in trouble.

SENATOR CLARK: Your time is up.

SENATOR SIECK: Thank you. I ask you to not vote for this bill.

SENATOR CLARK: Senator Cullan.

SENATOR CULLAN: Mr. President and members of the Legislature, I rise to support the legislative bill 243. I do so at the risk of disagreeing with Senator Kremer who told me that if I disagreed with him one more time this session, I would be in the woodshed, but maybe I can have Senator Schmit to defend me. Seriously, Mr. President and members of the Legislature, we have debated this bill extensively. I think it is a good proposal. I think it is only appropriate that we consider recreation as a benefit but it is highly inappropriate to build facilities whose only beneficial interest to the State of Nebraska is recreation. Our primary concern ought to be storing water for other purposes and not simply for recreational value. I know that we have debated and discussed this bill at length and so I will only raise one more point. I called my Natural Resource District about LB 243 early on in the legislative session I visited with the Manager of that Natural Resource District, John Williams from Chadron, and I asked him about LB 243, and he indicated that they did not believe that they needed the power of eminent domain generally but they certainly did not need it for a project which did not have as its main purpose a function other than recreation. And so my own Natural Resource District, which does plan to use some of the funds that we are appropriating, does not believe that recreation should be the main purpose for constructing a facility. Now it's pretty hard for me to understand if my own NRD takes that position, why their state association

is so different. But that NRD and the Directors that I visited with from that NRD certainly support LB 243. Some of them were a little concerned when we adopted the amendments that we have that weakened the bill somewhat. But anyway, they support LB 243 and I don't believe that as concerned as they are about water storage, that they would be supporting this bill if they thought it was a serious problem. So those many in the field who work in this area do not necessarily share the position of their association that this bill should be opposed. In fact, they support it. I urge you to support this bill. I think it is a wise move and will result in the expenditure of our dollars for water projects on higher priority items than has been the case in the past.

SENATOR CLARK: Senator Fowler.

SENATOR FOWLER: Mr. President and members of the Legislature, several urban Senators the last time this bill came up stood up and opposed Senator Schmit's position, and of great surprise to Senator Schmit I am going to rise and support his position on this bill. Many times in this Legislature we have had to adopt restrictions and controls on political subdivisions on expenditures, particularly on expenditures for capital items. Capital construction of any type whether you are building a school building, a community college or a water project is a very attractive thing. It is attractive politically because you come up with something tangible and it gives you a sense of accomplishment. It's something physical. We have found all too often, let's take a community college as an example that once construction starts it is hard to stop and that it is very difficult at times to limit these subdivisions and I think we may be running into that problem with the Natural Resource Districts. Senator Schmit has pointed out that not only is there a scarcity of water perhaps but there is a scarcity of money to deal with the problem and that we will have to establish some priorities. Now the priority that Senator Schmit is suggesting I think is very reasonable and that is that a project be at least 25 percent nonrecreational. Now I have no idea how many different categories of things would fall into nonrecreational, but I think you are talking about habitat, you are talking about water storage, you are talking about water and soil conservation, you are talking about flood control, probably a whole variety of factors. Senator Schmit says when you add all those together that at least 25 percent of the project benefits be in those areas. Now that seems very generous to let recreation be 75 percent, in fact, it might even be excessive, but Senator Schmit can be a generous man. It does

not seem unreasonable to say that when we have limited property tax dollars, when we have limited state dollars in our resource development fund, and when federal dollars are being cut back, that maybe we at the State Legislature have to express some priorities. And I think the priority that Senator Schmit is saying is that if a project is 90 percent recreation, the project is 98 percent recreation, if a project is 100 percent recreation, it should not receive these tax dollars, that there must be some other benefits, flood control, habitat, water storage, soil conservation, that must be in there at least 25 percent. It seems a reasonable position. It seems a moderate position, and it seems a responsible position as far as controlling the capital construction costs that may exist in water projects at a time when dollars are scarce. I don't believe that we can say that we have the money to fund every water project no matter what benefits it provides. Somebody is going to have to establish some priorities and those priorities that I think Senator Schmit is demonstrating seem very reasonable.

SENATOR CLARK: Senator Koch.

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

SENATOR CLARK: Senator Haberman.

SENATOR HABERMAN: Mr. Chairman, you have had three people speak in favor and two against, I would like to speak against before Call of the House, please, or before cease debate.

SENATOR CLARK: All right, I won't accept the question yet.

SENATOR KOCH: Well, Mr. Chairman, in that case I will exercise my prerogative which was I was recognized before Senator Haberman.

SENATOR CLARK: Well.....

SENATOR KOCH: I didn't know....usually you say, are there five hands, and then we are going to make that determination.

SENATOR CLARK: All I am going to rule is that I don't think we have heard enough on both sides yet.

SENATOR KOCH: In that case then, Mr. Chairman, may I exercise my prerogative to speak on this bill?

SENATOR CLARK: It is.

SENATOR KOCH: Thank you. Senator Schmit a moment ago was talking about funds we appropriate for the purpose of developing water structures for surface water, and we have been remiss in this. But I would submit to you that if we believe we are going to build more water structures under 243, we are wrong, absolutely incorrect, because I will submit to you and I will follow Senator Kremer's point of view and I think it would only be a period of time those people are going to be back in here wanting us to repeal this piece of legislation simply because of the litigation it is going to create. You know as well as I do that when you get involved in litigation on issues of environmental impacts of beneficial ratio for recreation and there are questions of what the percentage is going to be, you will tie it up in court for a considerable period of time, and while you have tied it up, you may prevail but I will submit to you the costs of construction will have increased correspondingly and you will not get your dollar's worth for that holding structure we all are searching for in terms of preserving surface water. So I would say to you here today, if we are going to continue to appropriate money for the purpose of building holding structures, then let's not impede the progress by enacting such laws as LB 243. First of all, the judge is going to make the determination on what the benefit is going to be in terms of recreation and in terms of other use, and I want to know how is a judge qualified to make that determination? What are the standards? I have yet to see where the NRDs have been abusive of eminent domain and I would submit to you anytime you build a water structure, it doesn't mean you are going to use it for all kinds of recreational purposes, such as boating, water skiing, whatever you might think. You might be able to use some of those ponds that we're going to build for a few million dollars for a little bit of fishing. That would be the extent of it. So I oppose LB 243.

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President and members, I also rise to oppose LB 243 for many of the same reasons as Senator Kremer and Senator Koch pointed out. I would remind this body that I think it is rather strange, this morning this very body passed a bill based on the trust that we gave to another entity outside of this body, namely the Regents. Now we are in a position where we don't trust another political subdivision, namely the Natural Resource Districts. And as Senator Kremer pointed out to you, they are directed by and large by rural people, farmers that are interested in water and water conservation, yet we are saying that these very farmers are willing to go out and use the power

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of eminent domain indiscriminately taking land away from their neighbors for various projects. Well I don't believe that. I don't think that is true. As a matter of fact, most of them that I know it is just about like pulling teeth for them to have to go through that process. They really hate to have to do it in any time when they have to. But I will submit to you that there are many people on this floor, many people in the State of Nebraska that stand up and say, what we need to do is build more storage projects. Well I come from a part of the state where we have got quite a few storage projects. I am proud of the Republican Valley. The Republican River is more controlled than any other....(mike went off).

SENATOR CLARK: Are you on?

SENATOR VICKERS: Yes. Okay.

SENATOR CLARK: All right.

SENATOR VICKERS: I guess I shut myself off. I was going to accuse you, Mr. President. But since this river is so fully developed, we recognize the benefits to be derived from it, but there's many people in this state that are saying what we need to do is have more storage projects. What they are really saying is, we want those storage projects to be built on somebody else's land, we don't want to give up our place. Obviously, that's true. Nobody wants the lake on their place, just like nobody wants the transmission line over their house and nobody wants the generating facility in their back yard, yet they have to be built some place. There is not a water project that I am aware of and we have a number of them, as I say, in my area that does not have some sort of recreational facilities. The fact of the matter is every weekend when I go home, there is a number of boats out there on the highway heading west toward Johnson Lake and many of the other lakes in central Nebraska. People like to go out and play on the water, they like to live around the edges. They like to fish in it. They like to swim, and I don't see how you can build a water storage facility which we desperately need in this state more and more of them without having recreational benefits, and how you are going to define those percentages, I defy anybody to do that. When they built the Tri-County system back in the thirties long before my time, I don't think anybody even considered the amount of recreational facilities that would be surrounding Johnson Lake, Jeffrey Lake, Lake McConaughy and many of those other lakes, but they are there now. How could you determine what the percentage was? I think it is

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Impossible. I urge this body to turn down this LB 243 if you are really serious about increasing the waterholding capacity of the State of Nebraska, and I will remind you, as Senator Kremer pointed out to you so well a while ago, there are areas of this state where we desperately need these facilities and are going to need them much worse in the future. Thank you, Mr. President.

SENATOR CLARK: Senator Haberman.

SENATOR HABERMAN: Mr. President and members of the body, it really boils down to a little simple thing, either you support the concept of local government or you don't. Either you support Natural Resource Districts or you don't. Now we just voted the Natural Resources Districts to be able to set management control areas, to control what? Water. And what has been said over and over and over is the most important thing in this state is water, and we gave the control of that in a new era to the Natural Resources Districts. Now if they...we just also gave them the authority to have more taxing authority. We said the NRDs can handle this, so we voted to let them have more taxing authority. If they can handle responsibility, if they can handle the responsibility and this body knows they are, of the amount of water that can be used on the crops that are raised in this state, which affects everybody, and if they can handle the responsibility of spacing water wells in this state, which affects every citizen, and if they can handle the responsibility of metering water wells and see that they work and see that everybody is conforming to the law, if they can handle those, they can handle the other problems. We have given them a tremendous amount of responsibilities and they have been doing the job. Those that haven't, they have heard from their local people. Now let's let them be responsible in this field and if they are not responsible, let the local citizens, not this body, call it to their attention. I ask you to oppose LB 243. Thank you, Mr. President.

SENATOR CLARK: Senator Remmers.

SENATOR REMMERS: Mr. Speaker and members of the Legislature, I just want to speak briefly in support of 243. We speak of local control but I think we all recognize that local control has guidelines set down by the Legislature. We are always setting guidelines for local control and I think this is proper, and I see nothing wrong with our trying to set some guidelines for the Natural Resource Districts. Let's remember that the Natural Resource Districts, the guidelines that were set out for them, that recreation was

not incidental to water and soil conservation, or that water was not incidental. Recreation was the thing that took second place, was incidental to water and soil conservation. We hear complaints that we cannot define recreation, that it will cause court battles. But I believe that in all cases of NRD projects the NRDs have been using benefits, recreational benefits, to justify their projects. So if they are going to use these benefits to justify their projects, they must have some skill in defining these benefits. Again, I want to say that recreation is a secondary part of the NRDs programs. I don't believe that the original bill that was introduced that the 50 percent limitation was unreasonable. I think the 75 percent limitation was granted partly because maybe of some difficulty defining these benefits. But I think that if we remember that the main purpose of the NRDs was water and soil conservation, that recreation was a secondary benefit. We look around and we find plenty of areas for projects. I am sure there are more projects than we have money to build that will live within the guidelines of the 75 percent limit for recreation. I urge you to support 243.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Question.

SENATOR CLARK: Senator Schmit, would you like to close on your motion? He was the last speaker.

SENATOR SCHMIT: Mr. President and members of the Legislature, there has been a lot of conversation here about local control, a lot of conversation about trust in the NRDs, a lot of conversation about trust in here and trust in there. Let me tell you what it boils down to. It boils down to this. Do you want to go back home and tell your people that we have got \$6 million in the water development fund, give or take a hundred or a million or two, depending on what we do this session, and that of that \$6 million you can only spend \$4½ million for recreation and that is going to handicap water development projects? Baloney! I have been around here thirteen years and I have seen some straw men built, but that is about as flimsy a man as I have seen. If we have to rely, if 75 percent recreational benefits are not sufficient, then God help us for ever doing anything constructive for water development in the State of Nebraska. You talk about how one person can stop projects, let me tell you this, ladies and gentlemen, I have been on both sides of the issue. As I told you, I sat on the Watershed Board for a dozen years and we never had to

condemn a square foot of property, and we built projects up and down the Platte Valley. We never had to take one foot of land by condemnation. Let me tell you one more thing. When a public subdivision comes out to that individual, the recourse is on the side of the public. The individual is a mighty small person when that time comes because the Natural Resource District has the full resources of the taxpayer behind it. They have legal counsel, they have unlimited tax dollars and they can pursue it and pursue it and pursue it and if you happen to win the first time around, they can go right back into court and drag your tail through there again and again and again. You talk about using money for lawyer fees, I say it is a shame that we are using as much money for legal fees as we are now. But I suggest and it has been suggested by other people here this afternoon that it is not inconsiderate to provide some guidelines to tell a Natural Resources District at least 25 percent of those benefits need to be from something other than recreation, and if that isn't sufficient to justify the construction of a project, then I can tell you one thing, after 35 years of driving and flying and walking over this state, I can find you plenty of projects that will have at least 25 percent of other benefits and you won't have to walk more than a stone's throw from this Capitol to start finding the first of them. We have a responsibility to use those tax dollars in the best possible method. Fun and games is fine and a certain amount of it is all right, but you better take care of your principal responsibility first, and I think if you went over and told the Governor that we were going to let the sky be the limit and we could spend all of this water development money on recreation, I think he would be constrained to veto a heck of a lot more than if we say it is for development purposes and soil and water conservation. Now Senator Fowler has pointed out a pond of water is an intriguing thing. It is something which appeals to all of us, but there are better methods of soil and water conservation than just building ponds, desirable as they are, and I support the concept. There is nothing very glamorous about a minimum tillage field of corn, I can tell you it is a messy looking thing, but it will conserve a lot of water and it will conserve a lot of soil. And the Natural Resource Districts that are engaged in that kind of an operation and encouraging the farmers to engage in that are doing a real service. The same thing with the tree planting situation, and there are many other conservation devices, the terraces and diversions. Nothing very glamorous about them. They don't look very good when you take a picture of it and put it in the paper, but it is a very real method of soil and water conservation. There isn't

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any one of us in this body who can stand up and say that other project, 25 percent should be for some other purpose or else we will find another project.

SENATOR CLARK: You have one minute.

SENATOR SCHMIT: It does not prevent the Natural Resource District from having the willing buyer-willing seller situation. This morning we talked about who we trusted in public office. We can trust each other but we need to give some guidelines. The Legislature laid down the Natural Resource rules and we need to follow up again with some additional guidelines. I suggest that we advance LB 243. Mr. President, I would like to ask for a Call of the House. I lost one time because there were some people that were not here. If I lose this time, I want it to be on an equitable basis. I ask that we have a Call of the House at this time.

SENATOR CLARK: A Call of the House has been requested. All those in favor of a Call of the House vote aye, opposed vote nay. Record the vote.

CLERK: 17 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All unauthorized personnel will leave the floor. All Senators will take their seats and check in please. I would like to announce we have eighty-five 9 through 12th Grades from Falls City, Nebraska from Senator Remmers' District. Mrs. Appleoff is the teacher. They are in the south balcony. Will you raise your hands so we can recognize you, please? Welcome to your Legislature. We have two excused. Fourteen have not checked in. Senator Wesely. Senator Wagner. Senator Barrett, Senator Higgins, Senator Labedz, would you all return to your seats, please, and check in? Senator Newell, check in, please. I think Senator Newell is the only one we are short. We have 2 excused. Senator Schmit, do you want a call of the roll, or do you just want to take a vote?

SENATOR SCHMIT: How many are excused, Mr. President?

SENATOR CLARK: Two.

SENATOR SCHMIT: Who is missing?

SENATOR CLARK: Newell.

SENATOR SCHMIT: Which one?

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SENATOR CLARK: Newell.

SENATOR SCHMIT: Newell? Let's go ahead and vote on the board.

SENATOR CLARK: The question before the House is the advancement of 243. All those in favor vote aye. All those opposed nay. Voting no.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Once more, have you all voted? Senator Schmit, I am going to call the vote.

SENATOR SCHMIT: Then let's have a roll call vote, please.

SENATOR CLARK: Call the roll.

CLERK: (Read the roll call vote as found on page 1978 of the Legislative Journal.) 23 ayes, 20 nays, Mr. President, on the motion to advance the bill.

SENATOR CLARK: The motion failed. The bill fails to advance. LB 436.

CLERK: Mr. President, if I may right before that, your committee on Miscellaneous Subjects whose Chairman is Senator Hefner reports LB 523 to General File with amendments, and it is signed by Senator Hefner as Chair. (See pages 1978 and 1979 of the Legislative Journal.)

Mr. President, LB 436 was a bill introduced by Senator Rumery. (Read title.) The bill was read on January 20, referred to Business and Labor. The bill was advanced to General File. The membership considered the bill on April 6 of this year, Mr. President. At that time the bill failed to advance.

SENATOR CLARK: Senator Rumery, do you want to explain the bill?

SENATOR RUMERY: Mr. President and members of the Legislature, you heard the little bit of history about this bill. I want to correct a few things that were said about it before. It was indicated that this was a special bill for a special person, and it is not. We did use an example of a special case that had been....that had occurred, but you will recall that in our Constitution now we are prevented from discriminating against a number of things in our existence here. If you are going to hire people you

this is to the best of our ability because I think that we can get this population variance a little closer than 1.14%. Like I told you before, the committee plan was down to less than one quarter of one percent and I feel after visiting with the Attorney General's office and with our staff, after they have done all of this research that that plan could survive a court challenge. Therefore, I would urge you to reject the committee amendment and then advance the bill to Select File and then we will try and work something out that will be acceptable to this body. I also call to your attention Senator Maresh's statement saying that we could have a hearing Friday. I don't believe there is any way we could have a hearing Friday because we need to have five days or seven days notice from the time that we put it on the Clerk's desk and so I think the closest date that we could set a hearing for would be next Monday night or next Tuesday night, so therefore, I would certainly urge you to reject the committee amendment now as amended.

SPEAKER MARVEL: Senator DeCamp, do you wish to speak to the committee amendments? Okay, Senator Koch. You are the last speaker so we can proceed. All those in favor of the committee amendments vote aye, opposed vote no. We are voting on the committee amendments. Have you all voted? Have you all voted? Senator Warner.

SENATOR WARNER: Is there still just one person excused?

SPEAKER MARVEL: There isn't anybody excused.

SENATOR WARNER: I ask for a Call of the House and a roll call vote, Mr. President.

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

CLERK: 23 ayes, 1 nay to go under Call, Mr. President.

SPEAKER MARVEL: The House is under Call. All legislators please take your seats. Record your presence. I encourage all unauthorized personnel to leave the floor. It is my understanding there is no one excused.

CLERK: Mr. President, while we are waiting I have amendments from Senator Schmit to LB 243 and from Senator Nichol and DeCamp to LB 213 to be printed in the Journal.

SPEAKER MARVEL: And while we are waiting for the vote from Senator Fowler's district it is my privilege to present Mr. and Mrs. Peter Wiese and their family, Jesper and Mary Ann, and Erik Anderson and Lisa Toft and Mr. Wiese is the permanent undersecretary to the Prime Minister of Denmark. They

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SENATOR CLARK: All right. We will then go to. . .the Clerk has to read some things in first.

CLERK: Mr. President, a new resolution, LR 187. Read LR 187. Pursuant to our rules, Mr. President, that will be laid over.

Mr. President, I have an explanation of vote offered by Senator Koch. (See page 2109 of the Legislative Journal).

SENATOR CLARK: We are now ready for item number five, LB 243.

CLERK: Mr. President, LB 243 was a bill introduced by Senator Schmit, (Read title of LB 243). The bill was first read on January 16th, referred to Ag and Environment hearing. The committee amendments were adopted by the body, Mr. President, on April 10th. At that time there was an amendment from Senator Schmit that was adopted. On a motion to advance the bill failed to advance on April 10th. The bill was again considered by the body on May 12th, at that time on a motion to advance the bill failed to advance. I now have pending amendments offered by Senator Schmit that are found on page 2083 of the Journal, Mr. President.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, these are the same amendments which I offered to LB 146 which we then withdrew. I would like to explain them briefly. There was objection to the original bill because of the fact that it seemed to be difficult to determine what percentage of a project might be beneficial as to the recreational benefits and what portion would be attributed to other benefits. So, the amendments that I have offered are number one, that it shall be the duty of the Board of Directors of the Natural Resource District to make a determination of the percentage of project benefits assessed to each of the purposes listed in Section 2-3229 prior to initiation of eminent domain proceedings, then this is the critical part, such determinations shall be prima facie evidence and any subsequent litigation in which the exercise of the power of eminent domain is at issue. What we are saying is that this should remove the objection that was stated upon a number of occasions that it would be difficult to determine which percentage of benefits could accurately be assessed to the various areas. I would hope that this would calm some of those fears. The second portion of the amendment provides that in the event the Board of Directors of the Natural Resource Districts finds that it is important to an area to construct

a project which is more than 75% for recreational benefits, they can do exactly as the Game and Parks Commission does, they can come back to this body and ask for the approval of this body. Now that has worked well in this body, has not been any problem for the Game and Parks, it seems to me if it will work for Game and Parks that it ought to work for the Natural Resource Districts. I recognize that there may be a unique situation from time to time in a particular area with high population where it may be important to provide recreational benefits and if it the Board of Directors, the NRD thinks that it is that important they can come to this body and secure the permission they need. I would hope that these two amendments could be adopted and that the bill could be advanced without a great deal of discussion. I do not want to take a lot of time. The bill has been discussed and debated at length. These amendments are a sincere effort on my part to compromise what I know is a very matter of deep concern for many of you. I would hope that you would adopt the amendments. I would answer any questions that you might have.

SENATOR CLARK: Senator Kremer.

SENATOR KREMER: (no response).

SENATOR CLARK: Senator Sieck, do you want to talk on the amendment?

SENATOR SIECK: Mr. President, members of the body, first of all I would like to ask Senator Schmit a question.

SENATOR CLARK: Senator Schmit, will you yield?

SENATOR SCHMIT: Yes, I will, Mr. President.

SENATOR SIECK: Will these amendments affect the Oliver project? Would the Oliver project then have to come back to the Legislature for approval? That is my question.

SENATOR SCHMIT: I don't think the Oliver project would be affected by these amendments, Mr. President.

SENATOR SIECK: Okay, now that is what I gathered. I think the bill is still special legislation. I'm not going to approve the amendments. I felt when I first saw the amendments on the draft 146, it looked like I could accept them and I voiced my opinion to Senator Schmit's staff that it looked like he was on the right track, and I think he is. But, the way these are set up

we are still going to have litigation. I don't think that it is going to help one iota. The Games and Parks is a completely different situation. If they want land they have to come to the Legislature in order to approve eminent domain. That is the way it is set up. This criteria would still go into effect. You have to get a percentage. The Board of Directors, yes, could get a percentage, but it would be litigated. I also feel that it would be litigated if it would come before the Legislature. If you will read the handout that I put on everyones desk, you will see a good definition of what my feeling is. My whole purpose in opposing this bill is to prevent undue litigation. I don't feel that this will do it. I am pleased that Senator Schmit is trying to find some way to make this work, but he has a bill under study and I feel that we really need to look into it and I think that we can come up with some kind of agreement. But this amendment will not do it and I do not support the amendment.

SENATOR CLARK: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, basically this is the same bill that was here before. It is a self-interest bill. It harms the NRD's, twice before we have considered this bill and it has failed to advance. I see no reasons to change now, the amendments don't do that much for it. Your Natural Resource Districts are still the same. We've given them more authority, we are not trying to change that. It didn't take three times to try to change that. It didn't take three times for us to show the faith in the Natural Resources District. I would say that if this body now reverses itself we are going to be asked why. I can't reverse myself, no good reasons have been put forth. So, I would ask this body to stay with the original pattern, support the Natural Resources District and do not support amendments or LB 243. Thank you, Mr. President.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Question.

SPEAKER MARVEL: The question has been called for. Do I see five hands? All those in favor of ceasing debate vote aye, opposed vote no. Shall debate cease?

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CLERK: 26 ayes, 1 nay to cease debate, Mr. President.

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

SENATOR SCHMIT: Yes, Mr. President. I would just like to say this. Senator Haberman refers to the fact that we can't change, we can't swith. We change every day in this body. We just witnessed it several times this morning. I don't think in the thirteen years that I have been here I've ever seen a bill that has came out of the Bill Drafter's office and hit Final Reading in the original form. Maybe Rex can pick one out and if he would, I would be glad to see it. There are also those individuals in here that take a certain pride of authorship and who refuse to accept any kind of a compromise on their bills and usually those bills do not wind up as law. I would be the first to suggest that rather than to have a bill stripped down to the point where it does not do anything that I would just as soon see a bill die. But I think this is an important issue. I believe the issue is important enough to all of us that we recognize that at some point in time we had better try to lay down some guidelines or we are going to have a very difficult time to explain why when we request from the General Funds, three million, six million, ten million dollars for water development projects, we refuse to adopt any guidelines relative to how the money will be spent. I don't think that Senator Haberman or myself could go back to our respective districts and argue to our constituents that every single dollar of the three million dollars in the water development fund should be spent for recreational purposes. Of the twenty-four Natural Resource Districts, only a small minority are desperately concerned about this issue. The question was raised many times as I travel across the state, almost without exception the managers and the directors have told me, we don't use the right of eminent domain. We rarely use it under any conditions. But we would not use if for the purpose for which some people claim that it is most almost necessary, the purpose for condemning for recreational purposes. Senator Sieck asked the question about the Oliver project. Senator Sieck, the Natural Resource District could come to the Legislature on that project if they so chose. It would be an avenue that would be open to them. I want to run through it once more. I'm not going to take a lot of time. There were objections raised as to why and how the determination would be made as to what percentage of benefits would be attributed to recreation. Under my amendment the Natural

Resources District's Board of Directors makes that decision. That shall be Prima Facie evidence in the court of law. Number two, if they want to build a project that is more than 75% recreation in nature they can come to the Legislature and get approval, exactly what we require of the Game and Parks. If you can find a Natural Resource District which will point out to you in a single instance where these bill...with these amendments is going to be damaging to them, I have not seen it. I don't think you can see it in writing. You see it from their lobbyists but you do not see it from the Natural Resource District. They can not cite you an instance. I suggest that the principle of eminent domain is one which is a very vital one to all of us. It is one which we should not surrender easily, and we should not surrender lightly. I would hope that you would ask yourself very sincerely upon what basis can you possibly oppose this amendment. This amendment is meant to give maximum freedom to the Natural Resource District and still provide some kind of guideline. I ask that the amendment be adopted. I ask that we have a Call of the House, Mr. President and a roll call vote.

SPEAKER MARVEL: Okay, the question is shall the Legislature go under Call. All those in favor of that motion vote aye, opposed vote no. Record.

CLERK: 21 ayes, 0 nays to go under Call, Mr. President.

SPEAKER MARVEL: The Legislature is under Call. All legislators return to your seats. Record your presence. Unauthorized personnel please leave the floor. Senator Schmit, everyone is here now. Roll call vote. The Clerk will call the roll.

CLERK: Roll call vote. 30 ayes, 6 nays, 12 present and not voting, 1 excused and not voting. Vote appears on pages 2110-11 of the Legislative Journal.

SPEAKER MARVEL: Motion is carried, the Schmit amendment is adopted. Senator Schmit.

SENATOR SCHMIT: Mr. President, I believe the bill has been discussed at great length. I think everyone has more or less made up their mind. I move the bill be advanced.

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

SENATOR KREMER: Yes, I do. Mr. President, members of the Legislature, I recall when attending my little country school

the teacher wrote a little axiom she wrote on the blackboard, it went something like this: If at first you don't succeed, try, try again. I think it had to do with my graduating from the eighth grade, I'm not sure, but apparently Senator Schmit has learned this quote very, very well. This is the third time. It was defeated both other times. I continue to oppose the bill like I have before, even with the amendment. I recall twelve years ago, I happened to be in DC in the office of a certain person that had to do with energy. He gave me a book. The book was entitled, "The Energy, the Coming Energy Crisis". I read the book somewhat with alarm and yet I did not believe what it said. It had been written several years before, in fact about seven or eight years before which takes us back seventeen, eighteen years. The authors of the book predicted what we were going to get into as far as energy crisis was concerned. I didn't think they were accurate. There were gasoline wars. We could buy gasoline at a very low price. I didn't believe it could happen but it did and we are in that position today. The same thing is happening with respect to this wonderful resource we have in Nebraska that we call water. I have here with me only a part of the file that I have that should alarm us, what could be ahead of us. Today Nebraska stands on a high peak of decision making. Either we are going to store some of the water that is available to us or we are heading towards the same problems we had with energy...that we are having with the energy today. I'm going to make reference to only a few of the various publications and quotes that I have on file in my office. Here is one of them entitled "Fies on the Prarie". I'm going to read only a paragraph out of this publication. Here is what I am reading, "There is not much hope for a natural recharge in many of the areas and depleted water levels will eventually force farmers back to dry land crop production. This would indeed incur an economic disaster. Irrigation, higher yields require vast amounts of additional fuels, fertilizers, much storage capacity, transportation and the like. And, the many booming industries that have grown with irrigation may also shrink with it". That is all I'll read from that publication. I have here a recent publication put out by CDM News and the front page has this quotes in large figures, or in large letters, "Water, are we running out?" I have a copy of the Ag Scope, again the caption on the front page is "A country without water." Last of all a year ago the World Herald put out a detailed report again the caption on the front page is "Water, will it last?" Ladies and gentlemen of the Legislature we are making a decision today that is going to be far reaching. I think

Senator Koch put it very well when we debated it the last time when he said "you'll be back". If it were not for the fact that I'm worried and concerned about litigation, litigation, litigation, I'd support this bill. I, too, have trouble with the power of eminent domain. Some of us are going to have to sacrifice, do for Nebraska what is going to have to be done. Ladies and gentlemen of the Legislature, stay with us and defeat this bill. If we don't, I can see nothing but problems in the future. We are going to have to store water and we are going to have to recharge this tremendous underground supply that we have. I said before, I want to repeat, if we do the sensible thing, the right thing, it is my conviction that Nebraska will have enough water to last us indefinitely. If we don't, if we do not store some water it is going to be in trouble, we are heading for trouble. Thank you very much.

SPEAKER MARVEL: Senator Sieck.

SENATOR SIECK: Mr. President, members of the body, we just advanced an amendment which I don't feel is going to help one iota as far as holding down litigation. Yes, if the Board of Directors find that the structure that they want to build is going up to 75%, yes, they will come to the Legislature for approval. That isn't too bad. But, what happens between the 75% and zero when the individual wants to prove that it is 75% and that is what we are talking about, litigation that will go on proving that it is less than 75%. This is what I am fearful of. We need many, many projects in the Upper Blue area, many projects. We are going to do it, but I'm sure that we are going to have to use some eminent domain. But, it will not be used haphazardly. I can assure you this. Invisiting with many, many people that are now on the Board of Directors and people that live within the area but they understand that it has to be used occasionally. Another item that was brought to your attention the last time we debated this that sometimes eminent domain is used for a purpose to save on capital gains tax. If you recall that item and our people will occasionally want to use this to benefit themselves and I feel that they should, because when you force an individual off his land he should take every advantage that he can. I want them to do this. Any time an individual that has a problem in this area, I can assure you that I will do everything in my power to help that individual to get the best price and the best arrangement for him.

We have passed laws in the past that have done a lot for these individuals. Now if an individual is moved because of a water structure or because of a road or a highway this individual is paid to find another location and he is paid the amount that his home is equivalent to a new home. He is paid all moving expenses. He is also allowed a hearing before they even appraise the land, he is sent a letter and he is allowed to come to the review process and the land has to be appraised before this. The NRD is in a bind because it hardly lets them negotiate because the individual before the project is approved have to hear this man. This man knows what his land is appraised for and will give him another reason to object if it is appraised too low. So, I think we have given a lot of advantage to these individuals and with this bill, it is just going to hamper the process of building any type of structure. Again I want to say that this is special legislation. I wholeheartedly oppose this bill. Thank you.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Question.

SPEAKER MARVEL: The question has been called for. Do I see five hands? All those in favor of ceasing debate vote aye, opposed no. Record the vote, no I'm sorry. Have you all voted? Okay.

CLERK: 26 ayes, 0 nays to cease debate, Mr. President.

SPEAKER MARVEL: Debate has ceased. The Chair recognizes Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I share the concern of every other member of this body as to the methods and necessity for conserving and developing and properly handling and managing our most precious resource which is water. I will recall to those people who talked about the impending energy shortage, I was one of them, many years before it became popular to be on that side. I think that if you go back and read the record that I have been on the side of water conservation and development and proper management for many, many years. I think we have to recognize that it is within the prerogative of the Legislature to lay down guidelines as to what we expect from our subdivisions of government. I do not think that the guideline that we are laying down here is unduly restrictive. In fact there are those who have told me that

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LB 243, 165A, 181, 316, 485
322, 336, 336A, 352, 303
412, 459, 459A, 523

they would prefer that it were more restrictive. All I am asking is that we give some kind of a guideline, some kind of direction and that we do it in a manner which is not going to be, I'm sure, restrictive to the operations of the Natural Resource Districts. I would hope that you would advance the bill. Mr. President, again I ask for a Call of the House and a roll call vote.

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

CLERK: 15 ayes, 0 nays to go under Call, Mr. President.

SPEAKER MARVEL: The House is under Call. All legislators return to your seats, record your presence. Unauthorized personnel please leave the floor. Sergeant at Arms, we are looking for Senator Newell, Senator Lamb, Senator Haberman, Senator Marsh. We have one excused. Senator Newell and Senator Marsh. Senator Schmit, okay, call the roll.

CLERK: Roll call vote. 27 ayes, 13 nays, 6 present and not voting, 1 excused and not voting, 2 absent and not voting. Vote appears on page 2111 of the Legislative Journal.

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

CLERK: Mr. President, some items to read in. Senator Hefner wants a meeting of the Miscellaneous Subjects Committee in Room 2102 at noon.

Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 412 and recommend the same be placed on Select File, 352 Select File, 523 Select File with amendments all signed by Senator Kilgarin.

Your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed 316 and find the same correct engrossed and 322 correctly engrossed, (Signed) Senator Kilgarin.

Mr. President, the bills that were read on Final Reading this morning are ready for your signature.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business I am about to sign and do sign Engrossed LB 181, 165A, 303, re-engrossed LB 336, Engrossed 336A, 459, re-engrossed legislative bill 459A, Engrossed Legislative Bill 485.

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LB 213, 243, 320, 321, 488

SPEAKER MARVEL: The motion is carried. The bill is advanced. The next bill is 213.

CLERK: Mr. President, if I may right before that, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 488 and recommend that same be placed on Select File; 320, Select File; 243, Select File; 321, Select File. All signed Senator Kilgarin, Chair. (See pages 2148 and 2149 of the Legislative Journal.)

May 22, 1981

LB 243

CLERK: Mr. President, LB 243, there are E & R amendments pending.

SPEAKER MARVEL: Senator Kilgarin, E & R amendments to 243.

SENATOR KILGARIN: I move the E & R amendments to LB 243.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. All in favor of the E & R amendments to 243 being adopted say aye, opposed no. Motion carried.

CLERK: Mr. President, Senator Schmit would now move to amend the bill.

SPEAKER MARVEL: Senator Schmit.

SENATOR SCHMIT: Mr. President, there have been some concerns that this bill would cause litigation, cause some unnecessary expense in the Natural Resource Districts. I have tried to attempt that with the amendment that have been...attempted to resolve that with the amendments that were previously adopted which allowed for the Natural Resource Districts to determine the extent of the benefits that were attributable to recreation and then secondly, to allow for the special exemption through the legislative process for those projects that the Natural Resource Districts meant or felt were necessary for a particular area. I am, therefore, trying to offer one additional amendment to ease the fears of those who feel that the bill will have a wide or long-lasting impact and a devastating manner against Natural Resource Districts. This says that in three years the provisions of the bill will sunset. Therefore, unless we come back in at the end of that time and renew the exemption that it would cease. I want to say very frankly that I don't think the amendment is necessary because if we don't like the problem, if we think there is a problem there or we don't like the bill, in a little over seven months we can come back and we can amend it or we can take the provisions out of the bill but I am just going a little bit farther to demonstrate that I feel very strongly that we will come back within three years time and extend these same provisions. I have no concern that the Legislature will not continue the process. I do not fear those or share those concerns which some people do relative to the limitation of the right of eminent domain but I am willing to go this far and I would hope that the amendment will be adopted.

SPEAKER MARVEL: Senator Newell, we are voting on the Schmit amendments.

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LB 243

SENATOR NEWELL: Yes, Mr. President, I would like to ask Senator Schmit a question if I could.

SPEAKER MARVEL: Senator Schmit, do you yield?

SENATOR SCHMIT: Yes, I yield, Senator Newell.

SENATOR NEWELL: Senator Schmit, this sunsets the entire bill after three years. Is that correct?

SENATOR SCHMIT: That is right.

SENATOR NEWELL: There is, the sunset provision as I read it on the Clerk's desk applies to only Section 2 and Section 4. Would that... Are we sure that that is going to sunset the entire bill?

SENATOR SCHMIT: Well you can read it as well as I do, Senator, and...

SENATOR NEWELL: I just want to get it for the record.

SENATOR SCHMIT: Can't you read?

SENATOR NEWELL: Well, Senator, you are the one that drafted the amendment. I'm sure that you can clarify...

SENATOR SCHMIT: Well, Senator, you are a very educated man and you can read the amendment as well as I can.

SENATOR NEWELL: Well, does it sunset Section 3 also?

SENATOR SCHMIT: What do you think it says?

SENATOR NEWELL: I think you are not going to answer me. That is what I think. That is what I think. I mean, I've got that much from the conversation so far. Thank you, Senator Schmit. Well, Mr. President, members of the body, I am kind of taken back by Senator Schmit's answer. I will ask others to try to analyze whether, in fact, this is the sunset provision or if it is more specifically aimed at some other, for some other purpose. With that question I will allow others to speak on this if they so choose.

SPEAKER MARVEL: The motion before the House is the adoption of the Schmit amendment to LB 243. Senator Schmit, do you wish to close? All those in favor of the adoption of the amendment vote aye, opposed vote no. The motion is the adoption of the Schmit amendment. Have you all voted? Have you all voted? Senator Schmit. Record the vote.

May 22, 1981

LB 243

CLERK: 25 ayes, 9 nays, Mr. President, on adoption of Senator Schmit's amendment.

SPEAKER MARVEL: The motion is carried. The amendment is adopted.

CLERK: Mr. President, the next amendment I have is offered by Senator Haberman. Senator, this is the one that you had had published in the Journal earlier. Is that the one you want to take now?

SPEAKER MARVEL: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Nebraska Unicameral, my amendment says that should LB 243 become law that the provisions in 243 are not retroactive. That means that any projects that have started or have been funded are not affected by this project. The reason that I am putting this amendment on is I personally feel that there are parts of this bill, and the bill had been changed, that directly points to the Oliver Reservoir out in Kimball, Nebraska. To give you some background, back in 1974 the Kimball Irrigation District voted to abandon the irrigation district. The dam and the lake had deteriorated and it was kind of a mess. So the local people decided rather than to let this be tore down, let's fix it up and make it into a recreation area for all of the people. So they started having cookie sales, cake sales, I passed a sheet of paper around to show you where the Volunteer Fire Department raised \$1,200, and the local people raised \$300,000 of their own money to put into this project. The Resources Development District or fund put in another \$891,386 and they put in \$300,000 of federal funds for a total of \$1,500,000 and they decided to go along with the project. Now the local NRD Board was responsible for the resources funds and the federal fund and they had the vote to condemn some land. This board is made up of fourteen people, thirteen of whom are farmers and the vote to condemn a particular parcel of land belonging to a man by the name of Singleton was nine to four to condemn this land, not the rumored four to three that has been going around the floor. So these people said we are going to condemn this man's land. So they went to District Court and they lost and this man had been offered \$84,000 or \$491 an acre for this land that had been used for cow pasture. It was worthless, just for cow pasture, because you could buy good wheat land out there that averages twenty-five bushels per acre for anywhere from \$180 to \$225 an acre but no, they said we are going to give you \$491 an acre for your land. So they went to court and this man lost. So then his attorney decided to take it to a higher court and that is where it is now. Now what happens to this project if

my amendment is not adopted? One-third of the shore line, at least one-third is lost to the public. The attorney admitted in a meeting that public access would be restricted if this land was not condemned and put into the entire project. So what they are doing, and Senator Schmit said the other day, said, "You shouldn't condemn one man's property for another man's recreation." And I say it is not right to take a lot of people's money to make one man rich and this is what this will do. It will make this man very wealthy because he has already plotted the land into lots and intends to sell them for cabins. So what my amendment says is if you pass the bill, and I am not debating the merits of the bill at this time, fine, that is all right, but my amendment says it cannot be retroactive. You cannot go back and attach it to something that has already been started and developed and money spent. And I ask you in the spirit of fairness to say that this is not correct, that we do not go back. We do not pass a law that affects and harms people who have tried in their best interest to make an area a recreation area for the benefit of all of the people in the State of Nebraska and that you support my amendment. Thank you, Mr. President.

SPEAKER MARVEL: Senator Newell, do you wish to speak on the motion? Okay, Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, of course I oppose the motion by Senator Haberman. I think, in fact, it is a reconsideration and if I wanted to extend the process and delay it and drag it out I would ask for a ruling on that but I think I would just as soon discuss the amendment and let the chips fall where they may and not concern myself with whether it is or not a reconsideration because it is only a matter of changing one word and then we would not have to do it. Now Senator Haberman speaks in some emotion about the private contributions. Let me tell you this. When the funds were originally solicited no private land was to be taken. Some of the people out there who contributed money to that fund said they did not know and, in fact, had been told that there would not be the taking of any privately owned land. If they had known it they would not have supported or they would not have contributed money to the fund. Number two, there is no shore line lost. No shore line is lost under my proposal. The shore line is still available to the public. There is absolutely no shore line lost. Number three, Senator Haberman goes to some length to explain about the nine, almost \$900,000 or \$891,000 of development fund money, public money he refers to it that has gone into the project which he implies will be lost if my bill becomes law. Not true but most important, I want you to understand this. That almost \$900,000 represents almost

20% of the entire expenditures of the Water Development Fund thus far. Now if you feel, as a member of this Legislature that it is good judgment to expend 20% of the Water Development Fund and all of you know that I have stood on this floor for many years and attempted to increase that amount of money, the money that is in that development fund time after time. But if you think it is good business to spend 20% of that on a recreation project in one area and ignore the needs of the rest of the state, then you would support the Haberman amendment. Now let me tell you one more thing. In order to justify the recreation benefits that they expect to achieve from this we had to borrow residents from Colorado and Wyoming. Now I think that is a little far-fetched, don't you? That we should be going into Colorado and Wyoming and be worried about providing recreation for those two states when we all know they have many, many times as many recreational facilities as we have in this state. I think we ought to take care of our own needs first. When they did the study out there to determine what might possibly be lacking in recreational facilities for that part of western Nebraska, it was the determination of the local officials that they might be deficient in a few miles of hiking trails. Now, ladies and gentlemen, as I have said I have walked, ridden, flown, done everything except swim across the State of Nebraska and there is hundreds of thousands of miles available for hiking. You can hike any darn place you please trail or no trail. So I don't think that is a major deficiency. What I am saying is that my own Natural Resource District Board supports LB 243. Do you know why they support it? Because they have projects, flood control projects, they have conservation projects that are not being taken care of because they have not been awarded development fund money. We have a project, Bone Creek that has been on the books for many, many years, Skull Creek which we have hoped to develop for a long while, Rawhide Creek in Senator Johnson's territory waiting for funds. Senator Neil Simon was here this morning. Do you remember? I'm sure some of you do when there was a flood up there and inundated a large portion of his district, the King Lake area. There was an attempt to get some funds for that project to protect homes and lives. I flew in there with a helicopter and picked up people who were stranded, who would have at least gotten their feet and their bodies wet and lost some of their possessions if we had not taken them out of there and we are spending money \$900,000, 20% of the total expenditure to provide recreation for Colorado and Wyoming residents. I think we want to remember one more thing. If this bill had been law when the project had started the farmer would not have lost his land. I want to say one more thing. I'm afraid I am going to run out of time pretty soon but the Montana Legislature on April 17, 1981, adopted a resolution and I will read it

to you in part. "Whereas the application of eminent domain is increasingly jeopardizing the rights of private landowners and the preservation of agricultural land and whereas the potential for serious conflict is increasing between those agricultural or private property interests and those who might use the power of eminent domain for their own profit and whereas private landowners are concerned about the continued viability for their agricultural operations as sections of their land increasingly are taken through eminent domain proceedings."

SPEAKER MARVEL: You have forty-five seconds.

SENATOR SCHMIT: "And whereas private landowners and condemnors generally are concerned about the overall process used in the taking of their land by means of eminent domain, therefore, the State of Montana has suggested that an appropriate interim committee be assigned to study all the aspects of Montana's laws regarding eminent domain." I think, ladies and gentlemen, that indicates a fair analysis of the project. Nebraska is not the only state where we are concerned with eminent domain. I would ask you to vote against the Haberman amendment and to advance the bill.

SPEAKER MARVEL: Before we continue, in the North balcony from Senator Lamb's district we welcome 19 sixth grade students and 7 adults from Sandhills Public School, Dunning, Nebraska, Kay Fruedenburg the teacher, and I assume that white haired gentleman up there is also an exteacher. Senator Newell, do you wish to speak? Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, I rise to oppose the Haberman amendments. I want to oppose them vigorously. No one or very few members of this Legislature have supported the Natural Resource Districts as strong and as vigorously and as consistently as I have over the past five years but I have to split from the association of Natural Resource Districts now on LB 243 and if I had been more aware of the project which Senator Haberman mentions in western Nebraska I probably would have been very much upset with them in the past. I think it is unwise for us to be spending public funds in the fashion that they were expended in western Nebraska and maybe we ought to take a much harder closer look at the way that these funds have been spent on water projects in the past. There are many, many flood control projects and important water projects that need to be funded in the State of Nebraska and it is unfortunate that we have funded a recreational project in western Nebraska not far from my own territory when there are many projects of much more significance that have not been funded throughout the State of Nebraska including in the Omaha and Lincoln areas. Senator Haberman makes it sound like a crime for an individual

from western Nebraska whose own property next to a lake all his life to want to take advantage financially of improvements around that property. I don't think it is a crime at all. I don't think there is anything wrong with this individual trying to take advantage of the fact that a lake has been created next to that property and I am not sure that the public is being denied the benefit of the public funds that have been spent in this area. They still have access to the great majority of the lake as far as the shore line is concerned and if you are familiar with water law you know they have access to almost the entire body of the lake itself. So the public is not being denied anything serious by one man who does not wish to contribute his property to the recreational benefit of others. The purpose of eminent domain should be exercised carefully. The purpose of eminent domain is to condemn property, private property for the benefit of the public at whole. The public still has the benefits from this project and they are not being denied them as a result of the refusal of this one individual to give his land to the public. Now Senator Haberman tells us that land in western Nebraska sells for \$200 an acre or less, wheat land. Well, Senator Haberman, you send me the legal description and willing sellers because I can find you a buyer for any wheat land that is selling for \$200 an acre. I can find a lot of buyers. We will be more than happy to purchase some of that kind of land. The fact is, in western Nebraska wheat land is selling for five and \$600 an acre and I have heard of some dryland wheat land selling for \$800 an acre. So I really challenge Senator Haberman's predictions as far as the value of this property is concerned. The real point that we are talking about here, however, is retroactivity and Senator Haberman and Senator Hoagland visiting with others earlier in talking about this bill has really objected to the fact that this bill was retroactive in nature. Now Senator Hoagland's 213 is retroactive in nature and he thinks that is very important, that the changes we make in the not guilty by reason of insanity statutes are retroactive so that they affect the Simants case and the Alvarez case and so do I because we are changing the public policy of the State of Nebraska and there is no reason why it should not be retroactive on LB 213 just says as it should be retroactive on LB 243. All we are asking is that the policy of the State of Nebraska be consistent, that projects with recreational value of less than 75% are projects that should not use the power of eminent domain. That is reasonable. That is logical. I have a tremendous amount of respect for Senator Kremer and I follow his lead on water issues...

SPEAKER MARVEL: You have forty-five seconds.

SENATOR CULLAN: ...almost all the time but the reason I depart from him here is because of the same reason he opposes this bill and that is my concern about the future of water projects. If we use the power of eminent domain indiscriminately and if we allow it to be used indiscriminately we are going to see a very adverse reaction to construction of water projects throughout the State of Nebraska and we will see legislators coming forward to challenge the power of eminent domain as it exists today. In the long run I think we are better for the future of water projects in the state to restrict the power of eminent domain here and now and retroactively rather than risk and show people that we are not willing to correct a mistake that we made in the past and that we are not willing to exercise the power of eminent domain for good public purposes in the public interest, not just for recreational purposes. I urge you to reject the Haberman motion.

SPEAKER MARVEL: Senator Sieck.

SENATOR SIECK: Mr. President, members of the body, I am going to support the amendment. I feel that the state commission, under their guidelines of providing money for the project, they had to be assured that they would have full access to the lake and the Natural Resource District up in that area did have no other prerogative. They had to do this. I am sure of knowing many, many Natural Resource District, they would have not done this with the issues that was brought forth here this morning but I do feel that they were obligated in giving the \$931,000 which the Natural Resource District committed to the South Platte Natural Resource District, that they would have to get full access to the lake and I also know that if federal funds are involved and you have federal funds in providing the lake and there is some recreation in it, it doesn't necessarily have to be 75%. If it is only 50% you have to assure that you will buy the full shore line of that particular lake. And I think we all know in this body the purpose of this bill was earmarked for the Oliver project. The last amendment tells us this. So I do feel that we have to support the Haberman amendment which will practically kill the bill and I understand that in the future we are going to study some of these problems and I would sure encourage this because I am sure that you are going to find out that there is very, very little abuse of this power among the Natural Resource Districts in the State of Nebraska. Now the Rawhide Creek was mentioned that the funds were stopped because of this. Now that is not true. The people were not supporting that project and so they had to back off and I think we are going to find more of this as we go along. We have to have the support of the people in the given area to build a project. The people in Imperial, Nebraska, got behind it and asked the

Natural Resource District to support it. They did not ask for it. The people of that community asked for it and I think we should assure them that they are going to get their money's worth. So I heartily endorse the Haberman amendment.

SPEAKER MARVEL: Senator Kremer.

SENATOR KREMER: Mr. President, members of the Legislature, I, too, rise in support of the Haberman amendment and I am not going to talk very long. I have tried to impress upon this body the dangers that I see in LB 243. Now the Haberman amendment, of course, has to do with the retroactivity of the bill. I have been concerned about that particular part of it right from the beginning. I am not sure that all of you have a copy from a letter sent and signed by a goodly number of citizens in that area including some of the top business people. It is rather an impressive group of signatures. Now why are these people interested in the Oliver Reservoir? It is not money that we are going to spend. It is money that has already been spent that we are concerned about. I assume that all of you have a copy of this letter or I would read the contents of the letter itself. I think it is explanatory and brings out their reasoning why the Oliver Reservoir as now constructed and now funded should remain as it is. The issue is in court for the second time at a higher court and perhaps we should wait and see what the court has to say. I could go on and on. It is not necessary. The hour is late. I just want to stand to my feet this morning and again give you my reasoning why I have concerns about LB 243. Thank you.

SPEAKER MARVEL: Senator Dworak.

SENATOR DWORAK: Mr. Speaker and colleagues, briefly I support Senator Haberman's amendment. I think we have got two specific issues and we keep talking and interweaving the two issues which appears to be blowing smoke and confusing the basic two issues. Number one is the issue of retroactivity which Senator Haberman is trying to address and, number two, is the issue of eminent domain which I think is what Senator Schmit primarily is number one purpose is to solve. I think I could support Senator Schmit's amendment on the eminent domain and the percentage between recreation and water. I don't really have any problem with that but I have some real specific problems with the going back on people that have already commenced something and I think that another problem that we have on this issue is trying to adjudicate the worth, the merit of certain project. I don't think I am in a position to do that. I don't think this body is in a position to do that. I think the Natural Resource Districts are and have had the authority to do that and if we have given them too much authority then let's change it but let's not change the rules in the middle of the stream. I think when we

adopt Senator Haberman's amendment the issue will become clear cut. It won't have this confusion. We won't have this whipsaw between one or the other issues and we can make a decision.

SPEAKER MARVEL: Senator Hoagland.

SENATOR HOAGLAND: Mr. Speaker and colleagues, I also rise in support of Senator Haberman's amendment. I think it is a very important amendment and I commend him for the speech that he gave, his opening remarks, I thought they were excellent and I commend him for wading into this controversial issue and stating his mind. Now I have two basic reasons and let me state those as succinctly as I can. First of all I think that the sunset amendment sponsored by Senator Schmit even more clearly points out the real nature of this particular bill as I understand it and that is a bill that is designed to serve one project, the interests of one family, one set of individuals in their particular part of the state who don't want their land to be condemned but instead want to be able to profit off of the continuation of this project to use their property up there along the shore line. And I think that the fact that the sunset amendment has been attached indicates that the proponents of this bill are not as interested in the long range policy effects of this as they are on putting the kibosh on this one particular project. Now I don't think in this Legislature we should let special considerations of that sort influence our judgment. Now the second major concern I have is with the bill as a whole and I think that the reason I am so worried about it is because I come from the eastern edge of the state and I represent part of a metropolitan area that is in upwards of a half a million people and I think that frankly no one knows the effect that this 75% cutoff calculus in the bill is going to have on recreation projects around the Douglas-Sarpy County area within a hundred or hundred and fifty miles of this metropolitan area of about a half a million people. I would ask Senator Schmit in his closing to tell us if any other states or if the federal government used this approach, this approach of saying that a project cannot be built if the recreation benefits are beyond a certain percent, here 75% the way it is written in the bill right now. Now any projects around a large metropolitan area are necessarily going to have a large recreation calculus just by virtue of the fact that there are a lot of people there and I think frankly we do not know the effects that this is going to have. I mean I would ask Senator Schmit if he knows if the retroactive effect of this bill which Senator Haberman is trying to strike out is going to affect any other projects that are on the drawing boards in the Pappio Natural Resources District or any other NRDs in the eastern part of the state. Is this going to mean, for instance, that if we have a project now on the drawing

boards where the recreational calculus is 35% or 40% or 45%, that we are inviting the attorneys involved, representing people who do not want their land condemned, to drag that case into court, to delay it for a year or two years or three years while the court decides whether or not the recreation calculus is not, in fact, 75% or 80% and not 40% or 45% or 50% as the current representations are. I think we just really have no...I think we understand that the principal impetus behind the bill is this project that Senator Haberman describes but what we do not know is what effect is it going to have on many, many other projects throughout the state. Is it going to tie them up in litigation? Is it going to cancel investments? Is it going to cancel plans that are already made? And frankly, as a representative for a metropolitan area, unless Senator Schmit can satisfy us that these provisions exist in the laws of other states or in laws of the federal government and have not had that effect in those laws, unless Senator Schmit can satisfy us that this is not an untested theory, the ramifications of which we simply do not know and do not understand at this point, I would have to support the Haberman amendment and whether or not it is successful, vote against advancement of the bill. Thank you, Mr. Speaker.

SPEAKER MARVEL: Senator Marsh and then Senator DeCamp.

SENATOR MARSH: I call the question.

SPEAKER MARVEL: The question has been called for. Do I see five hands? Shall debate cease? All those in favor vote aye, opposed vote no. Record. No, I'm sorry. Hold it. All right, now. Okay, record.

ASSISTANT CLERK: 28 ayes, 0 nays to cease debate, Mr. President.

SPEAKER MARVEL: Debate has ceased. The Chair recognizes Senator Haberman.

SENATOR HABERMAN: Mr. President and members of the Unicameral, I am sorry that some people had to make this into a personal thing so I guess I will too. Sam hadn't been home enough to know what the price of land is. Now out around in western Nebraska around Imperial it is 5, 6, 7, \$800 an acre but out at Kimball, Nebraska, and, Sam, I know what I am talking about because I have owned land out there for twenty-five years and they are also in my district. Their NRD is in my district. You can buy wheat land out there for 2 to \$250 an acre because it only averages twenty-two to twenty-four bushels and you have to summer fallow it. So if you want to take some of your money, Sam, and go back out west and buy some, they will be

glad to see you. Now I also ask Sam why didn't this man divide these lots and get ready to sell it before the lake was fixed up? Why didn't he do that? That is because it was worthless. He couldn't have sold a lot off of there for anything. It was absolutely worthless until these people came in with their own money and with the federal money and the state money and fixed it up. Now as far as 20% of the budget, well, I really can't argue that figure because figures are figures but the 1981 budget for the Nebraska Resources Development Fund is 8 million dollars and you can't say that \$891,000 is 20% of that so we won't go into it. But there are a lot of other projects in this state, the Clatonia Flood Creek Flood Control and Recreation project, the Maskentine Flood Control and Recreation project, Summit Lake Project and Recreation, Tecama Flood Control and Recreation, Walnut Creek Flood Control and Recreation near Crete. These were all built with the same kind of funds so we are not doing anything that is so bad. The only thing we are doing is saying, we are going to pass a bill, if it is passed, you can't go back and be retroactive. That is all we are saying. I don't think it is fair and I hope that there are twenty-five other senators on this floor that do not think it is fair either. Thank you, Mr. President. It is during lunch time and let's vote and get it over with.

SPEAKER MARVEL: The motion is the Haberman amendment to LB 243. All those in favor vote aye, opposed vote no. Have you all voted? Okay. Shall the Legislature go under Call. All those in favor of that motion vote aye, opposed no. Record.

CLERK: 26 ayes, 2 nays to go under Call, Mr. President.

SPEAKER MARVEL: The Legislature is under Call. Record your presence. Senator Rumery, would you record your presence. Senator Fenger, would you record your presence. Senator Koch, would you record your presence. Senator Cope, would you record your presence. Senator Nichol, Senator Chambers. Mr. Sergeant at Arms, we are missing two, Senator Nichol and Senator Chambers. Okay, Senator Chambers now. Senator Haberman, we are missing one. Shall we go ahead with a roll call? Senator Chambers. Call the roll.

CLERK: (Read roll call vote as found on page 2222 of the Legislative Journal.) 22 ayes, 16 nays, Mr. President.

SPEAKER MARVEL: What is the next motion? Senator Rumery, would you like to recess us until one-thirty?

SENATOR RUMERY: Mr. President, I move we recess until one-thirty.

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506, 506A

RECESS

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Record your presence please. Some of you haven't recorded your presence. Would you please record so we can proceed? Senator Schmit, do you want to record your presence please? Senator Burrows, do you want to record your presence? Okay, record.

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

SPEAKER MARVEL: Okay, Mr. Clerk. (Gavel.) We are ready for the Haberman amendment to 243. While the Legislature is in session and capable of transacting business, I am about to sign and do sign reengrossed LB 316; engrossed LB 506; engrossed LB 506A; engrossed LB 472. Okay, ready.

CLERK: Mr. President, Senator Haberman has an amendment to LB 243.

SPEAKER MARVEL: The Chair recognizes Senator Haberman.

SENATOR HABERMAN: Mr. President and members of the Legislature, although there seems to be some Senators who are not listening, I will go ahead and explain the amendment anyway. This amendment says that the bill, 243, shall not apply to any project where construction bids were let prior to the effective date of this act which is to be funded in whole or in part from contributions by private individuals or organizations. That is all it says, any projects that have been started that are funded in whole or in part from contributions by private individuals or organizations. Now you may wonder why I am offering another amendment similar to the other one when I was beaten. The reason I am doing this is to see if some of those Senators who promised me to vote for the other one and changed their minds and/or didn't vote would like to change their ways and support the amendment. So there is no need arguing or trying to explain it. It pertains to the same thing but it just says where private or individual funds have been contributed. Thank you, Mr. President.

SPEAKER MARVEL: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I was going to ask if this wasn't a reconsideration but Senator Haberman has just conceded that it is the same thing, it is a reconsideration, so I believe the motion is out of order and should be so ruled. He admitted it was a

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reconsideration. Shot himself out of the saddle.

SPEAKER MARVEL: For what purpose do you arise?

SENATOR HABERMAN: The other amendment is completely different from this one, Mr. President. This one just touches on where money by private individuals or organizations have been used the bill doesn't apply. The other one was federal funds and state funds.

SPEAKER MARVEL: The Chair has not entertained a challenge to you. I don't think there is anything to remark about. Pardon me.

SENATOR SCHMIT: I challenge the motion. I didn't think a challenge was necessary. He stated himself that it was a reconsideration and that is what it is but if you need the challenge, I so challenge.

SPEAKER MARVEL: Senator Schmit, will you inform the Chair, do you have a challenge or are you willing to withdraw if he withdraws?

SENATOR SCHMIT: I will withdraw if he withdraws his amendment.

SPEAKER MARVEL: Yes, sir.

SENATOR HABERMAN: I will withdraw my amendment if he withdraws his bill.

SPEAKER MARVEL: Senator Haberman and Senator Schmit, are you there? I want to ask you both a question, so if there is too much noise in the middle, why we will have to turn down the heat some way. Okay, Senator Haberman, I have, first of all, here an amendment to LB 243 and it has got Section 3 and Section 4 and we have checked the language (Gavel)...we have checked the language and the only difference, and so I ask you each for your own interpretation of this, in Section 3 of the amendment to LB 243 there is one section which reads as follows: "and (2) which is to be funded in whole or in part from contributions by private individuals or organizations." That is the difference in the two. Now do you have a comment?

SENATOR HABERMAN: Yes, Mr. President, that is the difference in the two.

SPEAKER MARVEL: Okay, what does subsection (2) mean? If you want the Chair to rule, we have got to have some background and I would recommend to the Legislature that some-

how or other in the next few years to come you provide some sort of mechanism whereby we aren't confronted instantaneously with decisions we don't even have time to look at them before we are to make these decisions. Somehow or other this is...I don't mind the heat but I do think in fairness if you are going to take the heat the least you can do is have time to look this over. Now would you tell me what subsection (2) means to you and then I will ask Senator Schmit the same question?

SENATOR HABERMAN: Subsection (2) to me, Mr. President, means that if LB 243 passes it cannot be retroactive on any projects where private or individuals or organizations funds have helped to build that project. That is what it means to me. That the bill cannot be retroactive to projects that have used private individuals money or organizations money that have been contributed to the project, that is what it means to me.

SPEAKER MARVEL: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I think that the body had better listen very carefully to this because if I understand properly what Senator Haberman is attempting to do, it means that if I make a contribution or any individual makes a contribution or decides, in fact, to use private funds, then I have got the right of eminent domain. I can buy Senator Haberman's farm for \$200 an acre, whatever he wants to sell it for, and use the right of eminent domain and I don't think there is any where in the statutes that that applies. It is not applicable in any way, shape or form and it is totally outside of the concept of law. And I am not an attorney, but I can tell you very rapidly that what Senator Haberman is attempting to do here would never be upheld, could not be upheld and has no bearing on the law. There is no way that private contributions can be used to acquire property using eminent domain. It can't be done and you have got to have sawdust for brains if you are going to think the body is going to buy that.

SPEAKER MARVEL: Okay, go ahead, the floor is yours.

SENATOR HABERMAN: Mr. President, you asked him to explain the difference and he stood there and debated the issues of the bill, and I was up front and honest and told you the difference between the two of them.

SPEAKER MARVEL: Do you wish to respond to what he had to say?

SENATOR HABERMAN: No, I am not going to respond to what he had to say, Mr. President, because I was up front, answered your question the way you asked it and I will just leave it set there, that there is a difference and I am not going to throw out anything, any ifs or ands or buts. There is a difference between the two and that is the difference. That is the issue. Are they the same? Is it a reconsideration? It is not a reconsideration because of what it says in Section (2). Thank you, Mr. President.

SPEAKER MARVEL: The Chair rules that this is not a reconsideration. Excuse me.

SENATOR HABERMAN: Then we have debated it and I will call the question. Let's have a vote on the amendment, if that is all right with Senator Schmit. Let's don't debate it or hold up the Legislature any more....

SPEAKER MARVEL: No, I am not interested in trying to...at the moment. This is serious enough I think we ought to discuss it and I think in fairness to everybody, Senator Haberman, you ought to discuss it. You are closing the door, so to speak.

SENATOR HABERMAN: You ruled that there is a difference, that it is not a reconsideration.

SPEAKER MARVEL: A very minor difference and the fact of the matter is that in item...in the wording that we had, the language is vague enough that you could drive a, not a two ton truck, but a fairly large truck through. That is my opinion. So I think (interruption).

SENATOR HABERMAN: I will withdraw...Mr. President, I will withdraw the amendment rather than have a floor fight and take up more time. I will withdraw it.

SPEAKER MARVEL: No objection, so ordered.

CLERK: Mr. President, I have nothing further on the bill at this time.

SPEAKER MARVEL: Senator Schmit.

SENATOR SCHMIT: Mr. President, members of the Legislature, I would just like to say that LB 243 as amended at this time should erase all of the objections and the concerns that have been expressed time after time by members on this floor. I think that all of us recognize the necessity and the need for the use of eminent domain. We recognize that there are

times when the taking of private property is necessary for the public good. There are times we have recognized when the taking of private property for the purposes of recreation might even be justifiable. We have provided a mechanism both in the present statute and under 243 to take care and to accommodate that instance. I think it is extremely unfortunate that we would ever have to do so. I don't think, and someone says it may only happen once in a great while. Well, ladies and gentlemen, once in a great while happens to be extremely important if the individual happens to be myself or one of the other forty-eight members of this body. It never makes quite so much difference if it is someone else who is being impacted by the action of this body. I guess I am a little concerned more than anything else by the fact that we have seen here the last few weeks tremendous impact of a governmental subdivision being able to lobby, influence, and in some cases perhaps even intimidate members of this body to give them the powers that are extended to no other subdivision of government. I have had manager after manager of the Natural Resource Districts, I have had innumerable directors of Natural Resource Districts come to me and say, "Schmit, we don't need the power. We are better off without it. We never asked for it. In fact, we didn't even know it existed. We wish we had never heard of it. We hope that you make it clear and emphatic in the statute how it is to be used. We hope that you give us some direction." I will concede also that there are some who think otherwise. I am not challenging the integrity, the good intentions of those individuals. I am not concerned, very frankly, about the possibility of widespread litigation that might result if this bill becomes law. Even those individuals and those editorial writers who have opposed the bill have acknowledged that there is some concern about the increasing use of eminent domain. As I pointed out to you this morning, the Montana Legislature has adopted a resolution calling for an interim study of the powers of eminent domain and the use thereof. One after another we have stood on this floor and we have criticized the taking of agricultural lands for various purposes. We have criticized the taking for the use of roads. We have criticized the taking of land by power companies, by railroads, by other entities, and all of a sudden we say that in the event they want to use it for recreational purposes, there shall be no restriction. I have stood on this floor and asked many times for money for the development fund. I will not be able to go back to the people of the State of Nebraska and defend the amounts of money we want for that development fund if we continue to use money in this manner. When you say we are going to take twenty percent of the total amount of the expenditure so far in the development fund and use it

for a purely recreational purpose and that recreation shall be provided to citizens of Colorado and Wyoming, not even Nebraska citizens, and a Nebraska citizen shall give up his land. I think it is unfortunate. I don't think there is any justification for it. We say it time after time, this is a particular special interest bill. I am at the point now where I will say, "Suppose that it were, I think the powers of eminent domain are so critical that if it were not for the fact that an NRD took property, took property, we would not have a point of emphasis in this area." I would suggest to all of you, remember this. It need not be property that is agricultural in nature. It need not be property that is taken for the purpose of a lake. It can be downtown property taken for purposes of building a playground, a hot rod track. It can be taken for a tennis court. It can be taken for any one of a number of purposes. It can be taken for a playground. Maybe that is what some of you think we should do but that is not what I think we should spend taxpayer dollars for. I know that Senator Haberman is sincerely concerned about conservation practices and I don't think that he would want to allow the use of eminent domain to be used for the purposes of building any of these other kinds of projects. Why then should we exclude a single kind of a project? The Oliver Lake project will in no way be diminished for public use. The lake will be available for all the public. The shoreline will be available for all the public. The only difference is, shall the land owned by an individual, owned by a family for many, many years, be condemned to provide scenic background and other purposes for that lake. I don't think, and I agree with Senator Cullan, there is anything immoral if a man who happens to live in an area that happens to be developed by a Natural Resource District from benefiting from that. By the same token many of us have found we have suffered by virtue of a development project. We have talked many times about the need for cooperation in this body. I have made no attempt to try to alibi. I will not alibi a bill as important as one which involves the taking of property that belongs to another friend or another woman for a public purpose. We are going to find as time goes by that there will be increased efforts to take private property, and when it happens to one of us, we are going to complain and complain bitterly. I suggest that we put ourselves in the place of the individual whose property is being taken here today and recognize that it may happen to us at any time. At the present time, and I have used it myself, water can become a sacred cow. Now, ladies and gentlemen, let me say this, you had better understand that the entire issue of construction of projects will suffer if we allow eminent domain to be used in an indiscriminate manner. LB 243 as it is presently drafted and

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amended allows the use of eminent domain for a one hundred percent recreational project if it is approved by this Legislature. It allows the use of eminent domain for any project which does not...

SPEAKER MARVEL: You have two minutes left.

SENATOR SCHMIT: ...does not exceed seventy-five percent in recreational benefits. There are those here who think the restrictions should be even greater and very frankly I would rather have them greater. I want to say also that if we allow this to continue we are going to find increased expense for construction projects from one state to the next. You are going to find that there will be those individuals who previously have been cooperating who want to develop projects who will no longer cooperate. It is one thing to take private property by eminent domain for a needed and necessary public purpose when no alternative is available and another thing to take that property by eminent domain for a public purpose for recreation when almost in every instance other purposes of the land is available.

SPEAKER MARVEL: One minute.

SENATOR SCHMIT: I would hope that as you review this bill that you forget about the personalities that are involved, you forget about the individual persons and the projects, and you look at it as how it impacts upon the State of Nebraska. This is not a minor bill with me. It never has been. It never will be, and those of you among my colleagues have stood up time after time and defended private property and private property rights and are today voting against LB 243 mystify me greatly. You would have a difficult time to defend it if it should occur in your legislative district, in your county, in your home town. You cannot defend it. It is indefensible.

SPEAKER MARVEL: Time is up.

SENATOR SCHMIT: Thank you, Mr. President, I would hope the bill would be advanced.

SPEAKER MARVEL: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, Senator Schmit referred three or four times to the taking of Colorado or providing the Colorado people with recreation but we don't mind them taking their money for their park fees when they go into our parks. We don't mind taking their money for motel tax, or the sales tax. So I don't

think that has anything to do with the issue or the Colorado people or Timbuktu people are going to use the water or use the lake. So let's review what has happened to this bill since we started. All of a sudden the percentages was changed from fifty percent use of recreational surface of the lake to seventy-five percent. Why was this change made? Well, because it took Willow Creek out. So evidently it is all right at Willow Creek but it is not all right at any place else. And Senator Schmit says it is so wrong to take public property by eminent domain but, Senators, now listen to this, it is only bad for three years. After three years it is all right to do it because he had an amendment put on the bill that the bill would sunset in three years. Now explain to the public and explain why after three years it is a bad thing but after three years it is okay. Now I ask you to think about that. For three years it is a bad deal and we should have this bill. But after three years it sunsets and the bill and everything goes away. What kind of logic is that? I think that that right there proves that this bill shouldn't be advanced. That proves it possibly is a special interest bill because it is for a three year period. If it is such a good idea, why not make it permanent? Why was the amendment put on and adopted? Explain that to the public. Because I sure can't explain why it is only for three years, if it is a good idea to take this authority away from the Natural Resource Districts. Somebody else can explain it but I can't explain it. So I say to you, do not vote to advance 243. Twice we have held it back and I think we can do it again. Thank you, Mr. President.

SPEAKER MARVEL: The motion is the advancement of the bill. Senator Schmit, do you wish to close on the motion to advance?

SENATOR SCHMIT: Mr. President, members of the Legislature, first in response to Senator Haberman and his argument on the sunset. I offered that amendment to pacify a person such as himself who concern themselves with a fact that there may come a time when there would be litigation and excessive spending of money for legal fees, et cetera, so I have stated, in effect, if that happens, make us come back in three years time and prove that it did not happen. I said I preferred not to offer the amendment because I felt by the same token you could come back here in January and do the same thing but I know this body long enough and I know after having been here thirteen years, which is longer than some of us have been here, that what usually happens is we fall into a state of lethargy and we forget the fact that maybe we were supposed to look at something again. So for that reason I offered the amendment. I offered the

amendment because it was suggested to me by some persons who oppose the bill. It was not my desire to offer the amendment. The people who suggested it did not want to put their name on the bill but they said, as some have told Senator Haberman, you know, and I suppose some of them would prefer that the bill die or go away or not have to be voted upon, that they could perhaps vote for the bill if this would happen. I know that there are those that are trying to tie 243 to other bills on this floor. It has happened before. It is going to happen again. It makes no difference to me but I will predict you this, if the starch in some backbones has turned to jelly, as happens frequently as the heat of the last few days begins to increase, it is not unusual, there will be those who will report in sick, you know, and I have got corn to plant, and maybe that wouldn't be a bad thing to be doing today, but if we do not adopt some guidelines for the Natural Resource Districts as we have for every other subdivision, the time will come when there will be nothing done because any time the right of eminent domain is used the individual will go to court, and if you want to have problems, ladies and gentlemen, you will see them then. Now it is easy for the lobbyists for the Natural Resource Districts to stand out in the hall this afternoon in the rotunda and call down the wrath of God upon a few of you and tell you how terribly important this is to your own private Natural Resource District. I want to tell you, ladies and gentlemen, I have traveled as I have said the length and breadth of this state and I haven't had yet, I haven't had yet more than two or three individuals who have spoken to me about the evils of the bill. I don't think they are afraid to speak to me. They are ready to talk to me about almost anything else but they cannot defend, they cannot defend, and no one in this body can defend, nor can they go back to their constituents and defend the taking of private property for recreational purposes when you have built in the safeguards we have provided here. Senator Haberman refers again to the Singleton property. Is it because of the fact that one man? Well, let me say this, if that one man were myself or Senator Haberman, we would be most concerned. When we forget about the rights of a single individual, and I have been reminded of that a few times on this floor, we forget about the rights of all of us. If we had given the Natural Resource Districts some guidelines...

SPEAKER MARVEL: You have one minute.

SENATOR SCHMIT: ...when they were established, the Singletons would still own their property, there would be no problem. I suggest to you there are many instances whereby we could pin-

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point evidences of intimidation, coercion and abuse in the use of eminent domain. The power is awesome. It hangs over all our heads. It is like a sword in the night. Do you want it to fall or do you want to remove the sword? I suggest, ladies and gentlemen, that we at least dull the blade a bit by providing some guidelines. I ask that you advance LB 243.

SPEAKER MARVEL: The motion is the advancement of the bill. All those...Senator Schmit has closed. All those in favor of that motion vote aye, opposed vote no. It is on the advancement of the bill. Have you all voted? Senator Schmit.

SENATOR SCHMIT: Mr. President, I ask for a Call of the House, please.

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

CLERK: 26 ayes, 1 nay to go under Call, Mr. President.

SPEAKER MARVEL: The House is under Call. All legislators please return to your seats and record your presence. Senator Cope, will you record your presence please? Senator Wesely. Senator Schmit, please record your presence. Senator Beutler. Senator Lowell Johnson. Senator Chambers, would you please record your presence? Senator Beutler and Senator Lowell Johnson. Mr. Sergeant at Arms, please locate Senator Beutler and Senator Lowell Johnson. Senator Schmit, did you ask for a roll call vote?

SENATOR SCHMIT: No, I didn't, Mr. President. I am waiting for Senator Wagner, Senator Warner and Senator Cullan.

SPEAKER MARVEL: Senator Sieck...I mean, Senator Schmit, Senator Schmit, Cullan and Warner are excused and (Gavel), Senator Schmit, Sergeant at Arms, Senator Schmit, Senator Cullan and Senator Warner are excused. The others, Maresh, Kahle and Sieck are I think back.

CLERK: (Roll call vote taken.) (See page 2224, Legislative Journal.) 23 ayes, 20 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The Clerk has some items to read in.

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LB 213, 234, 243, 16, 318,
394, 472, 506, 506A

CLERK: Mr. President, Senator Maresh would move to reconsider the body's action in their failure to pass LB 394 on Final Reading. That will be laid over.

Mr. President, your Enrolling Clerk respectfully reports that she has presented to the Governor at 2:10 p.m. the bills that we read on Final Reading this morning. (Re. LB 316, 506, 506A, 472.)

Mr. President, your committee on Enrollment and Review respectfully reports that they have carefully examined and engrossed LB 213 and find the same correctly engrossed; 234 correctly engrossed; 318 correctly engrossed, all signed, Senator Kilgarin.

SPEAKER MARVEL: Senator Schmit, for what purpose do you arise?

SENATOR SCHMIT: Mr. President, have we had the reading of the vote yet? Have you read those who have voted?

SPEAKER MARVEL: Sorry. Say it again.

SENATOR SCHMIT: Has the Clerk read the report of those who have voted yet?

SPEAKER MARVEL: Yes.

SENATOR SCHMIT: Did you read the names? I'm sorry if I missed it.

SPEAKER MARVEL: Which names are you talking about? You mean a roll call vote? I don't understand your question.

SENATOR SCHMIT: Well the usual procedure I believe is to read those who have voted aye and those who have voted nay. As I understand, Senator Warner indicated that he had voted aye and he is not recorded as having voted and I would like to have the record read as we usually do.

SPEAKER MARVEL: Mr. Clerk, do you have the record?

CLERK: Mr. President, the vote on the advancement of 243 was as follows: (Read record vote again as found on page 2224 of the Legislative Journal.)

SPEAKER MARVEL: Senator Warner, for what purpose do you arise?

SENATOR WARNER: Mr. President, is it in order for me to move to reconsider as shown as having not voted? Pat could

May 26, 1981

LB 552-554, 243

SENATOR CLARK: Senator Hefner, do you wish to move the bill.

SENATOR HEFNER: I move the advancement of LB 552 to E & R engrossing.

SENATOR CLARK: You have all heard the motion. All those in favor say aye, opposed. The bill is advanced. LB 553 is next.

CLERK: I have E & R amendments to LB 553, Mr. President.

SENATOR CLARK: Senator Kilgarin, E & R amendments to 553.

SENATOR KILGARIN: I move we adopt the E & R amendments to LB 553.

SENATOR CLARK: You have heard the motion. All those in favor say aye, opposed. The amendments are adopted.

CLERK: I have nothing further on the bill, Mr. President.

SENATOR CLARK: Senator Hefner, do you want to move the bill.

SENATOR HEFNER: I move that LB 553 to E & R engrossing.

SENATOR CLARK: You have all heard the motion. All those in favor say aye, opposed. The bill is advanced. LB 554.

CLERK: I have E & R amendments to LB 554, Mr. President.

SENATOR CLARK: Senator Kilgarin, the amendments on 554.

SENATOR KILGARIN: I move we adopt the E & R amendment to LB 554.

SENATOR CLARK: You all heard the motion. All those in favor say aye, opposed no. The amendments are adopted. Do you have anything further on the bill?

CLERK: Nothing further, Mr. President.

SENATOR CLARK: Senator Hefner.

SENATOR HEFNER: I move LB 554 to E & R engrossing.

SENATOR CLARK: You all heard the motion. All those in favor say aye, opposed no. The bill is advanced. LB 243. Senator Schmit is not here so we will pass over the bill if there is no objection. LB 216.

CLERK: Mr. President...

May 26, 1981

LB 243

SENATOR CLARK: Senator Schmit, do you want to take up 243?

CLERK: Mr. President, 243 was last considered by the body on May 22. At that time E & R amendments were adopted. There was an amendment from Senator Schmit that was adopted. I now have pending, Mr. President, amendments from Senator Haberman. They are Request #2467.

SENATOR CLARK: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, the intent of this amendment is that it covers Sanitary Improvement Districts within the bill that they cannot condemn land for recreational areas as they have done in the past. They have condemned land for golf courses, swimming pools and et cetera and the amendment merely says that if the NRDs cannot do it for recreational areas, the Sanitary Improvement Districts cannot do it either. Thank you, Mr. President.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, we have historically in this Legislature refused to accept as not being germane any amendment such as this which did not deal with the same section or same chapter of the law as the one in which we are involved. This amendment of Senator Haberman's deals with the SIDs. It is a different chapter and I protest the amendment on the basis that it is not germane. I ask for a ruling of the Chair.

SENATOR CLARK: Senator Haberman, do you have any arguments as to the germaneness?

SENATOR HABERMAN: Yes, I do, Mr. Chairman. My argument for germaneness is that the subject of the bill is the right of eminent domain and whether it is SIDs or NRDs or schools or anything else, that is the subject of the bill. That is the subject of my amendment.

SENATOR CLARK: You are in a different chapter. You are in chapter 31. Senator Schmit's bill is in chapter 2.

SENATOR HABERMAN: Okay, that is fine.

SENATOR CLARK: I would have to rule it is not germane.

SENATOR HABERMAN: Okay, that is fine. I will not challenge your ruling.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, the bill has been discussed many times and discussed at length. I would just like to emphasize once again. There have been some arguments advanced on the floor that this bill, because a certain amount of money has been expended, a certain amount of money that was delivered from the Natural Resource Districts, a certain amount of money that was almost 900 thousand dollars that was contributed from the water development fund, that because this money has been invested there is an implication that it may not be utilized to the best possible advantage if LB 243 becomes law. I would just like to point out that if this is true that there is about a million two hundred thousand dollars of total taxpayer dollars invested in a recreation area in Kimball County which has, I believe, a population of about five thousand people. It is a county which has, as nearly as I can tell, suffered one of the largest percentage of population drops of any county in the state. It is a county which does not have a great demand for recreational facilities and in which no dearth of recreational facilities exist. If you were to take this one million two hundred thousand dollars for example, and spend it in eastern Nebraska you could construct three or four swimming pools in metropolitan Omaha or a city of the primary class such as Lincoln with far more justification than you could expend that money in western Nebraska. I wonder how many of the people who are supporting this bill would stand on this floor as I promised to do if a Natural Resource District is joining an urban area comes before this body after my bill becomes law and requests approval of this body to spend that kind of money for a recreation area strictly for the benefit of urban Nebraska, I wonder how many of them will stand there and support that idea, that concept and that expenditure of funds. I have said for a long period of time and I recognize the value of recreation, my bill provides that recreation be considered as one of the benefits but it provides also that at least 25% of the benefits must be from some other category. Someone has asked me how will you ever determine that so we answered that. We said we will let the Natural Resource District make that determination. There have been implications and statements that no one can determine just how much of the benefits are recreational. Let me point out also that the federal government has criteria and, in fact, they do not encourage the expenditure of federal funds for a project where the recreation benefits exceed 50%. No one has ever said that it is impossible to determine those benefits from the standpoint of the federal government. And you can stand here today as you have done before and argue that this is a special interest bill. I say it is a special interest bill. It is a special interest bill of every single citizen of the State of

Nebraska. You can argue as long as you want about the need for funds for water development but if we are going to say to the public that the entire amount of money we place in the water development fund can be expended for recreational purposes without any consideration, without any consideration for other benefits, then we are going to have a hard time to sell that concept to the people in the State of Nebraska. We have been told many times during this eighty-seven days of this session that we are in a tight budget procedure. We have been told and we have been warned...

SENATOR CLARK: You have one minute left.

SENATOR SCHMIT: ...and we have seen the consequences of gubernatorial vetoes that have said we cannot allow increases in exemption for food tax. We cannot allow unfortunate children. We cannot allow other expenditures from Medicaid, et cetera but we can allow money to be spent from the water development fund for recreation. I am going to ask you one question. Who do you suppose is going to go to Kimball County, Nebraska, to enjoy the benefits of that recreation? I don't think the poor folks from any area is going to be out there. It is going to be the gentleman who has resources, the gentlemen who have money who can buy the high priced boats are going to travel four hundred and fifty miles from eastern Nebraska to western Nebraska. It is also going to be the people from Cheyenne, Wyoming, and Denver, Colorado. Why spend money to provide recreational facilities for out of state residents when that money could be better spent...

SENATOR CLARK: Your time is up, Senator Schmit.

SENATOR SCHMIT: ...to provide services for Nebraska citizens. I ask you to support LB 243.

SENATOR CLARK: There is a motion on the desk.

CLERK: Mr. President, Senator Haberman would move to indefinitely postpone the bill. Under our rules that would lay it over, Mr. President.

SENATOR CLARK: Senator Haberman.

SENATOR HABERMAN: Mr. President and members of the Legislature, I would like to explain to you why I put this motion on the bill and I hope that what happened to me yesterday afternoon does not happen to any other member of this Legislature. Yesterday afternoon at 4:00 p.m. I received a phone call and the man's voice said, "We are displeased, very dis-

pleased with your stand on 243 and as the leader or the president of the American's Right to Freedom, we are going to come into your district when you run for election and all nine hundred of us are going to see that you are defeated." And I said, "Well, I am sorry, sir. I do not talk to nameless voices. What is your name?" He said, "My name is Joe Singleton." I said, "Well then you might have some sort of vested interest in this." And he said, "Not only that but if the statutes of limitations had not run out we would have you for criminal violations because Mr. Bill Batterton paid you one thousand dollars. I would like to know what Mr. Batterton paid that one thousand dollars to you for." And at that time, fellow senators, I am afraid I lost my temper and my blood pressure went up. And I will not repeat on this floor what I told Mr. Joe Singleton except I told him this. I said, "That is right. Mr. Batterton did send me a check for a thousand dollars. Mr. Batterton has sent me checks to over fifty thousand dollars in the last ten years. Mr. Batterton manages my wheat land out in Kimball County from the Batterton Land Company and I do receive checks from him and those are what the checks are for." And I don't mind telling you, fellow senators, that when somebody stoops so low that they stoop so low to say, "We would have gotten you if the statute of limitations had not run out," and he did not even have his facts correct and when they stoop so low that says, "Our organization of Americans right to freedom, all nine hundred of us are coming into your district," that is going too far. Before I was trying to get amendments to exempt Oliver Creek Reservoir and I went in and talked to Senator Schmit this morning and told him there is nothing personal but now I am asking you that we do not pass the bill. We do not advance the bill. This shows exactly what is behind the bill and as I say, I hope it does not happen to you because it upset me terribly. I hate tactics like this and I think they are uncalled for. So I put the kill motion on there to give me an opportunity to explain to you what happened to me yesterday afternoon at four o'clock and I respectfully ask to withdraw the kill motion, Mr. President.

SENATOR CLARK: It is withdrawn. Do you have anything further on the bill?

CLERK: I have nothing further, Mr. President.

SENATOR CLARK: Senator Schmit, do you want to advance the bill? Senator Sieck, pardon me, go ahead.

SENATOR SIECK: Thank you, Mr. President. I do feel I should have an opportunity to oppose the bill again.

It just amazes me how often LB 243 crops up at the head of the agenda constantly. When we had bills like 512 which I feel and many of the body feel is of great importance to our consumers, even though I was on the opposing side of LB 512 I feel that this bill has a lot of merit and needs to be considered and yet here we are debating 243 again. I am going to give you my thoughts as to why I still stand opposed to LB 243 and again I want to impress upon you that LB 243 in its present form is going to cause a lot of litigation among the Natural Resource Districts with their many structures and they are going to have difficulty to build and on no matter what percentage a recreational cost benefit is in that structure. We constantly hear from Senator Schmit that he will not and that he has amended it now so that the board of directors will make that choice but I can assure you that if you go to that landowner and there is a recreational development in the structure he is going to try if at all possible to stop it. He does not want the structure. If he is opposed to it he is going to fight it. I have had enough experience in this field to know that this is true. I also realize that when you have this authority that people you are dealing with and are going to go negotiate on a reasonable basis and very very seldom do you actually have to use it. But their knowing that it is there, they will try to negotiate and come up with a reasonable demand and a reasonable solution. I am sure that every Natural Resource District that I know of in the state are prone to listen to their people and they do not... they will be voted out at the next election. Why do I feel this way? Maple Creek is a project that was with us at least fifteen years. The people objected to it because of the recreational potential and that in the several structures there. They went to their board of directors and their board of directors dropped the project. We also had the Stevens-Callahan and Low Platte South and I am personally acquainted with these projects. They had three project designs in the preliminary stages for the Stevens-Callahan but it did have considerable recreation in it but was way under 75% but yet this project was dropped because the local support was not there. Now they are going to try to accomplish the project by other means. So this tells me that the board of directors of our Natural Resource District are concerned about the use of eminent domain. I will not use it unless absolutely necessary. There have been rumors going around that this bill is not for the Oliver project but it is simply to deny the right of eminent domain over the recreation for over 75%. This bill came about because of Oliver project for no good reason. We would not have

the Willow Creek except that at the present time if it had not been exempted. I have received many letters from the Willow Creek project for this amendment but none from the Oliver. I also received many letters from the Stevens-Callahan a year ago. I did not receive any this year because the project is dropped. My opposition again is that I feel that the Natural Resource Districts are doing the job. I have total trust in them and I feel that if this bill passes and that there is difficulty in securing a site because of recreational development within the site...

SENATOR CLARK: You have one minute left.

SENATOR SIECK: ...no matter what percentage we are going to have litigation and we will have to prove what amount is for recreation and that is going to be very difficult to prove. This is going to be just one individual's 75% involvement as a property owner or is it going to be the total project of 75% and how are you going to prove the amount of time spent for recreation? You are going to use other projects and I am sure that you will find that your other projects similar to the one that will be built that we will have as it looks on the surface, a tremendous amount of recreation on it even though it may have been designed originally for practically all of it for flood control as a cost benefit ratio. So, again, I would like to encourage this body to vote down LB 243. We have had it with us long enough. Thank you.

SENATOR CLARK: Senator Cullan. The question has been called for. Do I see five hands? I do. All those in favor of ceasing debate vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

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

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

SENATOR CLARK: Debate is ceased. Senator Schmit, do you wish to close?

SENATOR SCHMIT: Mr. President, very briefly, I think that Senator Haberman could probably respond to that gentleman that called in the way I did to a gentleman that called me this weekend and expressed some of the same concerns. I said, "You are going to have to get in line because there are a log of people including some bankers and others who have indicated displeasure with me and I admire Senator Haberman for fighting for his convictions. I think we have talked long enough, Mr. President. I would like to ask for a Call of the House and a roll call vote.

May 24, 1981

LB 243, 216, 39, 39A, 472A

SENATOR CLARK: A Call of the House has been requested. All those in favor vote aye. All those opposed vote nay. Record the vote.

CLERK: 16 ayes, 0 nays, Mr. President, to go under Call.

SENATOR CLARK: The House is under Call. If all senators will return to their seats and check in please. Will you all check in please. Senator Lamb, Senator Hefner, will you check in please. Senator Wagner, Senator Newell, Senator Remmers. Get Senator Lamb checked in please. Senator Wagner is the only one we are missing and there he is. The Clerk will call the roll. He will read first what he is calling it for.

CLERK: Mr. President, the motion is to advance LB 243 to E & R for engrossment. (Read roll call vote as found on pages 2266-67 of the Legislative Journal.) 25 ayes, 20 nays, Mr. President, on the motion to advance the bill.

SENATOR CLARK: The bill is advanced. LB 216. The Clerk would like to read a couple of things in.

CLERK: Mr. President, I have a message from the Governor. (Read. Re. veto of LB 39 and 39A.)

Mr. President, I have a motion from Senator Kahle that LB 39 and 39A become law notwithstanding the objections of the Governor.

SENATOR CLARK: LB 216.

CLERK: Mr. President, excuse me, but Senator Haberman would like to print amendments to LB 472A. (See page 2268 of the Legislative Journal.)

SENATOR CLARK: I would like to also announce there is an Executive Board meeting tomorrow morning at eight o'clock, the 27th of May. Senator Lamb has called that at eight o'clock tomorrow morning.

CLERK: Mr. President, with respect to 216 there are E & R amendments pending.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 216.

SENATOR CLARK: You have heard the motion. All those in favor say aye, opposed no. The amendments are adopted.

May 26, 1981

LB 321, 243, 551-554

SENATOR CLARK: The motion is withdrawn. We go to LB 321.

CLERK: Mr. President, if I may right before that, read some material in. A new resolution LR 189 by Senators Newell, Wiitala, Higgins, Vard Johnson. (Read LR 189 as found on pages 2282-2283 of the Legislative Journal.) That will be laid over, Mr. President.

Mr. President, your committee on Enrollment and Review respectfully reports it has carefully examined and engrossed LB 243 and find the same correctly engrossed, 551, 552, 553 and 554, all correctly engrossed.

Mr. President, with respect to LB 321 I do have E & R amendments pending.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 321.

SENATOR CLARK: You have heard the motion. All those in favor say aye, opposed. The E & R amendments are adopted.

CLERK: Mr. President, Senator Koch would now move to amend the bill.

SENATOR CLARK: Senator Koch.

SENATOR KOCH: Thank you, Mr. Chairman. Mr. Burnett has notified me that we have a problem in the bill on page 30 and this is a reference problem, a sectional problem and so in order to correct this and not have to bring it back from Final Reading then once it has been approved, I move that this technical amendment be adopted so that it harmonizes with the section and would not be inappropriate at a later time. I ask for the adoption of the amendment.

SENATOR CLARK: Is there any discussion on the amendment? If not, all those in favor vote aye, all those opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: 29 ayes, 0 nays, Mr. President, on the motion to adopt the Koch amendment.

SENATOR CLARK: The Koch amendment is adopted. Senator Koch, what do you want to do with the bill? Do you have anything else on it?

CLERK: No, sir, nothing further.

May 28, 1981

LB 376, 243

PRESIDENT: Did you read those who voted for and against?

CLERK: Yes, sir.

PRESIDENT: Okay.

CLERK: Would you like me to do it again?

PRESIDENT: No, I guess it's...if it's all been read in.... all right, LB 376 passes. Mr. Clerk...Mr. Clerk, a request has been made that you do reread the names so that it is a reconfirmation, for the record.

CLERK: (Read the roll call vote as found on pages 2367 and 2368 of the Legislative Journal.)

PRESIDENT: The Legislature will....that concludes all the bills for Final Reading on that part. We now have the suspension. Mr. Clerk, do you have some things to read in? All right, we will proceed then with the... there has to be a motion and, Speaker Marvel, are you ready for a motion?

CLERK: Mr. President, the Speaker would move to suspend Rule 6, Section 7(b) to permit consideration of the following bills on Final Reading: 216, 243, 320, 406, 551, 553, 554.

SPEAKER MARVEL: Mr. President, I so move.

PRESIDENT: Motion by the Speaker to.....

SPEAKER MARVEL: Suspend the rules.

PRESIDENT: Okay, do you want to.....Mr. Speaker, before we take up the motion, Senator Hoagland has a bill that he wants excluded. I believe the Speaker could just exclude it if he agrees with it. Senator Hoagland, what is the bill number? 243?

SPEAKER MARVEL: The motion is to take up all the bills, Mr. President.

PRESIDENT: All right, the motion is to take up the bills, so you will have to put a motion on. You will have to put a motion on to exclude it because the motion now is to read all the bills. We will take that up at this time. All right, motion before the House is the Speaker's motion to suspend Rule 6, Section 7(b) in order that all the bills with the exception of 352 and 552 be read on Final Reading. Any discussion? Now there is an amendment to the Speaker's motion. Read the amendment.

May 28, 1981

LB 243

Read the motion.

CLERK: Mr. President, Senator Hoagland would move to exclude 243 from the Speaker's rule suspension motion.

PRESIDENT: All right, Senator Hoagland, you are recognized, and then, Senator Marvel, you may respond.

SENATOR HOAGLAND: Mr. President and colleagues, there is a lot of commotion here on the floor understandably following the casting of the very last vote, that I am not sure a lot of you understand what my amendment is to Senator Marvel's motion. If you look at your agenda, we have a motion to suspend the rules, which takes 30 votes, of course, to consider all the bills that follow that motion, including LB 243 which me and a number of other people have quite vigorously opposed. Now, Senator Schmit, the sponsor of LB 243, has had anywhere from 22 to 25 votes on this particular bill as it has progressed across the board. We debated it three times on General File, twice on Select File, and I would suggest that we exclude LB 243 from this particular motion to suspend the rules. And I understand I need 25 votes for this motion to prevail. If there are not 25 votes for my amendment to Speaker Marvel's motion to prevail, I would ask you then to oppose the suspension of the rules if you are opposed to LB 243, so we can put that bill off and consider it tomorrow. We will have tomorrow to consider that bill, and I would suggest that we not include it in this particular motion. Thank you.

PRESIDENT: The Chair recognizes Senator Marvel.

SPEAKER MARVEL: Mr. President, the motion that I made.... I've got to get your attention, I'm sorry...(gavel).

PRESIDENT: Let's give the Speaker some attention.

SPEAKER MARVEL: Okay, the motion that I made was made in good faith, was not to exclude, show favoritism by excluding one against the other, and, therefore, I stand on the original suspension of the rules.

PRESIDENT: The Chair recognizes Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, Senator Hoagland is entirely in order to ask for the exemption if he so chooses, but I'd just suggest perhaps that we might as well read the bill today as tomorrow, and if the Governor chooses to veto it, then

May 28, 1981

LB 216, 243

let's start out, at least, by being at our desks, not roaming around too much. Come on guys, come on. Okay, go ahead.

CLERK: (Continued reading LB 216 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 216 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: (Read the record vote as found on pages 2368 and 2367 of the Legislative Journal.) The vote is 48 ayes, 0 nays, 1 excused and not...one present and not voting, Mr. President.

PRESIDENT: LB 216 passes with the emergency clause attached. The next bill on Final Reading is LB 243. Proceed, Mr. Clerk.

ASSISTANT CLERK: (Read LB 243 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 243 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Senator Schmit. Yes, this is with the emergency clause, that's right. Well, record the vote. There's no way you can get the emergency clause.

ASSISTANT CLERK: (Read the record vote as found on page 2369 of the Legislative Journal.) The vote is 24 ayes, 21 nays, 4 present and not voting, Mr. President.

PRESIDENT: The bill having failed to receive the constitutional majority for passing with emergency clause fails to receive the emergency clause, and now the question before the House is, shall LB 243 pass without the emergency clause? All those in favor vote aye, opposed nay. Senator Schmit, do you wish a roll call vote?

SENATOR SCHMIT: Mr. President, I will have a roll call vote.

PRESIDENT: Roll call vote has been requested. Mr. Clerk, will you proceed with the roll call vote on LB 243?

CLERK: (Read the roll call vote as found on page 2370 of the Legislative Journal.) Mr. President, we need to verify the vote.