

January 16, 1981

LB 95, 247-283

Mr. President, Senator Schmit would like to have a meeting of the Ag Committee underneath the North balcony now if he could, and it is Ag Committee underneath the North balcony with Senator Schmit, immediately if possible.

PRESIDENT: The Legislature will be at ease until Speaker Marvel determines that we will go back.

EASE

PRESIDENT: The Legislature will come to order just for the purpose of the Clerk reading some matters into the record. Mr. Clerk, you may proceed.

CLERK: Mr. President, Senator Clark would like to announce that Senator Goodrich has been selected as vice chairman of the Telecommunications Committee.

Mr. President, new bills. Read LB 247-265 by title as found on pages 205-209 of the Legislative Journal.

Mr. President, your committee on Appropriations gives notice of agency hearings for Monday, January 26, signed by Senator Warner as chairman.

PRESIDENT: The Legislature will continue to stand at ease until approximately 11:15 a.m.

CLERK: Meet in Room 1517 at eleven o'clock? The Executive Board in Room 1517 at eleven o'clock.

PRESIDENT: The Legislature will come back to order. The Clerk has some matters to read in.

CLERK: Mr. President, I have a reference report referring LB 172-205 and rereferring LB 95. (See page 213 of the Legislative Journal.)

Mr. President, I have new bills. (Read by title, LB 266-283 as found on pages 214-218 of the Legislative Journal.) Mr. President, that is all the matters that I have this morning.

PRESIDENT: Any other messages on the desk, Mr. Clerk?

CLERK: No, sir, I have nothing further.

PRESIDENT: In that case the Chair will recognize Speaker Marvel.

SPEAKER MARVEL: I move we adjourn until Monday, January 19, 1981, at 10:00 a.m.

March 25, 1981

LR 46
LB 39, 39A, 50, 72, 73,
104, 167, 171, 194, 197,
197A, 252, 425, 475, 500

SPEAKER MARVEL PRESIDING

SENATOR BEYER: (Prayer offered.)

SPEAKER MARVEL: I have a note here that indicates that today is the 35th birthday of Senator Howard Peterson and this occurred on the weekend, March 22, and there will be rolls served in his honor and we wish Senator Peterson the best for the year to come. Have you all recorded your presence? Record.

CLERK: A quorum present, Mr. President.

SPEAKER MARVEL: Do you have items under #3?

CLERK: Mr. President, your committee on Public Works whose Chairman is Senator Kremer reports LB 252 to General File with amendments. (Signed) Senator Kremer.

Your committee on Enrollment and Review respectfully reports that they have examined and reviewed LB 39 and recommend that same be placed on Select File with amendments; 39A Select File; 167 Select File with amendments; 197 Select File with amendments; 197A Select File. All signed by Senator Kilgarin as Chair.

Your committee on Enrollment and Review respectfully reports we have carefully examined LB 72 and find the same correctly reengrossed. (Signed) Senator Kilgarin.

Senator Wagner would like to be excused for the day.

And, Mr. President, LB 73, 194, 50, 171, 194, 425, 475, and 500 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 LB 73, LB 104, LB 50, LB 171, LB 194, LB 425, LB 475, LB 500. Item #4, resolution.

CLERK: LR 46 is offered by (read LR 46.)

SPEAKER MARVEL: Senator Lamb, this is your resolution.

SENATOR LAMB: Mr. Chairman and members of the Legislature, this is a resolution which honors Senator Nichol's mother who recently passed away. The fine lady has been a long time credit to the State of Nebraska. I urge the adoption of this resolution.

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Now we are not saying that the information that we want to find out about these agencies is not going to be available. I am sure that it will be on a demand basis, and a lot of the things that are in those books have nothing to do with...let's say they are a financial report or what they are doing in various fields. It's more of a glorification for the department than it is information. I think that is a fair statement. And so I certainly support this and let's see how it works. I also realize that many of these are made because of grant programs that some of these agencies have, and, of course, we aren't interfering with that. If they have to have this information for grants, why I am sure they will print them, but they won't make as many of them and distribute them to everybody and his uncle. Thank you.

SPEAKER MARVEL: The motion is the advancement of the bill as explained, LB 545. All those in favor of advancing that bill vote aye, opposed vote no. Have you all voted? Record.

CLERK: 25 ayes, 0 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is advanced. The next bill is LB 252.

CLERK: Mr. President, LB 252 offered by Senator Chris Beutler. (Read title.) The bill was first read on January 16, referred to Public Works. The bill was advanced to General File. There are committee amendments by the Public Works Committee, Mr. President.

SPEAKER MARVEL: Senator Kremer.

SENATOR KREMER: Mr. Chairman and colleagues, I will try to explain the committee amendments in layman's language rather than make a reference to the amendments as they are printed. We addressed this issue in the following amendments to LB 252. First of all, it does...the committee amendments do modify the definition of beneficial use. The amendments would say that beneficial use shall include but not be limited to. Secondly, it addresses subirrigation that would be specified as a beneficial use. Next we go to use of the word...instead of pollution control, we chose to use the words...the phrase "water quality and maintenance" rather than pollution control. And next a sentence would be added to say "nothing in the definition is intended to affect the preference for the use of surface water". By statute we do set up a preference of use and we just make a statement here in the printed amendment to say, nothing that would affect that preference of use. Then

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here is one that is rather important, a new factor for the director to consider in making his decision would be that "alternative sources of water available to the basin of origin for future beneficial use". He has to address that issue that the basin of origin should also look at another source of supply whatever it may be, and there are those other sources of supply. In number 4 the director would be required to specify in his or her order the reasons for granting or denying the application. And the last one is rather minor in nature and it's in the title, when the term "groundwater" is used it should be corrected to read "surface water" because that is what we are talking about. These, ladies and gentlemen, are the amendments to LB 252, and I move for their adoption.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, I have no objection to the committee amendments. This is the kind of a bill where I have a bit of a dilemma as to whether to try to explain the bill now or to attach first the committee amendments which are largely technical but not entirely. And I think that what I will do is ask your indulgence with regard to the committee amendments with my assurance that those committee amendments have been agreed upon by both the pro basin of origin and the pro transfer people on the committee, and hopefully then we can discuss and center the discussion on the bill as a whole. And I think that will be the most useful way to approach the matter. Basically, by and large, the committee amendments are neutral amendments as far as the controversy is concerned between the basin of origin and the applicant or the basin to which the water will be transferred, with the exception of the one factor that is added providing that alternative sources of water available to the basin of origin for future beneficial uses. But the pro basin of origin people on the committee decided that that was a reasonable compromise to allow that to be added, and so that is in the committee amendments. The most important part of the committee amendments, I think, are two procedural amendments actually. One of them makes it very clear that the preference system that we have established in the State of Nebraska, domestic, then agriculture, then industrial, that preference system is not changed by anything in this law, and that's an important point, maybe the most important one in the committee amendments. And, secondly, it provides that the Director of Water Resources in making a decision on the question of whether water should be transferred or not will have to specify in his order the reasons for granting or denying the application. Right now that is not required and it is

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a little bit vague as to the rationale. So I think it is important procedurally to get that in writing. So those two procedural things are probably the most important things in the committee amendments, and again I have no objection to the committee amendments.

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

SENATOR KREMER: I believe I will have no closing, Mr. Chairman.

SPEAKER MARVEL: Okay.

SENATOR KREMER: I will be speaking later on the bill.

SPEAKER MARVEL: Senator Kahle, do you wish to...okay. Senator Beutler, your light is still on. Okay, the motion is the advancement of 252. I'm sorry.

SENATOR KREMER: Mr. Chairman, I move the adoption of the amendments.

SPEAKER MARVEL: Okay, the motion first of all is the adoption of the committee amendments as explained by Senator Kremer. All in favor of that motion vote aye, opposed vote no. Record the vote.

ASSISTANT CLERK: 30 ayes, 0 nays on adoption of the committee amendments, Mr. President.

SPEAKER MARVEL: Okay, the committee amendments are adopted. Senator Beutler, do you want to explain the bill?

SENATOR BEUTLER: Okay, Mr. Speaker, members of the Legislature, LB 252 basically seeks to regulate transbasin diversion of water in the State of Nebraska. And, of course, I think we are all familiar that the term...with the term "transbasin diversion". It means basically taking water out of one river basin and transferring it for use on land located in a separate and different basin. Just to give you a little bit of historic perspective, you may be aware... you may have been aware that we have not had to deal with this problem basically since 1936 when the courts decided, construing various statutes, that transbasin diversion was prohibited in the State of Nebraska. From that time on, the Legislature decided that it was too difficult a problem to address. The feelings ran high on this issue as you are well aware, and nothing happened until last year when the Supreme Court reversed itself and decided not only that transbasin diversion is not prohibited, but, in fact, that it cannot be denied except when it is in the public interest.

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Therein lies the whole concept and problem we are trying to deal with. Transbasin diversion under the Constitution of Nebraska cannot be denied except when it is in the public interest. The state water plan which we have talked about before has a section in it and is funded to deal with the question of transbasin diversion. The Legislature did make plans to deal with it. But it was one of the last subjects which we intended to deal with and was not due to be done until 1984. But the Supreme Court decision now has changed that. We can no longer afford to wait for the state water plan because the Supreme Court has said that the applications can proceed for transference of water from one basin to another. Let me basically explain what is happening right now and what will continue to happen until and unless the Legislature passes LB 252 or a bill similar to it. Applications are made to the Director of Water Resources and there is a hearing on the application, and basically the Director takes in all of the evidence that he wants to let in. As I understand it, he has taken in all evidence, and on the basis of that evidence he makes the decision as to what is in the public interest and that is that, except, of course, that the Supreme Court of the State of Nebraska is going to have the last word on what is in the public interest. Since the Legislature has not spoken, the process right now is in the hands of an Administrative Director, of an Administrator in the Executive Branch and in the hands of the Nebraska Supreme Court. My very strong opinion is that it is the responsibility of the Legislature to set down the policy of the state with regard to transbasin diversion, that it is our responsibility to give direction to the Director of Water Resources on when denial should take place to set up for him the framework for determining what is in the public interest, and to give the Supreme Court guidance as to what is in the public interest in the opinion of the legislators of the State of Nebraska who represent...who are the directly elected representatives of the people of the state. So that is what this bill is all about. It is saying, Legislature, make the policy. If you don't pass a bill, whether it is a little bit pro diversion or a little bit anti diversion, if you don't pass a bill, you are leaving it in the hands of the agency. And the policy that I am asking you to formulate today will be formulated slowly, haphazardly, tortuously by interaction between that Director and the lawyers involved in cases and the Supreme Court. As the Supreme Court decides each case, it will tie down a little bit more and a little bit more as it is forced to do so the framework for determining the public interest. But that process will be long and it will necessitate a large amount of litigation. I am asking the Legislature to take decisive

action now to set up that framework, the result of which will be not to end litigation altogether but which, I believe, will substantially cut down on the litigation over the years on this issue, and will give direction to all concerned. I hope that gives you a picture of where we are right now. What does the bill do? The sum and substance of the bill is on page 6, and if you would, I would ask you to turn to page 6 of the bill. Section 5 on page 6, it talks about an application and this is the application filed with the Director of Water Resources. And it says in determining whether denial of the application is demanded by the public interest, that there are certain factors that will be considered by the Director, and those factors are set out 1 through 6 following the initial paragraph. The economic, environmental and other benefits of the proposed interbasin transfer and use; any adverse impacts of the proposed interbasin transfer and use; any current beneficial uses being made of the unappropriated water in the basin of origin; any reasonable foreseeable future of beneficial uses of the water in the basin of origin; the economic, environmental and other benefits of leaving the water in the basin of origin for current or future beneficial uses; and six, alternative sources of water supply available to the applicant, and then seventh, to remind you of the committee amendment, which added number seven, alternative sources of water available to the basin of origin for future beneficial uses. Then in the following paragraph is the crux of the whole bill, the bottom line, lines 20 through 23 on page 6. And it says, basically, the application shall be denied if the benefits to the state from granting the application do not outweigh the benefits to the state from denying the application. The test then is the greater benefit test looking to the state as a whole. You might say just reading the language that it is a fifty-fifty bill, whichever side is greater weighted, that is how we will go. If there are more benefits to transferring the water, we will go that way. If not, we will leave the water in the basin of origin. But to be truthful with you, I think the bill is slightly slanted toward the basin of origin, as I think it should be, by virtue of the fact that the burden of proving these things is on the applicant, is on the person seeking to take the water from the basin of origin. That would be his burden of proof. But it has been my intention to try to come up with a formula that is balanced in nature, and I think that I have succeeded to a large extent. At least the way the sides have developed so far, the City of Lincoln is not happy because it doesn't protect the basin of origin enough....

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SENATOR NICHOL: One minute left.

SENATOR BEUTLER:and the other people are unhappy because it doesn't allow enough transfer. So there are people unhappy in both directions on this bill. Whether you finally decide that there are certain amendments that should be attached to the bill, either benefiting the basin of origin or favoring transfer, I hope that each time you adopt an amendment you adopt an amendment that you are sure you can live with because I feel very strongly that a bill should be passed that the Legislature should take its responsibilities, should live up to its responsibilities, and set forth a policy and that we should not allow ourselves to be distracted or confused by the various amendments from one side or another that will be forthcoming at one stage or another, I am sure.

SENATOR NICHOL: Your time is up.

SENATOR BEUTLER: Thank you, Mr. Speaker.

SENATOR NICHOL: Mr. Clerk, you have something on the desk?

CLERK: Mr. President, Senator Goodrich moves to indefinitely postpone LB 252.

SENATOR NICHOL: Senator Goodrich.

SENATOR GOODRICH: Mr. President and members of the body, I am afraid, in my judgment at least, LB 252 does more than seek to treat that transbasin diversion of water. It adds considerable confusion to the surface water picture by adding a short shopping list of beneficial uses which must be considered in diversion issues. Exactly what this section means is unclear. Section 6 of the Nebraska Constitution, and I will read it verbatim, "Priority of appropriations shall give the better right as between those using water for the same purpose but when the waters of any natural stream are not sufficient for the use of those desiring to use the same, those using the water for domestic purposes shall have the preference over those claiming it for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the water for manufacturing purposes, provided no inferior right to the use of waters in this state shall be acquired by a superior right without just compensation therefor to the inferior user." Since no appropriation is possible for such things as fish and wildlife, water pollution control, recreation, exactly how do they fit in the big picture and why these are necessary beneficial uses

in connection with outer basin diversion is almost impossible to understand. They would be affected by any diversion except if this bill becomes law, the Department of Water Resources would specifically exempt these benefits in determining public interest. I believe this is another area where LB 252 classifies out of basin people as second class citizens. Now what I am really trying....the point I am really trying to make is that the bill I am afraid is designed not for regulation but for the injection of these six points and separate lawsuits, for example, could be brought on each one of the six points, or seven as the case might be now. So, consequently, this legislation would be tied up in court a long period of time. Consequently, we don't get any benefit from the legislation whatsoever as long as it is tied up in court. Why then do we process the bill instead of waiting for the end of our studies that we all know about, why don't we wait for the end of those studies and then come in with a bill based on those studies and the hearings on those studies? And it is for that reason that I make the motion. Thank you.

SENATOR NICHOL: Senator Kremer, did you wish to speak to this?

SENATOR KREMER: Mr. Chairman, I will speak to the kill motion. I was going to speak in opposition to the bill, but it means the same thing to speak against the kill motion. First of all, I would like to lay the foundation for my argument as to why I oppose the bill and support the kill motion. I would like to start out by quoting the Chief Justice when he made the statement as to why the Supreme Court overturned the ruling of the court in 1936 with reference to the Osterman case. I would like to have the members of the Legislature note carefully what the Chief Justice had to say, and I am quoting now: "On reading of the Nebraska Constitution and the statutes applicable thereto as well as our subsequent decisions in the Ainsworth Irrigation District versus the Bejot case, also the Metropolitan Utilities District versus the Merritt Beach Company case", it goes on to say that "All this leads us to the conclusion that it is appropriate for us to reexamine... to reexamine our holding in the Osterman case". It goes on to say, "The language of the Nebraska Supreme Court is clear and unambiguous with regard to use of water". Now note this, The Nebraska Constitution, Article XV, Chapter 4, provides, "The necessity of water for domestic use and for irrigation purposes in the State of Nebraska is hereby declared to be a natural right. That is important. The full impact of that provision has in recent times been so clear that further or additional reference to or citation to support that declaration is unnecessary." The Nebraska Constitution...the same article provides, now he is quoting

the Constitution and please pay attention, "The use of the water of every natural stream within the State of Nebraska is hereby dedicated to the people, not of the basin, but the people of the state for beneficial purposes subject to the provisions of the following section", and he quotes, "It is significant to note that the stated section refers to the use of water of every natural stream being dedicated to the people. Nothing in Article XV, Chapter 5, indicates or authorizes the limiting of the use of the water of every natural stream to be within a particular watershed", note that, "basin, or dedicating it to the use of the people living within the particular watershed basin. Quite to the contrary", says the Chief Justice, "the clear and unambiguous language constitutionally mandates that every use of every stream, regardless of its location, is dedicated to all of the people of the State of Nebraska regardless of their location and not just to those who happen to live within the confines of a particular valley or watershed basin. Nowhere in the Constitution can such limiting words be found". Now this is important. What I am trying to say is this, that the water within a basin is not dedicated only to those living within the basin but to the entire population of the State of Nebraska for beneficial use. Now having laid that foundation, it is my fear, and I have trouble with this, that LB 252 is counterproductive to the decision of the Supreme Court. The language as found on page 6, and Senator Beutler made reference to that, troubles me greatly. We there allude to language that says, "future reasonable use" and on and on like that. And I can see nothing but trouble ahead when and if such times that the Director of Water Resources says, I am going to allow the moving of water from one river basin to another river basin, and then look into that language and say, what do we mean by reasonable future needs within the basin? I can see nothing but trouble in there and I would like to reemphasize my opposition to the bill and my support of the kill motion that the water in the streams of the State of Nebraska belong to all of the people in the State of Nebraska, and I realize that perhaps it is well that the Legislature looks at some guidelines for the Director to use in making a determination. This bill...well, I am sure Senator Beutler did take a lot of time and drafted this proposal before us today. I feel that the Legislature as a whole has not yet had time to...some of us sit down together and give some guidelines that will give more thought than is given to this bill by the entire body. I am not saying that Senator Beutler did not give it thought, I know that he did. That is his makeup. He does a good job, but I cannot help but stand and oppose the bill and support the motion to indefinitely postpone. The Legislature has directed the Natural Resources Commission to have

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a look at transbasin diversion and, of course, it was not to come out from the Commission until...what, 1983 or '84, however, the Supreme Court decision has probably brought this thing to our attention much more rapidly. I think that we can get the Commission to step up their study as to when and how why transbasin diversion should be allowed and then I think we should address the issue. I think they can step that up and we can get a report within the next 18 months or so, and then we need to look at what kind of conditions can water be moved from one area to another. Furthermore....

SENATOR NICHOL: Time is up.

SENATOR KREMER: Well, I will continue with my furthermore at a second chance. Thank you very much.

SENATOR NICHOL: There were several lights on, seven of them to be exact, but only one came on after the kill motion. Now do I see any hands other than Senator Beutler who wish to speak to the kill motion? Senator Kahle, you are up next.

SENATOR KAHLE: Mr. President and members, I have grave concerns about this bill and, of course, received calls from both sides of the issue from NRDs. I happen to have a district that is entangled in both sides of this transbasin diversion business, and personally I feel that it would be inappropriate right now to pass legislation such as this while the courts are still tusseling with the issue. Now you know that Mr. Nuernberger did rule that transbasin diversion was legal, but that has not settled the issue. And, of course, one of the problems is that both sides are using taxpayers' money to fight the issue and I don't like that very well. But I just don't feel that this is the appropriate time to pass this legislation when the court action is still in the process, or litigation is still in the works. And I certainly agree with Senator Kremer. I think we are going to get things on the books here that will certainly tie up the courts for the next twenty years and we will not accomplish anything. Thank you.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Senator Lamb.

SENATOR LAMB: Mr. President and members, I rise to oppose the kill motion and I perhaps should explain my vote. You may note in the committee statement that I did not vote

to advance the bill. The reason I did not vote to advance the bill was that I was not sure that this bill gave the basin of origin any protection at all. And it seems to me that it is necessary that the basin of origin has some protection. In other words, it does not make sense to me to transport water around this state unless you are going to put it to a better use after you haul it somewhere else. I think the basin of origin should have the opportunity to use this resource first since that is where it is to begin with, there is not the expense of transporting it to other areas. Now I might comment on the problem faced by some of our cities. Omaha, for example, I can never see a time when Omaha or any other large city will be deprived of the water that they need. That is just not politically possible. It is unrealistic to ever think that that is going to happen. They are going to get the water they need for all the vital functions of a city...of a bustling city. And this is not, I believe, part of the issue. I think that the people in the city can rest assured that the water is going to be there for their use. But what we are talking about primarily is the agricultural areas and it certainly makes sense to me to take care of the basin of origin before you start transporting the water. I think Senator Beutler's criteria that gives the Director of Water Resources some basis upon which to base his decision is sound. We may argue about some of the language in one or another of those, but basically he is on the right track. I think this is a necessary bill. I support the bill and I oppose the kill motion.

SPEAKER MARVEL: Senator Dworak.

SENATOR DWORAK: Mr. President and colleagues, I join Senator Lamb in opposing the kill motion, and the arguments that I hear raised in my opinion are ridiculous. The major argument I have heard in opposition to the bill is that there is litigation pending. And in my opinion whether we have the bill or do not have the bill one thing that is going to be assured probably is continued litigation. I think any request with or without the legislation is going to probably result in some court battles and court tests. The major purpose and the major thrust of the bill is to give some legislative guidelines to the Director of Water Resources and also the courts. In absence of these legislative guidelines, the issue becomes moot as far as public debate, as far as public involvement, as far as legislative involvement in the issue. If we do not pass this legislation and if we do not establish this criteria in statute, we totally abdicate our responsibility to the courts. We give the courts, in fact, an absolute blank check to do

what rightfully is our responsibility to do. So I see the passage of this particular bill as paramount. And I think a lot of my good friends on the floor, Senator Kremer included, Senator Sieck, know my traditional stance on transbasin diversion. I personally have probably opposed transbasin diversion more strenuously, or as strenuously as any member in this body currently and historically, obviously, because I represent a water rich basin, and for me now suddenly to be supporting a bill that would permit, that would set guidelines, that would set criteria, that would facilitate transbasin diversion may seem to be an antithesis of my traditional position...traditional stand on this issue. But the fact of the matter is that we have had a ruling from the courts. The fact is the courts have now said there is no constitutional block to transbasin diversion and we are now forced to recognize, to accept the inevitability, the possibility, the probability of transbasin diversion. So if, in fact, we are at that point, it is only proper and it is only prudent that we establish in statute some type of criteria by which the Director of Water Resources can be directed, by which somehow people can take a look as to the criteria, the possibilities of transbasin diversion. I think without this kind of statutory explanation, without any legislative guidance at all, and we are...we reflect the will of the public, then we are closing the door on any public input whatsoever to this very vital issue in the State of Nebraska. And I think it is proper, in fact, I think it is imperative that we do establish some type of guidelines. Now the second issue that I had heard raised was the beneficial use section, and I had heard several Senators comment negatively on that specific section. I think Senator Goodrich was one that indicated some concern about that specific section.

SPEAKER MARVEL: You have 30 seconds.

SENATOR DWORAK: And I think that the committee amendments made it absolutely clear that there is no way we are tampering with the constitutional prioritization, number one, and number two, there is no way that we are trying to prioritize this particular list of beneficial uses. But I think it is erroneous for us as legislators to recognize that hydroelectric power with the facility being contemplated now by Tri State, the facility now being used in Columbus by the Loup Public Power District, that that is not a legitimate social, beneficial use of water.

SPEAKER MARVEL: Your time is up.

SENATOR DWORAK: So I very strongly urge us at this time

not to kill this. This bill is too important to not debate it completely.

SPEAKER MARVEL: Senator Peterson.

SENATOR H. PETERSON: Mr. Chairman and members of the Legislature, it is not often on this floor that I will rise to oppose my good friend, Senator Goodrich, or my good friend, Senator Maurice Kremer, but I am really rather amazed at both of them to think that they would feel that this bill should be killed. I believe it is time for us to argue this issue. It is too vital and important an issue for us to leave it without talking about it in this session. The Director has made a decision on one bit of diversion. There has been an application for another one in the southwest area. There will be more. And it is absolutely vital for us to set some guidelines to determine on what basis the Director will make those decisions. Personally, I would hate to be the Director and try to make the decisions without some guidelines. I believe that Senator Beutler is to be congratulated for having brought the guidelines to us, and I would urge this body not to kill this bill this day.

SPEAKER MARVEL: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I would oppose the kill motion at this time. As Senator Peterson and Senator Dworak, I come from an area that is rich in water and I would agree with Senator Beutler that the bill is perhaps a little bit more protective of the basin of origin than of the basin that would like to get the water. I think Senator Kremer has raised some excellent points. I think there are some unanswered questions on the bill. We discussed the guidelines that deal with the transfer of water from one basin to another. We have not yet established in the bill any guidelines for the use of water within the basin. I think the courts have told us that if we do not use that water within the basin of origin, that it will be transferred and that the people of the state have a right to it. The water belongs to all of the people of the state. I preferred it probably the other way when it looked like those of us in the basin that had water could keep it there. But I don't that is going to be a fact of life any more. I think we are going to have to face up to the fact that unless we have adopted guidelines that will guarantee the best utilization and development of the water in the basin, the water is going to leave. I would hope that some time before the bill, if it should become law, does become law that we would attempt to place some guidelines in the bill for the development

of the water in the basin. Without those guidelines, I think that we are going to be in some real serious trouble. There is some language in the bill that I think needs some clarification, and I think it....you know, it's amazing. It looks like a simple little bill. It is not so simple. I think Senator Goodrich has got some good points. But I believe we need to be doing something along this line, but I think we have to look at the entire picture and we should address those guidelines within the basin before we unnecessarily adopt guidelines for the transfer between basins. There are some words in there that are new. I hope you would read the bill carefully, and I hope you would read it page by page, line by line and word by word, and see if you really want to put all of those descriptions in there that are at the present time included. I think it may come back to haunt us at a later date. I have not researched the bill thoroughly. I have only glanced at it a few times, but I am apprehensive about some of the intent language in the bill. So although I will oppose the kill motion at this time, I am going to ask Senator Beutler and other members who are supporting the bill to clarify the language in some instances. And thank you very much.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, obviously I oppose the kill motion. I would like to just speak momentarily and I am afraid I might repeat a little bit what others have said so I will be brief, but let's separate the real arguments from the arguments that are not real. Senator Kremer supported the kill motion. Senator Kremer comes from an area that is water poor, to say the least. I can understand that Senator Kremer philosophically is probably very much in favor of a policy that would be strongly in favor of allowing transfer, and I respect his position. And if you share the view that the policy should be strongly pro transfer, then you should vote for the kill motion. But if you are looking for a more balanced view, if you are looking for some protection of the basin of origin mixed in there, then don't vote for the kill motion and work with the bill, because that is what the bill seeks to do. Although we can have differing opinions as to how far it goes in one direction or another, it does, in fact, strike a kind of balance. That is the real argument. That is the real question. Now all this business about litigation is just a bunch of bunk. Senator Goodrich says to you, let's not do anything while we are in the process of litigation. But, my friends, there are now two more applications filed with the Commissioner...with the Director, that are going to be in litigation for the next

couple of years, and before those are done there will be others, and there will be others, and there will be others. And if you follow the suggestion that we don't act while there is something in litigation, we will never act before this century ends. That is a completely false argument. It is false to say that passing this into law will cause more litigation because as I tried to explain to you in my opening remarks, the system that will generate the most litigation is the one where there are no guidelines and where the Supreme Court reviews on a case by case decision everything that the Director does for the next 15 or 20 years. That is the system that will generate the most litigation. I am not saying for a minute that this bill if we pass it won't be tested. Of course it will. Where so much is at stake, the livelihoods of so many people depending on one or two projects, a small amount...a relatively small amount of money spent on litigation will be spent if there is a question. This doesn't avoid...passing the bill doesn't avoid litigation but that is not to say that there will be more litigation with the bill. What I find interesting and ironic about those who want to leave the decision in the hands of the Director of Water Resources is that apparently they feel that the Director of Water Resources is going to give them something more pro transfer than this bill gives them. But what is their basis for that? They have absolutely...I suggest to you they have absolutely no basis and fact for thinking that, because the next thing that is going to happen is that the Little Blue decision is going to be before the Supreme Court and the question of what is in the public interest will be before the Supreme Court for the first time, and it could well be...it could well be that the Supreme Court would say, the public interest is something less amenable to the interest of those who are in favor of transfer than what this bill says. They are groping in the dark. They are betting on the future.

SPEAKER MARVEL: You have one minute.

SENATOR BEUTLER: And I personally cannot see why they think they are going to get a better deal out of the Director and the Supreme Court than they are going to get out of LB 252. It is a mystery to me. Thank you.

SPEAKER MARVEL: Senator Vickers, do you wish to speak?

SENATOR VICKERS: Mr. Chairman and members, I rise reluctantly to oppose the kill motion, and I say reluctantly very reluctantly. I am from an area of the State of Nebraska that, as Senator Beutler points out, is very water

poor. I represent a section of the Republican Valley that certainly could use some more water and as a matter of fact has got an appropriation in for the interbasin transfer of water. My District also, however, goes clear to the Platte River on the north. The division between the Platte and the Republican runs right down through our place. So I guess you could say that I can see both sides of the issue. I consider myself for transbasin diversion. I think it is important in the future that we allow the spreading out, if you will, and making sure that we are using all the water that we possibly can any place in the State of Nebraska. But the reason I oppose the kill motion though is that philosophically I agree with Senator Beutler to the degree that we, the Legislature, should set the criteria that the Director of the Department of Water Resources uses in determining whether to grant or deny appropriations. I think it is our job and not the court's job. If we don't do something in this body, the courts are going to do it for us, and I think we are supposed to be the body that makes those policy decisions. Now having said that, I will also say, as Senator Schmit did, that I have got some problems with LB 252. I have read the bill and there are certain words in it that I disagree with and I think Senator Beutler knows it, and is aware of the fact that there probably will be some attempts to amend his bill because I personally believe and I am glad that Senator Beutler pointed it out, I personally believe it is too pro toward the water rich areas or the basin of origin. I think it should be more balanced. And I will work toward that end. I appreciate my good friend Senator Kremer's comments and I understand exactly what he was saying, but in this instance, as I say, I think it is our job to face up to the issue. One point I think needs to be made, as Senator Beutler pointed out, it is in litigation. Senator Goodrich pointed that out. We passed a bill this morning that had a section in it, it went over there just with flying colors, that addressed a situation that is in litigation also. Nobody raised any real big concerns about doing that. So I can't see that there is anything wrong with trying to address the situation that might be in litigation right now in this instance. I believe this is a serious issue. I think each and every one of us should examine it very carefully, those from urban and rural areas alike. And it could be very easy for me to stand up and support the kill motion simply because I do believe in transbasin diversion. I guess I am on the opposite side on that issue of Senator Dworak and yet we are on the same side of this issue with this bill. Chances are pretty good he is going to oppose some of the amendments that I am going to try to offer to this bill, however.

SPEAKER MARVEL: You have one minute.

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SENATOR VICKERS: But I think it is important again that this, the legislative body, set down the criteria, and not the courts. It is unfortunate that it came up as soon as it did, but the Supreme Court is the one that brought it up by overruling the Osterman decision, so, therefore, we cannot wait for the...in my opinion, we cannot wait for the Natural Resource Commission's report, as Senator Kremer suggests. I think we need to act, and act as soon as possible.

SPEAKER MARVEL: Senator Sieck.

SENATOR SIECK: Members of the body, this is a very difficult position to take, but I am going to support the kill motion because I don't feel that we are ready...I just don't feel we are ready. After I read this bill, I can see a lot of question marks, a lot of question marks. And I do feel the Constitution at the present time does tell us the beneficial uses of water, and I feel that the streams of the original origin do have some protection. And I would like to really take a longer look at this subject. And in my particular area we are in need of water, and we are not asking water, that is...belongs to the water of the original origin, but water that is surplus, when we have extreme storms of this type, then we would like to have that water and use it properly. But I don't think we are ready for it. I don't think we of the area that needs the water are ready for this. I don't think we are ready for transbasin diversion. We haven't made enough plans. I even doubt whether the Little Blue as much as they have done are really ready for transbasin diversion. And I really feel that the Department of Water Resources has the tools, and we might cloud and muddy the waters some more. So I am going to support the kill motion.

SPEAKER MARVEL: Senator Wiitala. Senator Wiitala, do you wish to speak on the issue?

SENATOR WIITALA: Mr. Chairman, I would call for the question.

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

CLERK: 26 ayes, 6 nays to cease debate, Mr. President.

SPEAKER MARVEL: Debate is ceased. The Chair recognizes Senator Kremer to close. Just a moment, Senator Goodrich, did you give way to Senator Kremer on the close?

SENATOR GOODRICH: Yes.

SPEAKER MARVEL: Okay. Senator Kremer.

SENATOR KREMER: Thank you, Senator Goodrich, I can proceed with my furthermore. I would like to reemphasize some of the comments I made relative to what the courts had to say when they interpreted the Constitution as we know it very clearly. So if the court was right, and we have to assume they are until their decision could be reversed if that time ever comes, okay, then if the water in all of the streams in Nebraska belongs to all of the people, and there is unappropriated water, then all the Director would have to do is to just appropriate a certain measure of water like he does now when it is within a basin. But the court said the water belongs to all the people. So the Director should have the right to make an appropriation to another basin just like he does within the basin, if what the court said is right. What would he do? Then he would appropriate unused water. Do we have unused water? The court addressed itself to the data that was submitted by the Director when he made the decisions that he did on the request and they clearly said that there was at least 500,000 acre feet running out of just the Platte every year with the exception of one year, I believe. I would have to go back and read it for sure...just the Platte. Now we know that in all of the contributions that the streams in Nebraska make to Nebraska's stream water supply there is about six or seven million running out of the state that is unused. Now if that continues...let me warn you about something, there are two states lying west of us that contribute something to the water that comes into Nebraska, namely Colorado and Wyoming. Colorado and Wyoming both have plans to use more of the water that is coming into our state, many of those plans, and if we don't prove that we need this water and we are using this water, I can well see what is going to happen to the states west of us. It is going to cut down on some of the water that comes into our state. Now, how about the states south of us? I have told the Public Works Committee I will invite anyone that wants to attend, I will make a presentation of the Ogallala study. We have got some overlays and it is going to be most interesting, and if you will come I will show you what is going to happen to the water in the states south of us, mainly Texas, Oklahoma and Kansas, they are going to be practically out of water, especially groundwater. Now, when you take the water out of a stream and apply that to the surface, it does recharge underground water. Nebraska is the most fortunate state that we do have the water and if we got common sense enough to use it and use it wisely and to store it, we are

going to have water for a long time to come. If we don't, I will show you on these overlays there is an area...there are four areas in the state of Nebraska that we are going to lose about two million acres of irrigated land that is being irrigated now or that will be irrigated in the near future. If that happens, it is going to affect the entire economy of our state. My closing argument is that while we perhaps should give some guidelines to the Director if and when he appropriates water out of a stream, I don't think we are ready for that. I don't think we have addressed it. There are some of the issues that are in LB 252 that trouble me and trouble me greatly. I think we would need to be very careful that we do not bring about something that is counterproductive and swing largely to the interest of the basin of origin. I am willing to protect their water, but not to the extreme that we are going to shut the thing up, turn the faucet off and some of the areas that are going to be in deep trouble, and it's going to affect all of us, are going to run out of water. The issue is before us. I think we should kill this bill now and continue to have a look at it this summer. I have said that to Senator Beutler and I am willing to work with him. I don't think we have taken enough time. Therefore, I support strongly the motion to indefinitely postpone the bill at this point.

SPEAKER MARVEL: Before we take this final vote, in the north balcony I wish to introduce from Senator Lowell Johnson's area, forty-four 4th Grade students from Clarkson Elementary, Fremont, Nebraska, Miss Rosalie Rhodman and Mrs. Ginny Wojtkiewicz. I practiced on that for the last two hours. They are in the north balcony. We welcome you to the Unicameral. Where are you located? Okay. And from Senator Kahle and Senator Cope's District twenty students... 4th Grade students from Pleasanton Elementary School, Pleasanton, Nebraska, and Mrs. Sheryl Lammers is the teacher. And you are in the north balcony, and will you hold up your hands so we can see where you are. Okay. Welcome to the Unicameral. Senator Cope, for what purpose do you arise?

SENATOR COPE: I'm not sure. I thought you said that was my district. Senator Kahle...that's his District, Pleasanton.

SPEAKER MARVEL: It has Senator Kahle and Senator Cope on the sheet.

SENATOR COPE: Oh, okay, thank you.

SPEAKER MARVEL: The motion before the House is the indefinite postponement of Senator Beutler's bill. All those

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in favor of indefinite postponement vote aye, opposed vote no. Have you all voted? Okay, record the vote.

CLERK: 6 ayes, 30 nays, Mr. President, on the motion to indefinitely postpone.

SPEAKER MARVEL: The motion fails.

CLERK: Mr. President, Senator Vickers moves to amend the bill. (Read the Vickers amendment as found on page 1518 of the Legislative Journal.)

SPEAKER MARVEL: The Chair recognizes Senator Vickers.

SENATOR VICKERS: Mr. Chairman and members, as I indicated earlier it seems to me that the bill is weighted very heavily toward the basin of origin and I am simply attempting to set the criteria so that they are a little more equal, which is what I think we should do. If we are going to set the criteria down, I don't think we should be the judges also. And I do think we should set the criteria. The committee amendment, as you look at the copy of the bill, you have to remember that right now on page 6 there are seven criteria because the committee amendments included the seventh one to say, "The alternative sources of water available to the basin of origin for future beneficial use". In other words, in adding onto number six to make it even in that regard as far as alternative sources of water, what I am attempting to do is take out lines to 9 and 10, or number two, and take out lines 13 and 14, or number four, where it would say, "Any adverse impacts of the proposed interbasin transfer and use and any reasonably foreseeable future beneficial uses of the water in the basin of origin". In place of number two, I am suggesting we put in, "the beneficial uses to be made of the proposed interbasin transfer", so that line one or subsection one on lines 7 and 8 and subsection five on lines 15 and 16 would be the two equal sides on the two, either for transfer or against transfer. The basin of origin or the basin that it's going to would both be taken care of as far as economic, environmental and other benefits. With my new language on lines 9 and 10, the beneficial use to be made of the proposed interbasin transfer and lines 11 and 12 then would take care of the current beneficial uses being made of the unappropriated water in the basin of origin. So again it would be looking at the two sides of the same issue. That way we would wind up with six subsections, two, two and two, so that there would be three of them looking at one side of the issue and three of them looking at the other side of the issue, all dealing with the same subject, the economic,

environmental and other benefits, the beneficial uses and the alternative sources of water supply. Now by taking out subsection 4 in lines 13 and 14, somebody could argue, I suppose, that we are not looking into the future, but if you will look under subsection 5 on line 17 it also says, "or future beneficial uses", which to me would be the same thing. This is a legitimate attempt on my part and I haven't had a chance to visit with Senator Beutler about this, but it is a legitimate attempt on my part to make this bill more uniform in its treatment of the two basins, the basin of origin or the basin that is applying for the interbasin transfer. And as I said earlier when I opposed the kill motion, this is what I think we should do. I will also warn Senator Beutler that I would like to work with him later on to deal in some other areas of this bill to make it more even. But I would urge the body's adoption of this amendment.

SPEAKER MARVEL: Senator Kremer.

SENATOR KREMER: Mr. Chairman and members of the Legislature, I am a little bit reluctant to even speak on this issue. I feel a little like the fellow that said, I quit telling jokes because when I tell a joke everybody cries. I kind of feel like whenever I talk, it goes just the opposite of what I want it to, so maybe I should not talk at all. However, I am going to take a chance and I am going to speak in support of the Vickers amendment. In his amendment he does strike lines 13 and 14 and I think I addressed that issue and said this probably is the area where I have the most trouble, but since we lost the first round we will retrench and we will support the Vickers amendment. I think he has improved the bill and made it, as he indicated, kind of balanced the issue. I trust that Senator Beutler will support the motion, and I hope we get a little better vote than we did the other time. Thank you very much.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, I would like to say something very positive about the amendment. It beats the kill motion. I have basically taken the position on this bill and will be taking the position that the most important thing is for the Legislature to set the policy, and I don't have strong feelings as to whether that policy slightly favors the basin of origin or is slightly pro transfer. I do have strong feelings about any policy we set up which doesn't respect the basin of origin or on the other hand which would not

allow reasonable transfers where the water is not being used. I guess it is all a question and we are all trying to decide this of what is, in fact, a balanced policy. It is my feeling with regard to the Vickers amendment that it would make the bill a very strong pro transfer bill. He adds the language, "the beneficial uses to be made of the proposed interbasin transfer". I have no objection to the addition of that language, in fact, I think it is contained within subcategory 1 anyway. But it's what is crossed out that is serious. "Any adverse impacts of the proposed interbasin transfer and use." Well if you are not going to look at the adverse impacts, you are wiping out a large part of what you should be looking at. The second thing that is deleted is the phrase, "any reasonably foreseeable future beneficial use of the water in the basin of origin". So that means if the basin of origin isn't right at this moment, at the moment of the application, using the water, then they are out of luck. If that is the way you want it to be, that is fine, but I think maybe we should be looking at at least the immediate future of the basin of origin because some of that investment in those valleys, much of that investment, is based upon the anticipated use of that water at some time in the near future, and if you don't look at that, then you are ignoring values, you are ignoring economic investment. But in particular those two things together that he is deleting I think when looked at together would make it a very strong pro transfer bill, and I just want to give you my opinion as to what the amendment does and you do with it what you will. Thank you.

SPEAKER MARVEL: Senator Dworak.

SENATOR DWORAK: Mr. Speaker and colleagues, I would like to ask Senator Vickers a question, if he would yield. Senator Vickers, I know we are trying to write legislation on the floor which is always dangerous, and I think I have your copy of your amendment, probably your only copy of the amendment, but as I understand it you want to strike lines 13 and 14, which says, "any reasonable foreseeable future beneficial uses of the water in the basin of origin". That is one issue. The second issue is you want to add the wording, "the beneficial uses to be made of the proposed interbasin transfer", which means that the basin receiving the water, we would have to take into consideration beneficial uses in the receiving basin as well as the contributing basin. Is that basically a correct interpretation of your amendment?

SENATOR VICKERS: Yes, that is correct.

SENATOR DWORAK: We really basically only have two issues.

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SENATOR VICKERS: Well, well...but I am also striking another section. I think it is subsection 2 that talks about the adverse impact, because I think the adverse impact, Senator Dworak, would be taken into consideration by all the other language that we are telling them to look at.

SENATOR DWORAK: Okay, Senator Vickers, then your only reason for striking section 2 is redundancy of language.

SENATOR VICKERS: Yes, I think it is redundant because of the fact that all the other criteria would naturally be causing them to look at how it might adversely impact, and I am suggesting that by putting the beneficial use language as far as the basin that is asking for the transfer obviously that would allow some looking at the impact in that area also.

SENATOR DWORAK: Okay, the new wording would be the new section 2?

SENATOR VICKERS: That is correct.

SENATOR DWORAK: Okay, Mr. President, I would like to call for a division of the question. The first portion would be section 2, which is striking the existing wording and inserting "the beneficial uses to be made of the proposed interbasin transfer", and the second portion of the question would be the striking of lines 13 and 14. Could I have a division on the question and debate then each portion of the amendment, Pat?

SENATOR NICHOL PRESIDING

SENATOR NICHOL: Senator Dworak, that is divisible.

SENATOR DWORAK: Do you understand....am I making myself clear as to where I want it divided?

CLERK: Yes, I think so, Senator. I will come back and check with you, but I think so.

SENATOR DWORAK: Okay, thank you. I would request unanimous consent for division of the question.

SENATOR NICHOL: Is there any objection? If not, so ordered.

SENATOR DWORAK: And then we will debate the first portion first and the second portion second, right?

CLERK: Yes. Senator, may I, Senator, then if I may, Senator,

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what we will discuss now is "strike lines 9 and 10, page 6", strike the language there and insert "the beneficial uses to be made in a proposed interbasin transfer".

SENATOR DWORAK: That is correct.

CLERK: Okay.

SENATOR DWORAK: Thank you.

SENATOR NICHOL: Senator Wagner, did you want to speak to the first division of the question?

SENATOR WAGNER: Mr. Speaker, I really want to speak more to the second part.

SENATOR NICHOL: Thank you. Senator Lamb, did you want to speak to the first portion of the question? Senator Lamb.

SENATOR LAMB: Well, Mr. President, I think I want to speak to both sections. But I guess at this point I have a question of Senator Vickers. You are striking lines 9 and 10. Is that correct? And you are inserting "the beneficial uses of the proposed interbasin transfer".

SENATOR NICHOL: Senator Vickers.

SENATOR VICKERS: Senator Lamb, the language that I am suggesting to be used is "the beneficial uses to be made of the proposed interbasin transfer".

SENATOR LAMB: Well I guess, Mr. Chairman, I...it seems to me that the language there is saying what we really need to say, and the adverse...I object to striking lines 9 and 10. I guess I don't object to the addition of the language which Senator Vickers is suggesting. However, to...I think the Director should be required to consider the adverse effects of the proposed interbasin transfer. If you are not going to propose...or if you are not going to consider the adverse effects, you are not considering the whole issue. So that would leave it all on one side of the fence. If you are only going to consider the benefits to one area without considering the damaging effect to the other area, you are not giving it balanced consideration. So with that thought in mind I would oppose this amendment as well as the second half of the amendment which Senator Vickers will offer subsequently.

SENATOR NICHOL: Senator Howard Peterson, did you wish to speak to the first part of the question?

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SENATOR H. PETERSON: Mr. Chairman, my only concern is I don't object to the Vickers amendment but I think it ought to be an addition and that the second item as it is stated ought to be left in. I think we need to consider both. We need to consider the adverse effects and the good effects, whoever is making the decision. And for that reason I would be opposed to striking that language.

SENATOR NICHOL: You are talking about the first part of the question?

SENATOR H. PETERSON: Right.

SENATOR NICHOL: Okay. Senator Remmers, did you wish to speak to this?

SENATOR REMMERS: Mr. President and members of the body, just a few comments. I probably should be wearing my green freshman beanie, not having had much experience with this water business and also from an area where tranbasin diversion and that type of thing is not a very great problem. I am not worried very much about that in Nemaha County. But I do feel that Senator Beutler has made a good start on the problems before us. I don't think we can sit back and not do anything, and it seems to me that this has been sort of the....would be the result of this if we didn't act on this thing. And I have some questions about the amendments because I think that any decision we make is bound to lean one way or the other just a little. I don't think that we can devise a solution that is absolutely neutral. And I kind of feel that when it's a matter of taking from one and giving to the other, that if there is going to be anything leaning any direction at all, it should lean in the direction of those that have the water now and that are counting on it and have been counting on it. So I would urge you be very careful about amending Senator Beutler's bill to the extent that it would not be effective.

SENATOR NICHOL: I believe that everybody has spoken to the first portion of the question that wishes to. Senator Vickers, did you wish to close on the first portion of the question?

SENATOR VICKERS: Yes, thank you, Mr. Chairman. Mr. Chairman and members, the first portion or the division of this question of this amendment in order to be clear in everybody's minds what we are talking about, is to strike lines 9 and 10 on page 6, subsection 2, where it says "any adverse impacts of the proposed interbasin transfer and use", and insert in there this language: "The beneficial uses to be

made of the proposed interbasin transfer". Now, there have been a number of people, Senator Lamb, Senator Peterson, indicated that they had troubles with taking that language "any adverse impacts" out. But let me point out to you that this shall...up above it says, "such application as demanded by the public interest shall include but not be limited to the following factors", and then it includes these factors that will be in the bill and then the bottom line after number 7, it says, "the application shall be denied if the benefits to the state from granting the application do not outweigh the benefits to the state from denying the application". All of these criteria that are in there right now is to determine the adverse impacts, and if you will count them, you will find out that number 2 is looking at the basin of origin obviously. Number 3 is looking at the basin of origin. Number 4 is looking at the basin of origin. Number 5 is looking at the basin of origin. And number 7 of the committee amendments talks about alternative sources of water available to the basin of origin". But practically all of them are looking at the basin of origin, and yet Senator Peterson, Senator Remmers, Senator Lamb say that if they take this out you are not going to have enough protection. Goodness sakes, you have got about all the protection already. What about the basin that is asking for the transfer? Who is looking at it? Who is looking at the good that can be done there? Number one...number one does. Number 1 says economic, environmental and other benefits. Number 1 and number 5 are the two opposing sides, the basin of transfer as well as the basin of origin. Now what I am saying is by putting the language that I suggest in number 2, then number 2 and 3 will be the opposing sides as far as beneficial uses are concerned. Numbers 6 and 7 are the opposing sides. If we are going to put down a criteria, as I said earlier, we shouldn't be the judges too. I understand Senator Lamb, Senator Peterson, Senator Remmers, people that come from areas that transbasin diversion will not benefit them in any way, shape or form, but that is not our decision to make which is good and which is bad, whether we should or whether we shouldn't. That is the Director of the Department of Water Resources. We are setting the criteria for him to follow. But it is like the rules of a ball game, you don't set up the rules of a ball game to benefit one team more than the other. You set up the rules so it will supposedly be in the middle, and I would hope that that is what this body would do with this issue. As I said earlier, I live right on the divide between the Platte and Republican. I could fall either way. As a matter of fact, I'm right up there where you can shoot at me from either way is what it amounts to. And I think we should be fair and honest, set

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the rules in the middle, not set the rules over to one side or the other. If that is what you want to do, why don't you just simply come out with a law that says, we forbid transbasin diversion, period. We are attempting to set some criteria down for the Director to follow, for goodness sakes let's make the criteria equal. Let's make the criteria so that the Director has to look at both sides of the issue. If you want to...if people want to keep the adverse impacts of the proposed interbasin transfer then you can be assured that I am going to be back with an amendment that would say that you also have to look at the adverse impacts of not taking the proposed transfer over to the other basin. If you want that in there for your side, I think we should have it for both sides. But I think that the language that we are looking at will cause them to look at the adverse impacts. I think it is redundant. I urge the body's adoption of this amendment.

SENATOR NICHOL: The question is....Senator Kremer, for what purpose do you arise?

SENATOR KREMER: Did he close on his....?

SENATOR NICHOL: Yes, that was his closing on the....

SENATOR KREMER: Okay.

SENATOR NICHOL: And we were discussing the first half of the Vickers amendment.

SENATOR KREMER: Okay, if he is closed, I will waive mine.

SENATOR NICHOL: The question is, shall the first half of the Vickers amendment be adopted? All those in favor signify by voting aye, opposed nay. Senator Vickers.

SENATOR VICKERS: Mr. President, it is late on a Thursday that we are going to recess on and it looks like I have about lost, but I think this issue is important enough that people should have to take a stand on one side or the other. We have got a number of them that are not voting, so I am going to ask for a Call of the House and a roll call vote.

SENATOR NICHOL: The question is, shall the House go under Call? All those in favor signify by voting aye, opposed nay. Record, Mr. Clerk.

CLERK: 17 ayes, 0 nays, Mr. President.

SENATOR NICHOL: The House is under Call. Will all Senators

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please take their seats. The Sergeant at Arms will please find those who are not in the Chamber. All unauthorized personnel please leave the floor. As soon as you come, would you please indicate your presence. Senator Vickers, there are 6 absent. They are Clark, DeCamp, Haberman, Hoagland, Koch and Von Minden. Senator Goll, for what purpose do you arise?

SENATOR GOLL: I would like the exact wording of this amendment. I know where it goes but I would like the exact wording.

SENATOR NICHOL: Senator Goll, as soon as we get people in, then we will do it so we don't have to do it over. Okay? Senator Cullan, Senator Newell, Senator Pirsch, Senator Wesely, Senator Labedz. Looking for Senator Wesely, Senator Cullan and Senator Newell. Senator Vickers, we are still missing Senator Cullan and Senator Newell. Do you wish to go ahead?

SENATOR VICKERS: Let's wait on them. I would like to know how they are going to vote.

SENATOR NICHOL: Senator Vickers, we can't find Senator Newell and Senator Cullan has called in to ask to be excused. What do you wish to do?

SENATOR VICKERS: Okay, go ahead.

SENATOR NICHOL: Mr. Clerk, would you read what we are voting on, please?

CLERK: Yes. Mr. President, Senator Vickers would move to amend the bill....(Read the Vickers amendment as found on page 1518 of the Legislative Journal.)

SENATOR NICHOL: The question is, shall the first half of the Vickers amendment be adopted? All those in favor vote aye, opposed nay. Senator Vickers.

SENATOR VICKERS: A roll call vote, Mr. Chairman.

SENATOR NICHOL: Call the roll.

CLERK: (Read the roll call vote as found on page 1519 of the Legislative Journal.) 12 ayes, 26 nays, Mr. President.

SENATOR NICHOL: The first half of the Vickers motion failed. Now we go to the second half of the Vickers amendment. Senator Vickers. Senator Dworak, for what purpose do you...?

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SENATOR DWORAK: Question of the Chair. I have an amendment to the Vickers amendment. Would that not....

SENATOR NICHOL: Senator Vickers has not presented the second half of his amendment as yet.

SENATOR DWORAK: Okay.

SENATOR NICHOL: Senator Vickers, did you wish to do so at this time?

SENATOR VICKERS: Yes, Mr. Chairman. Mr. President and members, the second half of the amendment, now that the first half has been decided by the wishes of the body, is very simple. It strikes lines 13 and 14 on page 6, and it says, "any reasonable and foreseeable future beneficial uses of the water in a basin of origin". If you really and truly believe that transbasin diversion of water is wrong and that it should probably never take place, then I think you should vote against my amendment. If, on the other hand, you think that maybe there might be places in the State of Nebraska where at times it might be all right to take some water from one basin and take it to another, then I suggest you vote for my amendment. If you are worried about the future protection of the area that the water might be coming from, and we might as well be honest about it, we are talking about the Platte River, if you are worried about the future of that area and you are worried that by taking that language out you won't be protected in the future, I would remind you to look at subsection 5 where it talks about the economic, environmental and other benefits of leaving the water in the basin of origin for current or future beneficial uses. You are already protected. But I think any attorney, good, bad, or indifferent, could hold up any transfer of any water from any river under section 4, because I believe anybody could say that at some point in time in the future we are going to have some beneficial use of the water in the basin. Some of the projects that have been proposed in the past and voted down by the people would suddenly be back to life again, even if just for discussion purposes. We might want to build midstates again. We might want to build a numerous number of projects again. I think that language is weighted entirely too heavy toward not transferring water, and remember, as I said a little bit ago, I think we should be honest and try to set up the rules so that it doesn't weigh it too heavily toward one side or the other. Obviously, I don't think that is this body's intention. It seems to me from the vote on the last amendment that this body's intention is to prohibit transbasin diversion in spite of what the Supreme Court says. I think

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this body was very comfortable with the Osterman decision in 1936 and has been ever since. We didn't have to address the issue. We could just simply go back home and tell the folks that it is unconstitutional to take water from one basin to the other and therefore we don't want to deal with it, therefore we don't even want to talk about it. Well, I remind you that it is legal, it is all right under the Constitution. The Supreme Court said it was. Now if it is all right under the Constitution, is it all right for us to sit here in this body and say, no it is not, we know better than the Department of Water Resources, we know better than anybody else, therefore we are going to set up the rules under the guise of putting up the rules that the Director can use but we are going to set the rules under such a fashion that we know which team is going to win when this ball game is played? I don't think that is right. I don't think that is fair, and I don't think we should do it. Therefore, I think that lines 13 and 14 at least should be stricken from page 6, section 5. And I urge the body's adoption of this amendment.

SENATOR NICHOL: We are now speaking to the second half of the Vickers amendment, and I have six speakers on. The next one is Senator Wagner. Do you wish to speak to this?

SENATOR WAGNER: Mr. Speaker, members, I really think this is one of the more important portions of this whole bill, and let me tell you why, because a lot of times on some of these projects you are talking about many, many years down the road. There is one in my district that has taken twenty-five years to bring it on the line and just starting on construction. I think we have got to look into the future for some of the needs of these basins, and if we don't we are certainly going to hurt them and for that reason I would certainly oppose Senator Vickers' amendment. I don't think we need to strike any language like that out of that bill, and I would certainly oppose it.

SENATOR NICHOL: Senator Beutler. Senator Howard Peterson.

SENATOR H. PETERSON: (Microphone not on)....of the body, I think this particular portion of the bill is probably one of the very important portions, and contrary to what Senator Vickers is saying, we do have in our area a project that is known as the Prairie Bend project, some over a hundred thousand acres of land to be irrigated, some big storage to be developed, water rights that have been granted for quite a number of years, and it is important that before we divert water out of the Platte Valley that we develop that project and know we have water to develop it.

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Once it is developed, I think we will find that we have excess storage and at that time I would be hopeful that we might help Maurice Kremer out and get a little water over to Hamilton County. But I think we have got to store the water before we can use the water, and so I would just plead with this body that we leave this particular item in the list.

SENATOR NICHOL: Senator Kremer.

SENATOR KREMER: Mr. Chairman and members, of course I support the second part of the Vickers amendment. As I stated before, this is the language that has bothered me the most. There is others too. I think that Senator Vickers put it very well when he said if you never want transbasin diversion, just leave this language in and you probably never will get it. I tried to emphasize how important it is that Nebraska in a wise way uses the water that is available to her, and if we don't, I can predict very clearly there is going to be sections in this state that are going to dry up as far as irrigated acres are concerned. It is so important to our state. Today the economy in our state is stabilized. Perhaps more than any other state. We are not suffering the unemployment and some of the adverse conditions that exist in our economy today just simply because of what we have in the State of Nebraska. Nebraska has very little in the way of natural resources except water, and we are very thankful for what we have. Now I again want to emphasize, it is my belief and my strong belief that if Nebraska wisely uses this water that we can survive any long period of drouth, although will affectus. Because of the tremendous amount of our agricultural land is devoted to irrigation, we are producing the principle food production for not only our nation but for the world, and we are going to play a big part in this in the future. Now why are we going to let water run out of this state when it could be used in the state. We are talking about water that will be diverted in most cases, I would say, surplus water, when there is plenty of it there and take it to an area that is short and store it there and you get a number of benefits. It will be a supplement to the use of groundwater for irrigation and it always recharges the underground system. I think we should strike this language and it will bring in balance to some extent at least what we are trying to do today as we give guidelines to the Director when he seeks to take care of an application to move water. So I strongly support the second part of the Vickers amendment. Senator Vickers put it very well and I support everything that he said.

SENATOR NICHOL: Senator Sieck.

SENATOR SIECK: Yes. Mr. President and members of the body, I thought we were going to compromise, but it doesn't look like we are going to compromise. It looks like we are going to go just the way it is written. I do have to agree with Senator Vickers, and I think it is a lost cause. And we are not going to have transbasin diversion. We are going to let some of our areas dry up. Let's take a good look at that water. Let's use it. Sure we are going to support Prairie Bend and I would be the first one to support it. I think we should catch this water and store it, and I think we can and I know we can. But there is still going to be water getting away that we should be using, and that is what we are looking at. We don't want to take anybody's water, that is furthest from our mind. But we are tightening this thing up so much that we are not going to have transbasin diversion. And that is about all I have to say. I just feel that it is a lost cause as far as we are concerned. But I would sure like to warn you, there is a lot of good, rich land that could dry up. So I urge you to support the Vickers amendment.

SENATOR NICHOL: Senator Dworak. I don't see him in the House. Senator Schmit. Oh, excuse me, Senator Dworak is there. Senator Dworak.

SENATOR DWORAK: Mr. President and colleagues, I oppose strongly the second half of the Vickers amendment. And I keep hearing statements that for all practical purposes this is going to preclude any transbasin diversion and I don't read that at all in the language that Senator Vickers is trying to strike. And I think we ought to look at that very closely on page 6 and read lines 13 and 14 and it says, "any reasonable", and I think the word "reasonable" is a qualifying word, and "foreseeable" and I think that is a qualifying word and certainly not an open-ended type concept..."any reasonable foreseeable future beneficial uses of the water in the basin of origin". I think when we are talking about irrigation potential, agricultural use, when we are talking about industrial potential, when we are talking about municipal potential, you certainly have to take the foreseeable reasonable future uses of those people in the contributing basin into account. I think in any kind of a spirit of fair play, and I don't think anybody, whether it be Senator Sieck or Senator Kremer, or anyone else on this floor, has any intent of taking water away from a particular basin when the people in that basin are expected to be using that water. And so this gives some protection, and I don't think an over abundant protection, but it gives some protection that these people can look into the reasonable foreseeable future and be assured that

their reasonable foreseeable future use of water will be protected. Everything I have ever heard discussed on the issue of transbasin diversion has been surplus water. When a basin has surplus water, then it should be conserved and it should be used by potentially another basin, but certainly not water that is essential to agriculture, that is essential to industry, that is essential to municipalities in the contributing basin, and nobody has ever discussed that. And so when I look at this wording, I don't see it as opening the door completely. I think it is wording that needs to be in here. I think we have to at least give the contributing basin at least this kind of protection before we would allow water to leave one basin to another. So I strongly oppose the second portion of Senator Vickers' amendment.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I join Senator Dworak in my opposition to striking that language. I want to call your attention though to several other issues. When we imply or we state as we do in this language that any reasonably foreseeable benefit, we have to assume that there has to be development within a basin. We are not just going to allow water to continue to flow on down the river and out into the ocean. We are going to have to do some development work. That means you are going to have to do some construction and some storage. I would like to point out, very frankly, that I have a bill, LB 527, that deals with that issue directly and it is still languishing in the Public Works Committee. I don't see any support from Senator Beutler to bring the bill out. I would appreciate it very much if that bill had come to the floor. It is a priority bill. It ought to be on the floor along with LB 375 introduced by Senator Kremer and myself. I have stated...I am on record, I have opposed transbasin diversion, but I recognize that the courts are not going to allow us to continue to sit there unless we develop that resource. An undeveloped resource is going to be considered a wasted resource, and I think the courts are going to view it as such. And although Senator Chronister and Senator Dworak and myself would like to see the water run down the Platte, because we think there are some benefits through the underground maybe, or we think there are going to be some benefits for some other purposes by having that water there. We also recognize that it is not going to be allowed to continue to flow out when water deficient areas are suffering. And so I want to say as I said before, better read these lines very carefully because if you don't, they are

going to come back to haunt you. When we talk about "reasonably foreseeable" benefit, the benefit is not going to be a major consequence I think to sustain a few fish or a boat or two. I think you are going to have to look at something else and that something else is storage and development. And I think that if we are going to pass this bill, Senator Vickers and Senator Kremer have some very legitimate reasons to be concerned, if we adopt the dog in the manger attitude and say we are going to let that water flow on down the river unused. And so I am going to say again, I am going to oppose the Vickers amendment, but I am placing the challenge on this Legislature to do something about the storage problem which has gone totally unrecognized this session of the Legislature, and for all practical purposes the bill that is in the committee today is a dead bill. It is not going to be worth a darn on this floor or anything else. I think I take that as an inconsistency on the part of some of the Senators in this body.

SPEAKER MARVEL: From Senator Warner's District there were four 4th Grade students from Douglas Community School, Douglas, Nebraska, Miss Linda Nelson, teacher. Are you still there? Okay, welcome to the Unicameral. Senator Beutler, do you wish to be recognized, and then Senator Lamb.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, I would also oppose this amendment. But Senator Vickers' and Senator Schmit's concerns are well taken, and we will have to try to see if we can accommodate them to some extent as this bill moves on, hopefully. But I would like to remind you and put one thing in perspective now, these factors that are listed here, 1 through 7, including the one we are debating right now, are factors to be considered. Remember that, they are factors to be considered. They have no absolute values put on them. If, for example, the Director sees that there is a beneficial use in the reasonable future of the basin of origin, he still may decide to transfer the water. That is one thing that is factored into all these 6 or 7 different economic, environmental concerns. So what you are talking about is whether he should look at that, whether he should consider that, or whether he should ignore that altogether, and I think it is a little bit difficult to suggest that that should be ignored altogether, especially in light of the simple facts that when people buy land, they buy it with the view to where the water is and to the possibility of bringing water to it. And there are a lot of people that might be hurt if you don't watch out for reasonably foreseeable interest. Thank you.

SPEAKER MARVEL: Senator Vickers, are you ready to close on

your second half of the amendment?

SENATOR VICKERS: Thank you, Mr. Speaker, yes. Mr. Speaker and members of the Legislature, again I would simply point out to you that the future beneficial use of the district or of the basin of origin is protected under subsection 5, line 17. Senator Schmit pointed out the fact that there should be more storage facilities in certain areas of the State of Nebraska and, therefore, he opposed removing the "reasonably foreseeable future" language because there might be some more storage facilities built in certain places. Let me pose this to this body, we are state representatives. We are elected by district but we are supposedly supposed to look at the benefits of issues that we delve with as they affect the State of Nebraska. Now is it to the best for the State of Nebraska and for the taxpayers of the State of Nebraska to talk about building storage facilities, new storage facilities on some of the rivers of the State of Nebraska that might have additional water, like in Senator Schmit's area, Senator Dworak's area, although I am sure they don't want the dam on their land, or on their place or in their town, close enough to go fish in perhaps, is it better to do it that way or think about doing it that way? Or is it better to at least think about taking some additional water that might be in those areas to areas where the dams are already at, reservoirs are already built, the land is already bought, but there is not enough water to fill them up? That is the decisions we are going to have to be able to make in the future. That is part of the decision we are making right here this afternoon. Shall we build the Midstate facility, or shall we even just put it on the books so that we will never take any water out of the Platte River because we have got that on the books, we might talk about building it some day, that some time in the future? Or shall we be honest about it and say that that is probably not going to be built because of environmental reasons and various other things, costs, therefore, would it be reasonable to assume that maybe we should take some water where it might not damage too much, take some water out and put it in a reservoir some place that is already built, already there, no additional cost? Now if you are conservative, I would assume that you would think, gosh, it would be a pretty good deal to use something that is already there instead of building more. Or if you are opposed to using eminent domain for taking farmland away from farmers, maybe you would say, gosh, maybe we better just go ahead and use the lake that is already there and we don't have to take any more farmland away from anybody, we don't have to damage the environment any place any more than it's already setup, the environment is already changed. Well you and I both know that those projects are

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LB 44, 74, 87, 113, 271, 298,
327, 328, 331, 404, 478, 486,
252, 241, 483

not going to be built for a variety of reasons, environmental costs, eminent domain and many other reasons. You start talking about building a project and immediately you have a whole group of people that rise up in arms to it. We all know that, but yet it is nice to stand up on the floor and make glowing speeches about how we need to store more water. But now when we are talking about an issue where we might be able to save some of that water in the State of Nebraska although it might not be in your area, it might not be in your basin, you might have to drive a couple hundred miles to go fish in it, suddenly you don't want to do that and you want to put language in the statutes that I assure you is going to prohibit it from happening. I suggest that reasonable people that are of conservative nature should agree with me to remove the language in lines 13 and 14.

SPEAKER MARVEL: Okay, the motion is on the second half of the Vickers amendment, is the adoption of that amendment. All those in favor vote aye, opposed vote no. Have you all voted? Senator Vickers, where are you? Oh, there you are. Eight are excused, Senator Vickers.

SENATOR VICKERS: Record the vote. Oh, make it...I want a record vote.

SPEAKER MARVEL: Okay, record.

CLERK: (Read the record vote as found on page 1519 of the Legislative Journal.) 10 ayes, 23 nays, Mr. President, on adoption of the amendment.

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

CLERK: Your Enrolling Clerk has presented to the Governor LB 483.

I have a communication from the Governor addressed to the Clerk. (Read communication regarding the signing of LBs 44, 74, 87, 271 and 483 as found on pages 1520 and 1521 of the Legislative Journal.)

Mr. President, Senator Fowler would like to print amendments to LB 404. (See pages 1521 and 1522 of the Journal.)

Your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 241 and find the same correctly engrossed; 298, 327, 328, 486, 113, and 331 and 478, all correctly engrossed, Mr. President. (See pages 1524 and 1525 of the Legislative Journal.)

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LB 491, 252

ASSISTANT CLERK: 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting. Vote appears on pages 1532-33 of the Legislative Journal.

SPEAKER MARVEL: LB 491E is declared passed on Final Reading. That completes Final Reading for the morning. Before we start on General File item number six, it is my privilege to introduce in the south balcony from Senator Chronister's district 40 students from the rural schools of Stanton County and ten adults, the County Superintendent Mary Lee Temperlee. Will you hold up your hands so we can see where you are located to welcome you. Before we move to General File it is....I would like to welcome Robert Clark to the Chamber. I understand that you have been away for sometime and we welcome you back again. From, we have already taken a machine vote. From Senator Wiitala's district 34 students and three adults from Prairie Lane School, Omaha, Nebraska Betty Wright is the teacher in the south balcony. Will you hold up your hands so we can see where you are.

The first order of business under item number six, LB 252 Mr. Clerk.

CLERK: Mr. President, LB 252 was introduced Senator Beutler. Read title. The bill was considered by the membership on April 16th of this year Mr. President, at that time the committee amendments were adopted. There were several amendments offered including a kill motion by Senator Goodrich, which failed. I now have a series of amendments pending Mr. President.

SPEAKER MARVEL: Senator Beutler, will you give us a brief synopsis of the bill. Since we went through this rather thoroughly the other day.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, just to refresh your memory briefly, the bill is basically to govern the transfers, the interbasin transfers of water in Nebraska. It seeks to set out the introducers intent in introducing the bill was to give a balanced approach and an approach that would allow the transfer but which at the same time would give some protection to the basin of origin. Now for purposes of discussing the amendments that are coming up, I would simply suggest to the body that you get out the bill, LB 252, and turn to page six of the bill which lists the different factors that the director of water resources must look at in considering whether to grant an application to transfer water. I would point

out again that these factors are factors that he must look at, if he chooses to look at factors in addition to these he can certainly do so. But just for your reference purposes it is page six of the bill that will probably be most helpful to you in following along on different proposed amendments and again on further on page six of the bill it is lines 20 through 23 now that are the bottom line of the bill. That bottom line is that the application shall be denied if the benefits to the state from granting the application do not outweigh the benefits to the state of denying the application. So, that is the balancing test in the end and I think Mr. Speaker we can probably proceed from there. Thank you.

SPEAKER MARVEL: Senator Vickers, do you have an amendment to the bill?

CLERK: Mr. President, Senator Vickers has an amendment that is found on page 1526 of the Journal. It would read as follows. Read Vickers amendment.

SPEAKER MARVEL: Senator Vickers.

SENATOR VICKERS: Mr. Chairman and members, this amendment is offered in good faith. I'm sure that Senator Beutler is not going to approve of it, but the amendment would change the burden of proof, if you will, to indicate that the application shall be denied if the benefits to the state would indicate that it should be instead of being the other way around as it is presently worded. It seems to me that since the Constitution of the State of Nebraska makes it clear that appropriations shall not be denied, based on the public interest, that if we are going to attempt to put some criteria in the law and as I indicated the other day I agree with Senator Beutler's intention with LB 252, I think the criteria should be put in, but I think the criteria should be also in conformity with the Constitution and with the way we have done it in the past and it seems to me by changing the language to say that it shall be approved unless the benefits to the state from denying application outweigh the benefits to the state from granting the application. In the end I don't believe that there will be an awfully lot of changes, an awfully lot of those that are either pro or con as far as transbasin diversion is concerned, I really don't think there will be an awful lot of change no matter which way the wording is done. But it does seem to me that the wording should be in conformity with the way we operated in the past. I'll be perfectly honest, it also puts the burden on the other side. In the past we have

had many people say that if you use the water or lose it I'm not sure that is a good method to follow, but by the same token if we are going to have applications for water it seems to me the basin of origin should be under some sort of burden to say, look this is why it shouldn't be taken, this is why it shouldn't be approved. So it seems to me the burden should be switched around a little bit and I urge the body's adoption of this amendment.

SPEAKER MARVEL: Senator Beutler. Do you want to speak to the. . .

SENATOR BEUTLER: Yes, Mr. Speaker, members of the Legislature, I do very strongly oppose this amendment. Again it is an amendment, as Senator Vickers forthrightly says, to shift, to shift the weight of the bill as a whole from a bill slightly in favor of the basin of origin to as I would perceive it to a bill in favor of transfers. It makes a very strong shift in that direction. Now in the law we have in each and every law case one party or the other has the burden of proof. Has the duty of going for it and affirmatively showing by preponderance of the evidence that they have proven their case. The way the bill is structured now the party who would seek to take the water from the basin of origin would be the one who would have to prove his case. If you adopt this amendment you would shift it around the other way. You would say that anybody can take water from a basin of origin unless the basin or origin can prove that they need the water. So you can do it either way, but I would recommend to you and strongly urge you to reject the amendment and to retain the present philosophy of the bill which is that those who seek to take water from the basin of origin should at least have the duty of affirmatively going for it and proving their case. Thank you.

SPEAKER MARVEL: Senator Dworak.

SENATOR DWORAK: Mr. President, colleagues, I too oppose Senator Vickers amendment. It appears to me that if I have the beneficial use of something by virtue of where I live, what I paid for my property, how I selected where I reside, compensated the people for this benefit that I enjoy, somebody desires to take it away from me on the grounds that it is surplus or excess I certainly think that they ought to prove beyond reasonable doubt that this is surplus or excess. I don't believe that I should be thrust in the position where I am forced to prove what beneficially is mine. So I strongly urge the rejection

of this amendment. I think that it defeats the intent, the purpose, the major thrust of LB 252 as introduced by Senator Beutler, as voted out by committee and as . . . so far withstood I think, less important challenges than this one preceding Thursday. So, I think to think about this as to where the burden of proof should lie, it is in the proper position now in the bill and to completely reverse that and turn that around would not be wise public policy and certainly would change the nature of the bill so much so that I would even think that we have an entirely different piece of legislation than we started with that was heard before the public.

SPEAKER MARVEL: Senator Lamb.

SENATOR LAMB: Mr. President, members of the Legislature, I rise to oppose the Vickers amendment. As I mentioned the other day and you will note by reading the committee statement, I did not support the bill as it came out of committee because I did not feel that it gave the basin of origin enough protection. I feel very deeply that the basin of origin should have first chance at that water. It doesn't make very much sense to me to be piping or distributing the water elsewhere when there is a basic need for it in the area where it is generated. So Senator Vickers amendment further erodes the rights of the basin of origin. I find that highly unacceptable and I urge the body to reject the amendment.

SPEAKER MARVEL: Senator Kremer.

SENATOR KREMER: Mr. President and members, I rise in support of the Vickers amendment. I would like to take the time and repeat what I tried to get you to understand when we debated this last week, I would like to go on and say that I wish all of you could have been present to attend the lecture given by Dr. Weeks with the US GS in Omaha last night at the University of Nebraska in Omaha. He pointed out very clearly that Nebraska really was . . . Nebraska and the seven dwarfs. He meant by that, took into consideration, and his report coincided almost 100% with the high plains study that the EDA is conducting at the present time. According to this report, his analysis of Nebraska at 65% of all of the water in eight states including the states south of us and the two states west of us and South Dakota and North Dakota north of us. Nebraska is a water rich state. However, there are about three areas in Nebraska that are on the other side of the fence. Unless something can be done Nebraska stands to lose about two million acres of presently irrigated land. Those of us that live in those areas are concerned

because we have been given the assurance that most of Nebraska is water rich. This gentlemen brought out, just like EDA study brings out that we are simply going to have to shift some of this water and in no way do those of us out in the water poor areas feel like we want to steal from you that have plenty of water. However, unless something is done we are all going to suffer for it and especially those of us that are in areas where water depletion is taking place. I feel that the Vickers amendment not only this amendment but one that is on the desk too will bring in balance and will at least prohibit an attempt to delay and delay and delay to the extent that costs get out of line and perhaps we fail to move water at all. I think the Vickers amendments go a long way towards bringing in a balance. I want to warn against if we don't do this I can foresee that down the line Nebraska is going to experience some . . . some disappointing things are going to happen unless we are all willing to look at this as a family. I have predicted and I still predict that Nebraska has got a tremendous future but there are certain areas that are going to be in trouble unless we are willing to do something about it. Thank you.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, I'm going to oppose the amendment and this is one of the few times on water where Senator Kremer and I have kind of gone on a little slightly different direction and so I would like to give a little bit of background of how we even got the transbasin diversion, why we even have the legislation here. Remember it was the court that said, ah heck, you can have transbasin diversion. Everybody in the Legislature and across the length and breadth of the state thought, in their minds, no that is in violation of the Constitution, you can do 'er. You can't take Johnny DeCamp's water up there from the Niobrara or the Elkhorn or wherever and haul it down to Rex or Tom Vickers. Their water is theirs and you keep your hands off. The court said no, no, you can do 'er. Once they said you could do it you set up the question of what are the procedures and who decides whether Rex can come up and get my water. So that forced the Legislature into at least opening the door and taking the first step on setting kind of the rules and guidelines and that is what the Beutler bill does. It says, now Rex, if you want that water of John's up there you have got to come in and prove one heck of a case and prove that you are not hurting

John and you are not hurting his people up there and you really are doing a lot more good with it than he could. I think, as I interpret the Vickers amendment, that they go a step further. Maybe a step further than we are ready to go this year. They say, listen, the Director of Water Resources is going to look at the picture from the aspect of what is good for the whole state, I think that is the direction of almost all of the amendments, and say, if Rex wants that water and he can do more good with it than you can John, we are going to run it down to Rex. I just don't think the people of the state, on this water issue, are ready to take that step yet. I think that you are going to have some more litigation here in the next year on this issue of transbasin diversion. I think you are going to have some more legislative developments and I don't know, a year, two years we may move towards the direction of what Senator Vickers is suggesting. But, at this point, I think you are going to kill the bill if you say we are going this far right now. We are going to say Rex, some guy in Lincoln is going to decide whether you can do better good with John's water than he is and he is just going to look at the whole picture from that standpoint and say, if you can do more good he is going to give it to you. So I would urge rejection of the amendment at this time with the understanding that this issue is going to have more litigation and more legislation in upcoming years. All we are doing here is setting the basic guidelines for the first attempts to even play with this transbasin diversion question.

SPEAKER MARVEL: Senator Peterson.

SENATOR PETERSON: Mr. Chairman, members of the Legislature, I would rise to oppose the Vickers amendment. I believe the present wording is the kind of wording that we need to protect the basin of origin. It just seems to me that we debated this whole issue last Thursday, forward and backwards, the only people who are in favor of reversing the situation of course are the areas where the water is very deficient. We need to recognize that up in Johnny DeCamp's area the water table is starting to go down. Over in my area the water table is starting to go down. We need to have the wording in this particular bill to give protection to those areas where use is beneficial and then if there is surplus water I would be the last one to stand in the road of moving that water someplace where it can be used. But it seems to me the group who is opposed to this particular bill would do much better to support the dollars that we have been looking for to build dams in this state and to store water.

and to get as much water held in this state as possible so that we would have water to give to them.

SPEAKER MARVEL: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, I rise to support the amendment especially after Senator DeCamp used one of his favorite tactics. He gets up and says you are going to kill the bill. You are going to ruin the whole thing if you change it. John usually doesn't do this unless he really wants to make an impression, panic and scare people into thinking his way. The problem is the people say A has the water and really aren't using all of it and they have a surplus of water and the people down here B need some of it. So they would like to transfer some of the water out of A down to B, which is natural. So, John says that you don't want somebody in Lincoln to decide whether this should be done. Well now I ask you who else is going to decide? You sure as well are not going to have the people up in A decide to give the water to the people down in B. They are not going to do that. You know that. Because, if I was an A I sure wouldn't want to give any of it to B. But, I happen to be on this case down in B's area and we need the water. It goes down the river, flows down and nobody is really using it. Now we already have approval of the federal government back in 1922 to take water out of the south Platte and bring it down into Perkins County. We already have the authority to do this. I feel that in the very near future we are going to follow through on this and get some of this done. So, beings as we already have the authority to transfer this water, it isn't such a bad idea. If it was a good idea back then it is a good idea now. John says, let the courts decide. Well now you know how that works. Once you start something in court it can go on and on and on. So I'm willing to support Senator Vickers amendment. I'm glad to see Senator Kremer in support of this as I don't think there is anybody on this floor that is any more knowledgeable about water and its problems than Senator Kremer. I think the body would do very well if they would follow his leadership. So, I would ask that you support the Vickers amendment to LB 252. Thank you Mr. President.

SPEAKER MARVEL: Senator Sieck.

SENATOR SIECK: Mr. President, members of the body, again I think this is a lost cause. But, I do feel that we should look at the State of Nebraska and plan our water

use over the State of Nebraska instead of each particular water way. I feel that we need to do this and the state water plan so designates that we do this. I'm kind of wondering whether we are not a little ahead of our time in introducing a bill of this type. We don't even have the state water plan developed completely and yet we are trying to set some guidelines. So, at the present time I will support the Vickers amendment, but I will be opposed to the bill if we don't get some corrections in the bill so that it will help the total state instead of just pushing of it. We need to look at the state as a whole, not at little entities, so to speak. So I will support the Vickers amendment.

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

SENATOR VICKERS: Yes, Mr. Speaker. Mr. Chairman and members I think that maybe we need to recover some of the same ground that we covered last week on 252. First of all I want to make it clear that I am not necessarily for or against transbasin diversion. Although I think it is in the future, in the future in certain areas of the State of Nebraska I think it is a necessity and I think that it will probably happen, will come to pass. Senator Sieck just mentioned that perhaps this is a little ahead of time, this particular piece of legislation. The other day when we were discussing the kill motion on this bill I indicated that I was not in favor of killing the bill because I didn't think it was ahead of its time. It was ahead of its time as far as the state water planning process is concerned but it was thrust upon us by the reversal of the Supreme Court decision of 1936, this last summer, that said that transbasin diversion is in fact legal. Therefore, it is in our hands. We can not wait for any further studies or any further implementation of plans. I think that it is important that this body, the legislative body, the legislative branch of state government set down the criteria that transbasin diversion should follow. Now, having said that, it is true that I represent an area of the State of Nebraska that can certainly use some more water and has an application in right now for transbasin diversion. But I remind this body as I reminded you the other day that my district also goes to the Platte River. I also represent a water rich area. I think it is important that all of us recognize that our title is "State Senator" we are looking at the state in general, not each district. I don't think that we should look at it

as my water, your water, I think it is our water and it is our state. If we are going to set down criteria to be followed I think the criteria should be even, should be uniform. The rules should be the same. The length of the football field the same length on both sides. I don't think that we should make the judgment in this body, good or bad. I think we should put down the rules and then let the Director of the Department of Water Resources and the courts make the judgment based on our rules. Now, the amendment at hand, is true, but change the burden of proof. I would like to read to you a little bit out of the Constitution of the State of Nebraska, Article 14, Section 6, the first sentence says, "The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest." The Constitution says that unappropriated waters shall be diverted, shall not be denied, yet the language that we are trying to put in the bill in 252 puts the wording just the other way around. It says that "it shall be denied unless." I think it should be in conformity with the language of the Constitution and I think we should say "it shall not be denied unless". Again, the burden of proof, it is true, is being put on the other foot. One final point. Senator Peterson made the comment that those of us that perhaps are trying to look at transbasin diversion from a different point of view than those that are trying to protect their water, if you want to use that term, should perhaps support more dams to be built. Put more dollars and store and store more water in the State of Nebraska. That is certainly a noble cause. I have always supported that. But what about in sections in the State of Nebraska where we have dams and we don't have enough water to fill up now? The real problem is that water will not run up hill. That is the real problem. The real problem as Senator Kremer pointed out to you is that we do have an abundance of water in the State of Nebraska but it is not spread out very evenly. It is concentrated more in certain areas than others. If there are members of this body that think there are certain areas of the State of Nebraska that are not going to be suffering a severe water shortage. . . .

SPEAKER MARVEL: You have thirty seconds.

SENATOR VICKERS: . . . Thank you Mr. Speaker, in the next few years, then you are just dreaming. Because they are. We are going to be faced with this issue. I think we should face it straight on. I think we should face it

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straight on, I think we should face it and deal with it as the Constitution deals with it and I think we should make the football field the same length on both ends. I urge the body's adoption of this motion.

SPEAKER MARVEL: The motion is the adoption of the Vickers amendment as explained by Senator Vickers. All those in favor of adopting the amendment vote aye, opposed vote no. Have you all voted? Have you all voted? Okay, Senator Vickers.

SENATOR VICKERS: I would like a record vote.

SPEAKER MARVEL: Record.

CLERK: 13 ayes, 24 nays, and 12 present and not voting. Vote apperas on pages 1533-34 of the Legislative Journal.

SPEAKER MARVEL: Motion lost.

CLERK: Mr. President, the next amendment I have is offered by Senator Vickers, it is also found on page 1526 of the Journal.

SPEAKER MARVEL: The Chair will hope that you will not repeat what has already been said during the debate this morning, otherwise we are not going to get even to the agenda, let alone through it. The Chair recognizes Senator Vickers.

SENATOR VICKERS: Mr. Chairman and members, Mr. Chairman I would like to withdraw that amendment. I've got one coming up that I filed with the Clerk a little bit ago. With the Speakers.....if it is all right with the Speaker I would like to also hold that next amendment over and work with Senator Beutler between now and Select File and perhaps be able to address these issues on Select File.

SPEAKER MARVEL: Which. . . .a.a.a.a...which. . .

SENATOR VICKERS: I would like unanimous consent to withdraw the amendment that we have got right now and I have another one up there with the. . . .

SPEAKER MARVEL: Is there any objection? If. . hearing none, so ordered.

CLERK: Mr. President, the next amendment I have is from Senator Lamb and Senator Wagner.

SPEAKER MARVEL: Senator Lamb.

SENATOR LAMB: Mr. President, members of the Legislature, first I'll . . . you have a copy of the amendment on your desk and there is another copy being circulated now which will be on your desk in a few minutes which more or less explains the reasons for the amendment. The amendment merely, if you will turn to your bill book, page 6 of LB 252, you will notice the wording on lines 11-14 is merely moved down to following line 23. Basically the wording is changed slightly but that is basically the change in the bill with this amendment. You will note the wording in lines 11 through 14 which talks about the current beneficial uses and the reasonably foreseeable future beneficial uses shall be considered by the director when considering the denial or the approval of the application. But it doesn't say that these, it doesn't give any real emphasis to those criteria of beneficial uses and reasonably foreseeable beneficial uses. By putting this language down lower in the bill where it says, "The application shall be denied if the benefits from the state granting the application do not outweigh the benefits to the state from denying the application or there are present or foreseeably future beneficial uses for water in the basin of origin." So, what it does is exactly the opposite of what Senator Vickers has been trying to do. It gives the basin of origin slightly more protection than under the present bill. As I mentioned before the reason I voted against this bill when it came out of committee is because I did not believe that it gave the basin of origin very much protection at all, if any. I would read to you a quotation from the high plains study from the Ogallala aquifer, which is being circulated on your desks. In the high plains study of the Ogallala aquifer the subject of the protection of the basin of origin was addressed and a position statement was adopted by resolution number six of the high plains study council. In part, that resolution reads: "The present uses and the prospective future need for beneficial purposes for the foreseeable future in the potential basins of origin of surplus water will be considered as having prior rights to the wars involved." Very simply that is what this amendment is striving to do. We are trying to give the basin of origin some protection. I am not opposed to transbasin diversion. I think transbasin diversion can be good, can be beneficial. But, only after the needs of the basin of origin are met should we consider transbasin diversion. I think that is only logical. It is the only practical way to go. I urge the support of the amendment.

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SENATOR NICHOL PRESIDING

SENATOR NICHOL: Senator Wagner.

SENATOR WAGNER: Mr. Speaker and members, I too have similar feelings because I think you are really, when we sit down and look at our water and trying to look into the long range future needs that very definitely the basin of origin I think has to have some protection in there. It is the area in which the water is coming from and the basin there ought to very definitely have the right to that water. Now I'm not against transbasin diversion either, but I have a very strong feeling about the basin of origin ought to have some protection to the water that is in that basin. Therefore this is the reason that I support the amendment and I would ask you to support the amendment too. Thank you.

SENATOR NICHOL: Senator DeCamp, are you in the room? We will go to Senator Beutler and then we will come back to Senator DeCamp if he returns.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, I would like to very strongly oppose this amendment. To date so far in the debate on 252 you have seen numerous attacks on the bill from those who are in favor of looser restrictions on transfers, those who favor transfers. Now you are seeing an attack from the opposite direction from those who would protect the basin of origin absolutely. I do not agree with Senator Lamb that this shifts it slightly in favor of the basin of origin. This particular amendment has the effect of destroying the entire balancing test that we are trying to set up because the change that it makes is in the bottom line. What it is saying is that....it is saying two things. It is saying one, you look at all of these factors and do this balancing test and if the weight isn't on the side of the basin of transfer you reject it or it is setting up an alternative test. It says in part B that you reject the transfer if there are present or reasonably foreseeable future beneficial uses of water in the basin of origin. In other words by that type of structuring you throw out the whole balancing act as far as the factors are concerned and if you can come up with one present or reasonable or one use in the reasonable foreseeable future if you could just come up with one of those then under the law you would reject the application. I submit to you that in almost all cases you are going to be able to come up with a few beneficial uses in the basin of origin. The question is how important and how much weight to give to those uses

in balancing them against the other factors, not to make that factor the absolute factor. That is what they are doing. They are making that the absolute factor. I submit to you that 99 and 100 cases you will be able to find at least one beneficial use either in the present or in the reasonably foreseeable future. So it very definitely has the effect of prohibiting, in my opinion, transbasin diversions in almost all cases. Thank you.

SENATOR NICHOL: Senator DeCamp. Senator Kremer.

SENATOR KREMER: Thank you Mr. President. Now we are swinging way way back in the other direction again. I think Senator Beutler picked it up right away. This is not a slight movement back in the other direction, it is a major movement. Now Senator Lamb made reference to Resolution 6, adopted by the High Plains Study Council. Some of us happen to be on that Council. What we are referring to there the basin of origin are the main stems, the Missouri River and the tributaries to the Missouri we are talking about Nebraska was not. . . that was not part of the resolution. We are talking about moving Missouri River water down into Texas. We are not making reference to streams within Nebraska we are making reference to larger river basins and that is what we are talking about in Resolution 6. I strongly oppose the Lamb amendment. I wish Senator Lamb you could have heard the lecture last night. I mentioned it before. You Senator Lamb live in the water rich area of the state and it was brought out last night that your aquifer thickness there is as great as 800 feet, that is almost unbelievable. Most of it is 400 to 600 feet. Now if I remember correctly the figures given last night were this. The areas of shortage represent 20% of all of the irrigated acres in Nebraska, that is in the Blue River Basin. Unless something can be done about that we are facing some very very serious problems that is going to effect not only that area but the entire state of Nebraska. Now I am willing to compromise and get back to a balance but the Lamb-Wagner amendment go far beyond balance and if we adopt this amendment there is going to be no movement of water and we are going to reap the consequences. Thank you.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Senator Vickers.

SENATOR VICKERS: Mr. President and members, I rise to strongly oppose the Lamb-Wagner amendment. I would also

like to commend Senator Beutler for his honesty in looking at both sides, in attempting to look at both sides of the issue. Even though Senator Beutler and I have disagreed on some of the amendments to this bill I certainly agree with Senator Beutler on this particular one. Senator Lamb says that he is in favor of transbasin diversion but I suggest to this body that if we adopt the Lamb-Wagner amendment we will in all actuality never have any transbasin diversion. If you will notice they are striking I think it is three and four of the criteria and then they are putting down in the language that I tried to amend a little bit ago, they are putting down in the language that says "application shall be denied if" and then they will have two criteria with their amendment. But the first criteria as it is in the bill. The second criteria is "it shall be denied if there are present or reasonably foreseeable future beneficial uses for the water in the basin of origin." Now think about that a minute. You know that there has got to be some arguments made that there can. . . in the reasonably foreseeable future, whatever that is that there might be some beneficial uses for water. You are going to deny it based on that no matter what the other criteria is. It will always be denied. If we are going to set down the rules, again I emphasize to this body that is what we are doing, we are putting down the rules that they operate under. There are members of this body that I am sure hated to see the supreme court rule as they did last year. They didn't want to deal with that issue. Now we are dealing with it. So now they are trying to come up with some way to prohibit it through legislation. I don't think that is right, I don't think it is fair. Whether you are pro or con on this issue I don't think that is our job to make that decision. I think our job is to set down the criteria and then let the courts use that criteria, let the director of the Department of Water Resources use that criteria but to put in criteria that is so strongly on one side or the other is wrong. I would urge this body's rejection of this amendment.

SPEAKER MARVEL: Before we continue it is my privilege to present from Senator Burrows district 38 students from Stoddard School, Beatrice, Nebraska, teachers are Mrs. Workman and Mrs. Hertlein in the north balcony. Will you hold up your hands so we can see where you are? Are they gone? Okay. Also from Senator Maresh's district 16 students from Fairmont, Nebraska High School, Mr. Walburn is the teacher, in the north balcony. There you are, okay. Senator Hoagland.

SENATOR HOAGLAND: Mr. Speaker and colleagues, I wonder if Senator Lamb would yield to a question. Senator Lamb both Senator Beutler and Senator Vickers have argued that in the basin of origin there is always going to be foreseeable future beneficial uses, I mean that is just always going to be the situation. I wonder what your response to that argument is.

SENATOR LAMB: I don't agree Senator Hoagland. If a basin has surplus water to me that means that there is a surplus of water which is not being used beneficially now and not in the foreseeable future. So, I don't see all of the bad things that the people are reading into this amendment. It certainly does give the basin its needed protection. But, if you just read the amendment carefully there are present or reasonably foreseeable future beneficial uses for the water in the basin of origin. I think that is logical. I think that is the way it should be and I don't think that it is going to stop transbasin diversion. It is only going to stop transbasin diversion in those cases where it should not be transferred in the first place because there is a reasonably foreseeable use beneficial use for that water where it is already located.

SENATOR HOAGLAND: But Senator Lamb, isn't there always going to be a situation where there may be some domestic use? Or there maybe some irrigation use that somebody could always say "may in the reasonable future" be undertaken by somebody? And, use that as a basis for denying an application?

SENATOR LAMB: I don't see that as a problem. If that is true, if there is a reasonably foreseeable use then I say no, the water should not be transferred. But, in those basins where there is excess water, where there is no reasonably foreseeable and those are the words that I think you have a definition for and most lawyers know more about what they mean than the rest of us, but those....that is a phrase that means things to people in this business that is really significant. I think it is a proper phrase in this case.

SENATOR HOAGLAND: Thank you Senator Lamb. Let me just say in conclusion colleagues that I am inclined to agree with Senators Kremer, Beutler and Vickers. I think the kind of language that Senator Lamb has chosen to use here is going to shut down transbasin diversion under almost any circumstance because to me somebody can always point to a reasonably foreseeable future beneficial use out there somewhere. Somebody may be thinking of coming in and putting in a Prudential

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Insurance Company type development in the reasonable foreseeable future which would necessarily claim a lot of water and on that basis I think applications would probably have to be denied or surely would give the director the discretion to deny them under all circumstances if he were of that political philosophy. Thank you Mr. Speaker.

SPEAKER MARVEL: Senator Kahle.

SENATOR KAHLE: Mr. Speaker and members, this was drawn out a lot longer I think than any of us really want it to and I hate to even take up the time but I guess as I sit and listen to both sides of this issue and having been an irrigator and I think Senator Kremer and I have been at it about the same length of time, I know the value of water as well as anybody in here. Also remember the fight with tricounty some forty years ago when Adams County was not allowed to finish the canal that was already built. So I am familiar with what happens. I am quite amused really at the...at some of the people along the Platte, including the area that I represent part of it, they are very concerned about not letting that water get away but they are not even close to using it at the present time. Voted down the midstate project a couple of years ago quite soundly. I guess I think of other states and I think that transbasin diversion is absolutely necessary in some areas of our world. I think it is absolutely necessary for the City of Lincoln that it get water from the Platte Valley. I don't know how many of you are aware of that but that is a form of transbasin diversion. I'm not trying to shut Lincoln's water off or anything like that but I think that you ought to realize that we are already diverting water. It is necessary. The thing that really bothers me, and we spend I don't know how many hours the other day and we are spending a lot this morning arguing what we should do with the water. While we are arguing it runs away. The next step is of course that our Natural Resource Districts are suing each other or taking the issue to court and spending the tax payers money to do it while the water still runs away. Until we get smart enough, some of you mentioned dams, that is certainly part of the answer, we can't get any of those built either. Until we get smart enough to use that water for beneficial use whether it is in the basin or out of the basin we are just not getting anything done. We can argue here to doomsday and it is not going to grow one hill of corn or one plant of beans or anything else. So I would hope that we could. . . . I think this bill was ill advised in the first place. I think we are in the

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courts with this thing now and it should have been left there. Thank you.

SPEAKER MARVEL: Senator Dworak.

SENATOR DWORAK: Mr. Speaker, colleagues, I find it almost amusing to hear Senator Hoagland maintain that he wants to protect the contributing basin where there is a reasonable foreseeable future use of water for whatever that reason may be, whether it be drinking water, he mentioned drinking water, irrigation, he mentioned irrigation and he said gosh, we are really going to curtail transbasin diversion if there is a foreseeable future beneficial use. But I thought this body was pretty well decided that we wanted to protect that contributing basin. If there was in fact a legitimate foreseeable future use we would want to protect those people. So, I don't see where this amendment is changing the basic philosophy, the whole concept of the bill. I think everybody in the room, including myself, absolutely in favor of transbasin diversion when there is a surplus and water is being wasted. But, when there is no surplus and when we are taking away that water from some people that need it when we are disadvantaging those people that need it and can use it at the advantage of somebody else, then I think we have got some real serious problems and I think Senator Lamb's amendment hits it square on, straight on. I hear Senator Kremer say hey, this is a great concept protecting the contributing basin when we are talking about a multiple state situation and we are talking about large rivers but then says the concept is not valid when we are talking about smaller basins. I can't understand or follow the logic of that. I think the amendment is a good amendment and I don't think it drastically alters the bill. All it does is reinforce what we have been talking about here for eight hours, almost. We are just merely reinforcing that principle. I think if we didn't put this in here we'd create some doubt. Again, and Senator Kahle says that it should stay in the courts, I disagree, it should be in this legislative body. It should have been in this legislative body fifteen-twenty years ago. Because we refused to bite the bullet, because we refused to react it got into the courts. We gave them our authority, we gave it up. I think the Lamb-Wagner amendment is a good amendment, a solid amendment and one that ought to be adopted.

SPEAKER MARVEL: Senator Koch.

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

SPEAKER MARVEL: Do I see five hands? Okay. All those in favor of ceasing debate vote aye, opposed vote no. Shall debate cease? Record.

CLERK: 25 ayes, 0 nays on the motion to cease debate Mr. President.

SPEAKER MARVEL: Debate is ceased. Senator Lamb, do you wish to close on your amendment?

SENATOR LAMB: Yes, Mr. Speaker. Just very briefly members of the Legislature I think this issue has been debated sufficiently and I would comment briefly on the high plains study on the Ogalla aquifer and Senator Kremer says and he is correct that the resolution was adopted referring to big rivers, multi-state rivers and I agree with Senator Dworak that there really is no difference. If you are going to protect the basin of origin on a large river basis you should be protecting the basin of origin in a small river basin. The people there are effected equally. The bill or the amendment does not have the wide spread significance that some people have attributed to it but it is a step toward protecting that basin of origin which I think most of us agree should be protected. I urge the adoption of the amendment.

SPEAKER MARVEL: The motion is the adoption of the Lamb-Wagner amendment to the bill. All those in favor vote aye, opposed vote no. Have you all voted? Have you all voted? Senator Lamb.

SENATOR LAMB: A record vote Mr. Speaker.

SPEAKER MARVEL: Okay, record.

CLERK: 13 ayes, 20 nays, 15 present and not voting, 1 excused and not voting. Vote appears on pages 1534-35 of the Legislative Journal.

SPEAKER MARVEL: Motion lost.

CLERK: Mr. President, I now have an amendment from Senator Vickers.

SPEAKER MARVEL: The Chair recognizes Senator Vickers.

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LB 252, 118, 326, 555

SENATOR VICKERS: A question of the Clerk. Is this the last amendment that I put up Pat?

CLERK: Yes sir.

SENATOR VICKERS: Mr. Chairman and members, I'm going to try to work with Senator Beutler between General File and Select File to see if we can't work out some of our differences in this regard. I just want to make it clear for the record that I will vote to advance 252 over to Select File and work with Senator Beutler or any other interested parties in the mean time to try to come up with some criteria so that the proposals for the criteria are equal as best as possible for the pro and con sides of transbasin diversion. So, having said that Mr. Speaker, I would like to withdraw this amendment at this time and offer it on Select File.

SPEAKER MARVEL: Okay, the motion is to advance the bill. All those in favor of advancing the bill vote aye, opposed vote no. Record the vote.

CLERK: 28 ayes, 7 nays on a motion to advance the bill Mr. President.

SPEAKER MARVEL: The motion is carried, the bill is advanced. The next bill is LB 326?

CLERK: Mr. President, if I may right before that, Senator Vickers would like to print amendments to LB 252 in the Journal.

Business & labor reports LB 118 to General File with amendments, (Signed) Senator Maresh, Chair.

Senator Newell moves to withdraw LB 555. That will be laid over pursuant to our rules Mr. President.

Your Retirement System gives notice of hearing for certain gubernatorial appointments in Room 1019 for April 28th. That is signed by Senator Fowler, Chair.

Mr. President, LB 326 was introduced by the Public Works Committee and signed by its members. Read title. The bill was first read on January 19th of this year, referred to Public Works for hearing. The bill was advanced to General File.

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LB 160, 161, 163, 232, 241,
252, 326, 557-562

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer this morning by the Reverend Dwayne Lueck from Trinity Lutheran Church, Martinsburg, Nebraska. This is Senator VonMinden's pastor.

REV. LUECK: Prayer offered.

PRESIDENT: Roll call. Has everybody registered your presence? Record the presence, Mr. Clerk.

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

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

CLERK: Mr. President, correction, page 1577, line 7, add Senator Hefner's name after Sieck.

PRESIDENT: Correction so ordered. Any messages, reports or announcements, Mr. Clerk?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 252 and recommend that same be placed on Select File with amendments; LB 326 Select File with amendments; LB 232 Select File with amendments; LB 160 Select File; LB 161 Select File; LB 557 Select File; LB 558 Select File; LB 559 Select File with amendments; LB 560 Select File; LB 561 Select File; LB 163 Select File with amendments; LB 562 Select File, all signed by Senator Kilgarin as Chair.

Mr. President, LR 60 is ready for your signature.

PRESIDENT: While the Legislature is in session and capable of doing business, I propose to sign and I do sign LR 60. We are ready then for agenda item #4. The Sergeant at Arms will see that all members are at their desks and clear the aisles for Final Reading. We are ready for Final Reading as soon as everyone takes their places. We are about ready for Final Reading. As soon as everyone is in their place we will commence Final Reading. All right, we will commence. The first bill on Final Reading, Mr. Clerk, is LB 241.

CLERK: (Read LB 241 on Final Reading.)

PRESIDENT: (Interrupts reading.) Pardon me, Mr. Clerk, will you stop please. Senator Koch, for what purpose do you arise?

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LB 184, 252, 318, 451
LR 89

and vote for LB 184.

SPEAKER MARVEL: Okay, the motion is the adoption of the....the motion is the advancement of the bill. All those in favor vote aye, opposed vote no. Have you all voted? Senator Burrows.

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

SPEAKER MARVEL: Shall the House go under call first. First motion, all those in favor of placing the House under Call vote aye, opposed vote no. Record the vote.

CLERK: 21 ayes, 1 nay to go under Call, Mr. President.

SPEAKER MARVEL: The Legislature is under Call. Please record your presence. Senator Cullan, Senator Kilgarin, Senator Schmit, Senator Howard Peterson, Senator Goodrich, Senator Newell, Senator Chambers. Mr. Sergeant at Arms, you are looking for: Senator Newell, Senator Goodrich. Everybody else is accounted. Senator Chambers, do you want to record your presence. Okay, Senator Burrows, everybody is here but Senator Goodrich. Should we proceed?

CLERK: Roll call vote. 22 ayes, 20 nays, 1 present and not voting, 5 excused and not voting, and 1 absent and not voting. Vote appears on pages 1767-68 of the Legislative Journal.

SPEAKER MARVEL: Do you have anything to read in?

CLERK: Yes sir. Mr. President, Senator Cullan would like to print amendments to 451 in the Journal.

Mr. President, Senator Vickers to LB 252. Senator Koch to LB 318.

Mr. President, your committee. . .Mr. President, a new resolution, LR 89 offered by Senators Landis, Schmit, Chambers, Johnson, Fowler and DeCamp calls for a study to (Read title of LR 89). That will be referred to the Board, Mr. President.

SPEAKER MARVEL: Senator Fitzgerald, would you like to adjourn us until nine o'clock tomorrow morning.

SENATOR FITZGERALD: I would like to adjourn us till Wednesday, May 6, nine o'clock.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. Motion is carried. We are adjourned until nine o'clock tomorrow morning.

Edited by:

Marilyn Zank
Marilyn Zank

4569

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LR 103 - 108
LB 146, 252

by the Judiciary calling for a study of the victims of crime, their needs, and whether they are fully compensated for their losses. LR 103, purpose of the study being a study regarding the feasibility of realignment of Nebraska Judicial Districts. LR 104 by the Judiciary Committee regarding the funding sources of the Grand Island Law Enforcement Training Center. LR 105 by Judiciary, recodification of the Juvenile Code. LR 106 by Senator Higgins calling for a study by the Banking, Commerce and Insurance Committee pursuant to medicaid supplement. LR 107 by Senator Lamb, purpose of the study being to continue interstate cooperative effort to gather, coordinate, share and evaluate information regarding the proposed MANDAN project. LR 108 offered by Senator Koch regarding a study of the appropriate role of the state in the regulation and supervision of private and denominational schools.

And, Mr. President, Senator Wagner and Lamb would like to print amendments to LB 252 in the Journal.

Mr. President, the next amendment I have to LB 146 is by Senator Kremer and that is found on page 1710 of the Journal.

SENATOR CLARK: Senator Kremer.

SENATOR KREMER: Mr. Chairman and members of the Legislature, I will try to explain to the best of my ability what we are doing here. Under a section in the bill we have this language that "It may require water users to implement irrigation scheduling programs to schedule, to the extent possible,"... then this language here we are striking from now on out, "taking into account the type of irrigation system being used." There is a certain part of the industry, namely, the center pivot people, felt that it was unfair to them to have this language in and that we are singling them out. Now it is actually under this kind of a system only that you can schedule. In other words, scheduling gets controlled by a central area of control, such as, the headquarters of the supplier which could be a rural, generally is, and if you are using irrigation under a center pivot system or under a sprinkler system, they will push a button and it will stop the system, and it will not go on until you start it up again. That is scheduling. Now under gravity irrigation it is almost impossible because in order to get the water down to a far end you have to supply water at the source until it gets there. Well if the service goes off when you are halfway down, then you have got to start all over again. Then you are defeating your own purpose. So scheduling is practical only under a sprinkler system, either movable or overhead. So since they thought we were unfair, I

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LB 266, 266A, 252, 545

SENATOR WESELY: Yes, I move its advancement.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. The bill is advanced. LB 266A.

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

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move we advance LB 266A.

SENATOR CLARK: You have heard the motion on advancing LB 266A. All those in favor say aye, opposed. The bill is advanced. LB 545.

CLERK: Mr. President, there are E & R amendments on LB 545.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: Yes, I move we adopt the E & R amendments to LB 545.

SENATOR CLARK: The motion is to adopt the E & R amendments on LB 545. All those in favor say aye, all those opposed. They are adopted.

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

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move we advance LB 545.

SENATOR CLARK: You have heard the motion. All those in favor say aye, opposed. The bill is advanced. LB 252. The Clerk wants to read a couple of things in.

CLERK: Mr. President, LR 126 offered by Senators Clark, Marsh, Barret, Nichol, Kahle, Wesely, Fitzgerald, Goodrich, Warner and Maresh. (Read LR 126 as found on page 1835 to 1836 of the Legislative Journal.) LR 127 offered by Senator Haberman. LR 128 offered by Senator Higgins and Cullan. (Read LR 127 and LR 128 as found on pages 1836-1837 of the Legislative Journal.)

SENATOR CLARK: LB 252.

CLERK: Mr. President, LB 252, Mr. President, does have an E & R amendment pending.

SENATOR CLARK: Senator Kilgarin.

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LB 252

SENATOR KILGARIN: I move the E & R amendment to LB 252 be adopted.

SENATOR CLARK: The motion is to adopt the E & R amendments to LB 252. All those in favor say aye, opposed no. The amendments are adopted. Do you have anything further on the bill?

CLERK: Yes, sir, I do. Mr. President, the next amendment I have is from Senator Vickers and it is on page 1535 of the Journal.

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Pat, did you tell the number of the Journal page that it was on?

CLERK: 1535, Senator.

SENATOR VICKERS: Thank you. Mr. President, members, the amendment that I am offering to LB 252 is another attempt on my part to make this bill in the middle of the road instead of leaning toward one side or the other. The amendment would strike all of Section 5 and put in all new language. Part of the problem as we discussed earlier with Section 5 is that the criteria set down is more in... about five of the seven I think are in favor of the basin of origin and it seems to me that we should have equal treatment to both the basin of origin and the requesting basin when we are dealing with transbasin diversion, realizing that we are not the ones that are allowing the transbasin. We are not the ones that are allowing the appropriation. We are simply the body that is supposed to set the criteria that the Director of the Department of Water Resources and the courts of this state would follow in their determination of whether or not to allow applications to be granted for transbasin diversion. So the amendment has twelve different criteria and I have attempted to set them out so that there are six on either side, six for the basin of origin and six lean toward the requesting basin, however, they are not drafted in that fashion. As you will notice transbasin or the basin of origin is not mentioned because of the intent language at the top of Section 5. Now part of the problem I think we face there is this very simply. The Constitution of the State of Nebraska says that the right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denials demanded by the public interest. Now that is what we are attempting to set up with LB 252 is criteria as to what the public interest is. Now since the

Constitution says that it can't be denied except for this reason and it does not say anything about it being in the basin or out of the basin and that was the basis of the court decision last summer, that indicated transbasin diversion is, in fact, legal in the State of Nebraska, then I don't think it is incumbent on us to make a decision in statute that would treat the request for an application for an appropriation of water that would happen to be out of the basin, make them jump through different hoops if you will, than an application for an appropriation within the same basin. We have got an Attorney General's opinion coming on this, on that very question. We have not got it back yet but I happen to think that probably it is going to be unconstitutional. So what I am saying or suggesting is that we set an acre foot figure that every application over a certain amount, every application of over 5,000 acre feet and that would certainly not include any individual farmer or even a very large farmer for that matter that would file for an application would certainly be above that so it would always be irrigation districts or something of that nature that would be applying for that amount of surface water. Everybody that applied for an application for an appropriation of over 5,000 acre feet would have to follow the same criteria that we are setting down in LB 252. Now the argument has been made on this floor that if you take water out of the river that it affects the river downstream and that certain impacts might result and that is the reason for the language on page 6 of 252. That is also the reason for the language in the amendment that I am offering to you where it talks about economical and environmental and other benefits, adverse impacts, current beneficial uses of water and proposed beneficial uses and so forth. It seems to me that that same impact could be felt by the basin or by the river if the water was taken out of the river and kept out of the stream for a distance of one hundred to a hundred and fifty miles before it went back. Now the argument can always be made of course that you will have return flows from irrigation. Well lets assume that a new project will go in and I think as most of the new projects will all be in the future, most of them will be in lined canals or in pipes, therefore, the return flow to the river will not be felt near as quickly as it is nowadays. For instance, if the Tri-County system that is out there in central Nebraska was, if the main canal was a lined canal and the point that the water comes out of the river is just downstream from North Platte, Nebraska, the point where the actual irrigation out of that system starts, where the return flows if you will, that would be caused by the actual irrigation is not until you get down around Elwood, Nebraska. Now that is a period of several

miles, probably fifty miles or more. Now if that canal that goes down there was a lined canal there would certainly be an adverse impact, it seems to me, on the Platte River from that point where it was diverted out until you got down to around the Lexington area. So, if that is going to be the case in new applications and I believe it will be, then I think there should be a concern of those people within the basin that the impact on the river before they get the water back in if you will, would be just as great on that stretch of the river as if the water went completely over into another basin and never came back. Once it is taken out at North Platte as far as the people at Maxwell are concerned, it is out of the river. It is gone. And it seems to me that we should require applications of that magnitude, of that size to follow the same criteria as far as the public benefit is concerned. One of the other, on 11 and 12, and I think this needs to be pointed out. I think there are some people that would be concerned about this. So I am not attempting to hide anything. Number 11 and 12 on the amendment that I am offering, number 11 says, where the water is proposed to be used to supplement or enhance an existing beneficial use of water and number 12 is whether it is proposed to be used to initiate a beneficial use. Now it seems to me...

SENATOR CLARK: Senator Marsh, for what purpose do you arise?

SENATOR MARSH: A point of order. I think it is very discourteous of this body not to listen when someone is speaking and I am in the row in front of the senator who is speaking and it is difficult for me to hear in my row.

SENATOR CLARK: Senator Marsh, I can quiet them down but I can't make them listen. (Gavel.) Let's try to keep it a little bit quiet, please. It is discourteous. Go ahead, Senator Vickers.

SENATOR VICKERS: Thank you, Mr. Chairman. Pat, I was just informed that the amendment on 1535 is the two short ones. Do I have one right behind that?

CLERK: Yes, sir, you do.

SENATOR VICKERS: Okay, I am talking about the one right behind that. I would like unanimous consent to withdraw the amendment on 1535 and take the next one then.

SENATOR CLARK: Senator Dworak, for what purpose do you arise?

SENATOR DWORAK: Now I am totally confused. He is withdrawing the amendment he just explained?

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SENATOR VICKERS: No, I was explaining the amendment that I am offering next, Senator Dworak. I thought that was the amendment that was on 1535. I apologize.

SENATOR DWORAK: It is not on 1535?

CLERK: It is now, Senator, the amendment that is before us is now on 1773.

SENATOR DWORAK: Is this the one that shifts burden of proof from the asking basin to the giving basin?

SENATOR VICKERS: No, Senator Dworak.

SENATOR DWORAK: Is that on 1535?

SENATOR CLARK: Senator Dworak, we will let him speak to the amendment, then you can get it from there. I will let you speak at your turn.

SENATOR DWORAK: A point of order.

SENATOR CLARK: What is your point?

SENATOR DWORAK: He just debated and opened on an amendment.

SENATOR CLARK: He was explaining the amendment he thought was on that one page. It was not. It was on another page and he is just telling you that it is on another page.

SENATOR DWORAK: How much time does he have left, Mr. President?

SENATOR VICKERS: I won't have any time left if you keep asking questions, Senator Dworak.

SENATOR CLARK: He has got two minutes and you will get them anyway, Senator.

SENATOR DWORAK: Thank you.

SENATOR HABERMAN: ...amendment on? Page please?

SENATOR CLARK: Mr. Clerk, tell him the page number.

CLERK: Senator, the amendment is on page 1773.

SENATOR CLARK: 1773. Continue, Senator Vickers.

SENATOR VICKERS: Thank you, Mr. Chairman. I apologize to the body. I didn't realize that wasn't the amendment that

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we were discussing but the amendment that I am discussing is on page 1773 and in direct answer to Senator Dworak's question, it does not put the burden of proof on the other basin. As I was indicating to you it does not mention basin of origin or requesting basin at all. I will repeat one more time because of the way the Constitution of the State of Nebraska is drafted and because of the court's interpretation of that Constitution that allowed last summer the overthrow of the Osterman decision of 1936, I think that LB 252 in its present form, and I indicated I have got an Attorney General's opinion coming. I have not got it yet. It is probably unconstitutional. I don't think we can treat one application different than another and the only thing we could possibly do, and I am also asking for an opinion on that, is to split the amounts. So I am indicating that anything over 5,000 acre feet, any application of over 5,000 acre feet would have to jump through the same hoops, follow the same criteria that my amendment would put in LB 252, and those criteria, I am attempting to make them as equal as possible to the river that the water is being taken out of as opposed to...

SENATOR CLARK: You have one minute left.

SENATOR VICKERS: ...to the application for the appropriation, and number 11 and 12, I would again point out to the body, it is my belief, and I think many people's belief, that if we are going to appropriate large amounts of water in this state which I think we are going to have to do in the future, with certain areas of this state, I think we should take the water out to be used to supplement or enhance an existing beneficial use. And I think, and that is my opinion, but I think it is incumbent that we put both sides of the issue in and allow the director to make the decision. But I think the director should look at whether or not it is going to be used for an existing beneficial use or to initiate a beneficial use. That I think also should be part of the criteria. That is the only new criteria...

SENATOR CLARK: Your time is up.

SENATOR VICKERS: ...I am attempting to put into LB 252. Thank you, Mr. Chairman.

SENATOR CLARK: I would like to introduce 28 fifth grade and sixth grade students and five adults from Roseland Elementary School in Roseland, Nebraska. They have three teachers with them. They are in the North balcony. Would you hold up your hands so we can recognize you, please? Welcome to the Nebraska Legislature. The next speaker is Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, let me remind you again briefly that the bill at this time does have a slight preference for the basin of origin. As you will remember from General File the bill was attacked from both sides as not protecting the basin of origin enough, and from the other side, not allowing enough transfer, not allowing enough latitude for transfer. The General File debate reinforced my belief that the bill does have a good sense of balance, that it does slightly favor the basin of origin but that it does allow for transfers in reasonable situations. Again, at this stage of debate, the bill is being attacked from both directions. Senator Vickers has the amendment that we are discussing right now. There is a second amendment on file which would protect the basin of origin significantly more and just to give you a sense of direction there is a third amendment on file which is basically technical in nature but which I will discuss presently because it relates to Senator Vickers' amendment. I hope that you do not adopt the Vickers amendment for the simple reason that I feel that it does tilt the balance more in favor of the basin to which the water would be transferred and it is understandable that Senator Vickers should be fighting hard for this, his area. His is a very water short area but beyond the fact that we are tipping the balance there is another dimension to this amendment which he has talked about but which is an element which needs much much more research and much much more discussion in this state before we venture to resolving the problem. Senator Vickers' amendment would lay down criteria for determining when applications were proper simply for taking river water out for use on land adjacent to the river. As you all know we have an appropriations system in this state for the use of water and first in time is first in right by and large. Now what Senator Vickers is saying is that there is one principle applicable both to transfers in the basin and to transfers between basins insofar as our Constitution speaks and the Constitution says that all of these applications, all these transfers, all these takings of water will be allowable except when it is in the public interest. Now in LB 252 we have taken half of that problem and we said with regard to the transfer of water as between basins, we will define what the public interest means and we have set out the criteria. Now what Senator Vickers would have you do by this amendment is something that will need to be done in the future but which broadly expands the scope of this bill by laying out criteria which are applicable to the simple taking of water and use of it within the basin. This is a very very hot topic as I do not need to tell you. So I would ask you to reject it for that second reason. Let me say in conjunction with that second rationale though,

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that I do not feel that it is unconstitutional to distinguish the two situations and that the technical amendment that I am proposing later sets out intent language which I believe gives a rational basis for distinguishing the two situations...

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Senator Beutler, you have one minute.

SENATOR BEUTLER: ...and by creating and articulating that rational basis in the statute, thereby giving the court reason to distinguish the two. I do not believe that it is unconstitutional with regard to the protection of the basin of origin. One last point, Mr. Speaker, I would like to point out to you the High Plains study that was done recently and it had to do with the use of the water in the High Plains state, in Nebraska and Kansas, in Oklahoma and Texas, where they don't have much left now but a resolution was adopted by that study committee which included Senator Kremer. I am not sure if he voted on this resolution or not but at any rate the resolution went like this. "The present uses and prospective future uses for beneficial purposes for the foreseeable future in the potential basins of origin," that is Nebraska in this context, "will be considered as having prior rights to the water involved." In other words, the basin of origin in their analysis should have the prior rights. Nebraska, where the water is, should have prior rights before we transfer it to Texas or Oklahoma or Kansas and I am saying the same thing with regard to Nebraska, that is, that the basin of origin within the state should have prior rights and a slight advantage as opposed to the basins to which we would propose to transfer the water. So I would ask you to keep the bill in its present form and reject the amendment. Thank you.

SPEAKER MARVEL: Now there are about ten names. We will have to cease discussion of this at the moment and we have got the list of names and these will be verified tomorrow. Yes, go ahead.

CLERK: Mr. President, real quickly if I may, study resolutions, LR 129. (Read purpose.) LR 130. (Read purpose.) LR 131. (Read purpose.) LR 132. (Read purpose.) LR 133. (Read purpose. See pages 1838-1840 of the Legislative Journal.)

I have a committee report from the Ag and Environment Committee regarding confirmation hearings, Mr. President. (See pages 1840-1841 of the Legislative Journal.) That is all that I have.

CEREMONIES

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LB 252

SENATOR CLARK: I would like to announce there is 28 eighth grade students and five adults from Holy Name grade school in Omaha, Nebraska. Sister Carol and Miss Barbara Hazard (Phonetic) are the teachers. Would you raise your hands in the North balcony so we can see you and be recognized? They are from Vard Johnson's District. Welcome to the Legislature. Senator Vickers, would you kindly explain your amendment. Then we will have the people turn their lights back on that were on yesterday. We are only going to be on this until eleven-fifteen. Go ahead, I think you are on.

SENATOR VICKERS: Mr. President, I would like to yield my opening time to my cointroducer of this amendment, Senator Sieck.

SENATOR CLARK: The Vickers amendment on page 1773 is what we are on at the present time.

SENATOR SIECK: Mr. President, members of the body...

SENATOR CLARK: Before you start, Senator Sieck, I have got 48 fourth graders. They do not stay too long so I like to announce it, from West Point Public Schools, West Point, Nebraska, Senator Chronister's district. Carolyn Boyum and Barbara Albers are the teachers. There are five mothers with them also. Would you raise your hands so we can see where you are and be recognized? They are up over here in the balcony. Welcome to the Legislature, all of you. Senator Sieck, go ahead.

SENATOR SIECK: Thank you, Mr. President, members of the body, you all received on your desks, a map of the State of Nebraska of the different water areas and you also received on your desk a commentary from the Ford Motor Company. I would like to have you look at both of those so that you begin to get a better picture of what we are talking about. What we are addressing here with this amendment is to, we feel, that the water is for the State of Nebraska and that we should be concerned any time water is diverted out of the stream wherever it is diverted and that we should use these criterias which we set out in this amendment in order to address ourselves in that fashion. Now that also means in the water within that particular basin if it is diverted to another area of that basin, that these criterias should be considered. The economic, environmental and other benefits of the proposed uses, we feel, that the beneficial uses and the environment and the economics should be considered. Now I am going to address myself to the Upper Blue area. If you look at that map you can see

that I should be concerned of what is happening with the water in the State of Nebraska. We have a large area there that we are suffering, a depleting groundwater table. I also feel that if we are going to ask for water from another area, that we should be sure that we are making full use of the water within our given area that is flowing out of that area and I think this amendment, and I know this amendment stresses that. It says in #5, "alternate sources of water available for future beneficial uses." Okay, that means the water within that basin and that we should look at that and I have constantly told my people before we can expect any water to come from another basin we have to look at the water in our own basin and I feel that this amendment does address it as such. It also says in 7, "any current beneficial uses of water which would be supplemented by the proposed uses." Okay, we would use our own water first and this water that we are trying to get from another basin, and as you can see by the map it would automatically be the Platte Basin because the Blue River Basin almost lies at the stream bank of the Platte River Basin. It looks, as you look at your map, it only could be a mile or two miles away from the Platte Basin. I know it lies very close and you can see that the groundwater table is dropping even right next to the Blue River Basin. I also notice that in Buffalo County that there is some water dropping in that particular area and we are not...this amendment does not say that we are going to take this water away from you. We feel that this water is necessary in that area and that you should have first priority. There is no question in our mind about this and I feel that that is what this amendment will protect. Now it should be this way and I think there is plans to take care of this. I think the Prairie Bend is in that particular area and it will try to correct some of those areas. I think that is what it should do and I feel this amendment is going to do that. # 10, "any reasonable, foreseeable future beneficial uses of the water". Okay, we are letting you do this and this is a word that I have a lot of difficulty with. Any time you say "reasonable" it just opens up a can of worms but we are willing to accept this. We know that this is the only way we can get anything across so we are willing to accept any reasonable, foreseeable future use of water in your particular area, although I have some real concerns about this but I am willing to accept it. I do feel that this is a good amendment. It protects the water in the total State of Nebraska and I think that we should...

SENATOR CLARK: You have thirty seconds left.

SENATOR SIECK: ...accept this amendment. I heartily endorse this amendment and with this I will close, hoping that the

legislative body sees the need of the water in the State of Nebraska instead of being selfish and have a selfish motive in their particular basin. Thank you.

SENATOR CLARK: We have 20 third and fourth graders and 13 sixth graders from East Butler, Brainard, Nebraska. Joan Petrzilka and Mary Lou Meister are the teachers. Four adults are with them, in the North balcony. Would you raise your hands, please? Welcome to the Legislature. The next speaker we have is Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I am going to be very brief because I don't want to repeat everything that was said yesterday. On the other hand, I don't want to leave you cold but let's just review very quickly what the amendment does, in my opinion. As compared to what is before you in the bill right now, the amendment would have the effect of shifting the advantage slightly in the direction of the basin of transfer and against the basin of origin. Secondly, let me remind you that the amendment involves a new concept and that is applying these public interest criteria that we set up, not only to interbasin transfers, but to water that is taken from a river for use within the basin. So in that respect the amendment goes far, far, far beyond the original bill and although that is something we want to do eventually, I think it is something that does require and should require a great deal of study and I think if you adopted this amendment now your constituents would be demanding from you shortly, an explanation of why this was done without a public hearing and without their input. So I would encourage you, for those two reasons again, to defeat the amendment. Thank you.

SENATOR CLARK: Senator Wagner.

SENATOR WAGNER: Mr. Speaker and members, I oppose the Vickers amendment. I think one of the things you really need to look at, it just completely changes the course of the bill. It takes out Section 4 in there that talks about river basins. It takes out some of the definitions. It is a different concept and it evidently was not discussed at a public hearing. We spent a great deal of time on this bill so far and I think we just kind of back and forth with amendments. I am very much opposed to it. I don't think this is the time to add amendments like this. I think the bill is basically not too bad the way it is and I would be willing to withdraw our other amendments if this amendment is defeated and I would say that if this Vickers amendment is put on, I will try to amend that amendment further and it is going to take some more time. I think we ought to defeat it now and go on with the bill. Thank you.

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LB 252

SENATOR CLARK: Senator Lamb.

SENATOR LAMB: Mr. President and members, I rise to also oppose the Vickers amendment, and as Senator Wagner and others have said, it is a major rewrite of the bill, and if you will look at the amendment you will see that. If you will look at it in the Journal, you will see that it is a major rewrite of the bill. It is the sort of thing that should be introduced separately if this concept is to be approved by the Legislature. I urge the amendment be defeated.

SENATOR CLARK: Senator Kremer.

SENATOR KREMER: Mr. Chairman and members, I stand here today to support the Vickers amendment to LB 252. First of all, I would like to compliment Senator Beutler. He may be assuming that I am against the Legislature taking an active role in providing guidelines whereby the Director of Water Resources would make a decision if or when or how much water may be diverted, if that time ever comes. However, I said this in the committee and I did not vote to bring this bill out of committee because I felt it was premature. I think Senator Beutler said yesterday this whole issue does need, and I think he used the word, "intensive study". I agree with that. We have not had that. We did not spend a lot of time on this bill in the committee. Again I do not deny that the Legislature should take an active role. I think it has been said that the amendment that is brought before us by Senator Vickers is a rewrite. The bill needs a rewriting. Senator Vickers is trying to bring about a balance as far as public interest is concerned between the basin of origin and the basin of request. It is my opinion that he is doing that. We all have our opinions, of course, depending on which side of the Platte River we live on. The Nebraska Water Resources Association has put together a pretty fine film. You ought to see it. Unless we in Nebraska are willing to work together and take this tremendous resource that we have in its great abundance, and I say that without hesitation, and use it wisely to help all people, we are not going to make the best use of it and we are all going to suffer for it. I firmly believe that the Vickers set of amendments do bring about a balance. That is all we are asking for and, Senator Beutler, again I compliment you for bringing this issue up. It may be premature but it is here. Now let's all cooperate and do that what is right and what is fair and which is honorable. That is all we are asking here. Thank you.

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President and members, I rise to take exception with some of the comments that have been made by Senator Beutler, Senator Lamb and Senator Wagner. First of all, this is not a major rewrite of this bill in any way, shape or form. It was indicated by one of the speakers that I took out some definitions. If you will study the amendment that I am offering and study the existing bill, you will find out we did not take out one definition. I defy anybody in this body to point out one definition that has been taken out of there. The only thing we did was take out the words "transbasin or basin of origin". We didn't change any definitions. We did, however, add some definitions. Now we do that sort of thing on this floor all the time and nobody stands up and says this is a major rewrite of the bill. Senator Lamb and Senator Wagner last...when this bill was on General File attempted to put a major rewrite in, if you want to term it that, but nobody stood up and said that this is a major rewrite and it should go back to a public hearing or introduce a separate bill. I think that is ridiculous. I think somebody is crying "wolf" but, of course, I can understand it. Those that have want to keep. They do not want to share. They do not want to look at the state as an entire state. They want to look at districts. I think our title is State Senator. I don't think our title is District Senator. We are supposed to look at what is good for the entire State of Nebraska. I passed out a map on your desks. You will notice there is some red areas and there is some blue areas. Now, obviously, if you don't live in a red area you don't give a damn about those red areas. I don't think that is the way we should operate in this body. I think we should be concerned whether or not we live there. If we operated that way then I wouldn't be of the least bit concerned about some of the urban problems of this state. I wouldn't be the least bit concerned about some problems in the eastern part of this state because I don't live there. Somebody mentioned that we take a lot of time on bills. We discussed a resolution this morning that has no more effect than a letter for hours, for an hour at least or more, and now there are going to be people upset because we are taking some time on an issue that I think has the most far-reaching impact in the State of Nebraska of any legislation we are going to pass this year but there are members of this body that don't even want to take time to study the issue. I have had people tell me I don't understand the water problems. In essence what they are telling me is I really don't want to find out either. They say this is a new concept. Senator Beutler said this is a new concept in appropriations, setting down the benefits, public benefit. The new concept is in the bill. The Constitution says that no appropriation shall be denied except when

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such denial is demanded by the public interest. That would indicate to me and the courts took it to mean that that meant all appropriations, all appropriations, but the bill says, no, that is not true. We are going to set up guidelines, we are going to put down in the statutes what the definition of public interest is only, only for those appropriations that are of transbasin nature. Senator Beutler says that that's...and what I am trying to do is say, no, no, we are going to put down in the statutes all right what the criteria of public interest is but we are going to make it apply to all, all appropriations over a certain size, all appropriations, no matter whether they are in basin or out of basin, and yet Senator Beutler says that is a new concept. Well, the new concept, if it is a new concept, is putting in the difference of size, the small appropriation will not have to follow the same criteria that a larger appropriation would. The new concept, I'll remind you, is in the bill not in the amendment.

SENATOR CLARK: You have one minute left.

SENATOR VICKERS: Thank you, Mr. President. We have spent thousands of dollars in this state on studies of ground water recharge, on ways of trying to figure out how to address the water problems of this state. The public, it has been said, it was said just the other day that the public is demanding us to do something about water. Yet when we discuss an issue that would really...is really at the root of our water problems in this State of Nebraska, many people become very self-protective and say we are not even willing to make it so it is possible to happen. One final point, Senator Beutler says that I am moving toward the basin of transfer. I will deal with that in my closing. I will simply point out that the bill right now has seven criteria, four of them slanted slightly toward the basin of transfer, five of them obviously slanted toward the basin of origin.

SENATOR CLARK: Your time is up, Senator Vickers.

SENATOR VICKERS: I am attempting to make them equal. I don't think that is going one way or the other. Thank you, Mr. President.

SENATOR CLARK: Howard Peterson.

SENATOR H. PETERSON: Mr. Chairman, I would call the question.

SENATOR CLARK: The question has been called for. Do I see five hands? I do. All those in favor of ceasing debate vote aye, opposed no.

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CLERK: Serator Clark voting yes.

SENATOR CLARK: Have you all voted on ceasing debate? From up here it looks like we are losing a lot of members off the floor. Have you all voted on ceasing debate? Once more, have you all voted? Record the vote.

CLERK: 25 ayes, 1 nay to cease debate, Mr. President.

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

SENATOR VICKERS: Mr. President, to start with, I would like to ask for a Call of the House.

SENATOR CLARK: A Call of the House has been asked for. All those in favor of a Call of the House vote aye, opposed no. Record the vote.

CLERK: 10 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All unauthorized personnel will leave the floor. Everyone will check in please. All Senators will return to their seats. Will everyone check in please? Will you kindly check in please? We have got DeCamp, Maresh, Schmit, Wesely. Maresh, Newell. Senator Schmit. We are under Call. If we will all get to our seats it will make it a little bit easier. While we are waiting for those three, I would like to introduce guests of Senator Haberman, Mr. and Mrs. Tom Plummer, Jr. and daughter, Kerri. They are from Ogallala, and their guest, Paul Cramer, from Geraldton, Western Australia. Will you stand and be recognized, please? Welcome to the Unicameral. We appreciate having you down. Senator Vickers, did you want to close?

SENATOR VICKERS: Yes.

SENATOR CLARK: You can go ahead and close. We will probably get them all here by that time.

SENATOR VICKERS: I want them all here first, Mr. Chairman.

SENATOR CLARK: Pardon.

SENATOR VICKERS: I want them all here first, if that is okay, Mr. Chairman.

SENATOR CLARK: We have only got three. We have got Schmit and DeCamp. Newell, Maresh and Schmit are unexcused. Mr. Sergeant at Arms, have you looked for these people? We have

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one of them. We understand that Senator Schmit is on his way to Omaha. Senator Newell is the only one we would be short. Your time is going to run out in five minutes.

SENATOR VICKERS: Okay, Mr. President, I will go ahead and close if everybody is here except Senator Newell, is that what you are telling me?

SENATOR CLARK: That is right.

SENATOR VICKERS: Okay. Mr. President and members, I think this is an important enough issue that everybody should be in this body and be aware as to what we are doing. I suggested a little bit ago and I will remind you again that I believe the issue in 252 is without a doubt the most important issue this Legislature is going to deal with as it affects future generations in this state this year or any other year, at least in any year that I have been here. Last summer the Supreme Court of this state overruled a decision that was made in 1936 based on the Constitution and indicated that transbasin diversion was in fact legal in the State of Nebraska. Senator Beutler had LB 252 drafted in response to that Supreme Court decision because of the language in the Constitution, and for the umpteenth time I am going to read you that sentence. It says, "The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest." Now it is Senator Beutler's contention that since transbasin diversion suddenly became a big issue and was going to be allowed that this Legislature should set down criteria for the courts and the Department of Water Resources to use as to what the public interest was, and I compliment him for that. I agree with that. I think we should, too. But the problem is as 252 is drafted it is leaning it very much toward one side of the issue and I don't think that is our job. I think our job is to make the criteria as near as possible in the middle of the road and then let the Department, let the various arguments be made, let the courts in the end make the decision based on our criteria, based on the guidelines that we have put down. But I don't think it is incumbent on this Legislature to make those guidelines applicable to only one side. If we are going to write the rules of the ball game I think we should treat both parties fairly. Now in the bill, on Section 6, Section 5, excuse me, on page 6, subsections (1) and the committee amendment that made subsection (5) I will certainly agree are in favor of the basin of transfer. The other five are all in favor of the basin of origin. So it is five against two. The amendment that I am offering, and I have a copy on everybody's desk,

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and it is marked pro and con, and if you will notice, there is one on one side and one on the other all the way down through except the two on eleven and twelve, and those are the criteria based on whether or not the applicant is going to be using it for existing beneficial uses or instigating a new beneficial use. Both of those are a burden on the applicant. So in the end, it is leaned even yet toward the basin of origin. It is leaned even yet toward the basin of origin. Senator Beutler says I am moving toward the basin...requesting basin too much. The problem as I see it is when you are at two points and one person is clear over here next to one point, and somebody else goes in the middle, obviously that is more toward the other side. That is what I am trying to do is be right in the middle, in the center. Also on your desk you will find a letter on my letterhead indicating that today's devotion out of the Guidepost book my wife and I read each morning, when I read it this morning, I thought, aha, I think they are talking...I find this quite often. I think all of us that probably read devotions do, we find, well, now that is really affecting us in our daily life. The last sentence I would like to read to you.

SENATOR CLARK: You have one minute.

SENATOR VICKERS: The last sentence says, "I can help be a good steward with the riches God has given us. After all God has given us abundance not to squander but to cherish." The final thing on your desk, a map showing the red and blue, the declines in the State of Nebraska. Also a large area of blue that shows the rise. The rise in the aquifer is because of the surface water that has been put on the top. The declines, you will notice, are areas where you are going to have to take water out of one basin and put it in another. Many people in this body have stood up and said I support and they have said so by putting more dollars into the development fund. I support developing. I support dams. support this sort of thing. Yet, what good is it going to do to build those developments, what good is it going to do to hold back that water, if you don't put that water where it will do some good. Senator Kremer's area, Senator Kremer so aptly pointed it out a little bit ago. If we really want to look at the State of Nebraska, if we really want to look at the entire state, and I will remind you...

SENATOR CLARK: Senator Vickers, your time is up.

SENATOR VICKERS: Mr. Chairman, I would like to have unanimous consent to have another minute, if I may.

SENATOR CLARK: No, I am not going to allow anyone any more

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minutes because if I do it is going to affect you and everyone else. I cannot do that.

SENATOR VICKERS: Mr. Chairman, I think this is an important enough issue that one more minute would not hurt since we...

SENATOR CLARK: You want to ask unanimous consent?

SENATOR VICKERS: ...we didn't have ten minutes in the opening this morning.

SENATOR CLARK: Do you want to ask unanimous consent for one more minute?

SENATOR VICKERS: Yes.

SENATOR CLARK: Is there any objection? There you go. He wants a minute if you get a minute.

SENATOR VICKERS: Come on, Senator Lamb. You are not closing. You can ask when you are closing on your amendment.

SENATOR CLARK: I am going to rule that there is an objection so I cannot do it unless you want to put it to a vote.

SENATOR VICKERS: Well, obviously this body does not think that transbasin diversion is that important so I guess I will close on that but I do remind you that we are State Senators and not Senators representing basins of origin or basins that are requesting it.

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

CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted on the Vickers amendment? While we are waiting for the vote, I will tell you that we are going to adjourn at twelve o'clock and come back at one-thirty, in case you didn't know. Not adjourn, but a recess.

SENATOR VICKERS: Mr. Chairman, in order to save time, I'd just ask for a roll call vote.

SENATOR CLARK: A roll call vote has been requested. Call the roll. We are under Call.

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CLERK: (Roll call vote taken. See pages 1861 and 1862, Legislative Journal.)

SENATOR CLARK: (Gavel) We did have a staff person on the floor. All of our unauthorized personnel will leave the floor. We would like to have quiet so he can hear the response please.

CLERK: (Roll call vote continued.) 20 ayes, 22 nays, Mr. President, on adoption of the amendment.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Motion lost.

CLERK: Mr. President, Senators Lamb and Wagner now move to amend the bill and that is on page 1801 of the Journal.

SPEAKER MARVEL: Senator Lamb.

SENATOR LAMB: Mr. President, Senator Wagner and I ask that this amendment be withdrawn.

SPEAKER MARVEL: Hearing no objection, so ordered.

CLERK: Mr. President, I now have an amendment from Senators Beutler and Wagner.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, this amendment is entirely technical in nature. It was passed out to you yesterday. I hope you all still have it. Basically all it does is add a statement of intent to the bill itself and the purpose of adding the statement of intent is to show that the Legislature does and intends to make a distinction between transfers outside the basin and applications for water within a basin and it states that there are reasons for considering those two things differently and it sets out the legislative intent. It does not in any way shift more toward the basin of origin or more towards the basin of transfer. It simply, again, sets out the legislative intent and I would ask your adoption. Thank you.

SPEAKER MARVEL: Okay, the Clerk has an amendment to the amendment.

CLERK: Mr. President, Senator Kremer moves to amend the

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Beutler-Wagner amendment. In line 4, strike the word "can" and insert the word "may" and strike the word "substantial."

SENATOR KREMER: Mr. Chairman, members of the Legislature, the Beutler amendment truly is intent language and probably that is what he wants to do but it is not quite as pure as Senator Beutler said that it was, where he is using the word "substantial", if you will take the Beutler amendment and here I am reading, "The Legislature finds, recognizes, and declares that the transfer of water outside the boundaries of a river basin," and he uses the word "can" be substantial. That sentence is going to be a disaster. It is going to be the end of the world. All I am doing here is to make it reasonable again and strike the word "can" and say "may". It is a little softer word and strike the word "substantial." It will then read, "water outside the boundaries of the river basin may have impact on the water and other resources in the basin of origin. I move the adoption of the amendment to the Beutler amendment.

SPEAKER MARVEL: Senator Kremer, would you pose your motion once more, please?

SENATOR KREMER: Pardon, Mr. Speaker, what is your question?

SPEAKER MARVEL: You said you moved to adopt what? Would you repeat that so I can put the question?

SENATOR KREMER: Mr. Speaker, in my amendment to the Beutler amendment which is intent language, on line 4 of his amendment I changed the word "can" to "may" and I strike the word "substantial."

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

SENATOR WAGNER: Basically I think we can accept Senator Kremer's language in there but in good faith I would hope this is the last one they are going to bring forth on the bill. I support it in that sense, in good faith.

SPEAKER MARVEL: Senator Cullan. Senator Cullan, do you have an amendment for the bill? All right, do you wish to comment on the Kremer amendment to the Beutler amendment? That is what we are on.

SENATOR CULLAN: Mr. President, members of the Legislature, I think I would support the Kremer amendment to the Beutler amendment. I think it is a reasonable proposal. I would urge you to adopt it.

SENATOR VICKERS: Mr. President and members, I also urge the body's adoption of the Kremer amendment and it would indicate that this is a substantial amendment it seems to me. I think that any time the Legislature puts in its intent language, that it can have substantial impact. It seems to me that legally what we are saying is I think to an attorney and I think Senator Beutler knows this, that substantial does mean something and that we are making quite a judgement decision right there. So obviously I can understand the feeling of this body on this issue. I would make one final comment, however. It was mentioned a minute ago by my good friend Senator Wagner that in good faith, if members would stop putting amendments on this bill, but I think in good faith to my constituents and good faith to the people of the State of Nebraska, I think that Senator Kremer and Senator Sieck and myself and others that are interested should be interested and attempt to amend this bill in a fashion that we think would be logical and even to all people in the State of Nebraska, but I do support this amendment and would hope that Senator Kremer's leadership in the water area would be recognized at least on this amendment, if not on some of the others that we have offered on this bill.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, the purpose of the intent language was simply to make a distinction between interbasin transfers and uses of water within the basin and its purpose was not to browbeat the basin of transfer and I think that Senator Kremer's amendment is reasonable and I have no objections to its adoption.

SPEAKER MARVEL: Senator Kremer, we recognize you to close on your amendment to the Beutler amendment.

SENATOR KREMER: Only this closing, Mr. Chairman and members, at the first impulse as you read this you may feel that it is not important but I am talking about headlines. Most people read the headlines and not the contents of a certain article in a newspaper and the headlines generally will determine what the impression of the reader may be as he reads the entire article. Headlines are important. What we are dealing with here is headlines. You get the impression that if water is moved out of a basin into another basin at any time it can have really some catastrophic results on that basin. It suggests that and that is what it does and this is why I moved to have it removed. I think it is important. I move the amendment, Mr. Chairman, that we vote to adopt this proposed amendment to the Beutler amendment to LB 252.

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SPEAKER MARVEL: The motion is the adoption of the Kremer amendment to the Beutler amendment. All those in favor of that motion vote aye, opposed vote no. Record.

CLERK: 26 ayes, 0 nays on adoption of the Kremer amendment to the Beutler-Wagner amendment, Mr. President.

SPEAKER MARVEL: The motion is carried. The amendment is adopted. Now before we go to the... Underneath the South balcony it is my privilege to introduce guests of Senator Chronister, his son, Mark and his wife, Jane, and daughter, Angela from Minneapolis, Minnesota. Are you still underneath the balcony there? Will you raise your hands so we can see you? Okay, the motion before the House is the Beutler-Wagner amendments. Is that right? Senator Beutler, do you want to take the amendment or do you want Senator Wagner to take it?

SENATOR BEUTLER: Mr. Speaker, I think we have already explained the amendment.

SPEAKER MARVEL: Okay, all we have to do is take a vote on it then?

SENATOR BEUTLER: Yes, sir.

SPEAKER MARVEL: Senator Wagner, for what purpose do you...?

SENATOR WAGNER: Well basically, Mr. Speaker, I would call the question which you are going to do anyway so...

SPEAKER MARVEL: There are no other lights so we will just vote on this then. All in favor of the adoption of the Beutler-Wagner amendment to the bill, all those in favor vote aye, opposed vote no. Record the vote.

CLERK: 30 ayes, 1 nay, Mr. President, on adoption of the Beutler-Wagner amendment.

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

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

SPEAKER MARVEL: Do you want to move the bill? Okay, the motion before the House is the advancement of LB 252 to E & R for review. Senator Wagner, do you wish to speak to that motion? Your light is on. Senator Vickers, do you wish to speak to that motion?

SENATOR VICKERS: Yes, I do, Mr. President. It is a debatable motion, is it not?

SPEAKER MARVEL: Yes, sir.

SENATOR VICKERS: Mr. President and members, I think it needs to be pointed out one more time that what we are doing is putting criteria, attempting to define a public benefit but putting the criteria in the statutes weighed heavily toward one side and I strenuously object. I think that if you are going to put in the criteria and I indicated on General File on this bill, I voted against a kill motion on this bill. I indicated at that time that I thought the criteria should be set by this Legislature but I cannot believe what this Legislature is doing. I cannot believe that we choose to ignore certain areas of the State of Nebraska that are experiencing severe declines. I cannot believe that we choose to ignore the thousands of dollars that we spend for studies and I have got three books up here. Here is one of them that just came out just recently. The title of it is "The Investigation of Our Official Recharge of Aquifers in Nebraska." And it was prepared in cooperation with the Old West Regional Commission, Nebraska Water Resources Center, Institute of Agriculture and Natural Resources, the Nebraska Natural Resources Commission. Some of the intent language on the inside, some of the language that deals with what this booklet talks about, some of the things that we are spending tax dollars on, we are studying, we are thinking about doing these things, parts of it says, "The experiments show that large quantities of water can recharge through wells and by surface spreading if conditions are favorable", and then it is talking about a recharged well that is installed out in the Aurora area, in Senator Kremer's area, in the large red area that you notice the map that is very close to the Platte River. The Big Blue basin comes within a few miles of the Platte River. As a matter of fact, this is Platte River water if I understand it correctly. It was pumped down into the ground as an experiment and it says the recharge rate was about 730 gallons per minute during two tests of six and eight months duration. It goes on to say that analysis of water level buildup on the recharge well during this six month test indicated the recharge could have continued at the rate of about 700 gallons per minute for several years. It further says, "Infiltration rates from surface spreading experiments", surface irrigation, if you will, "range from a half a foot per day in lowest covered plain to eleven feet per day in the sandhills". I guess what this Legislature is doing is saying, "We are just willing to writeoff the Upper Republican, the Little Blue and the Big Blue areas of this state that have got the declines", and any of you that have talked to any hydrologist will tell you that once declines start there is no way to stop them short of putting more water on the surface for artificial recharge. We have got several other booklets

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here. It talks about the economics of ground water recharge. One sentence out of there says, "This means that a major policy issue posed by the ground water mining problem is how to manage the available ground and surface water resources to provide for economic stability over time." We are talking about the economic stability of the State of Nebraska. We are representing the State of Nebraska as State Senators, and yet by turning down all the proposed amendments, by passing LB 252 in its present form, we are ignoring large sections of the State of Nebraska that will, in fact, have to have some additional water if we expect them to continue to irrigate as they know it now. Many people have stood up on this floor and fought for storage projects. Many people have stood up and made great and glowing speeches about how the people of the State of Nebraska expect us to deal with the water problems. Many people have mentioned the water problem is the major problem in the State of Nebraska. Yet we are willing to pass LB 252 in its present form. We are willing to do it without any amendment. As a matter of fact I get the feeling that the majority of this body would have liked to have done it on consent calendar, (interruption) important issues.

SPEAKER MARVEL: You have thirty seconds.

SENATOR VICKERS: I remind you one more time, this is a very, very important bill. It is going to affect not only us today but generations to come and it is going to affect them in its present form in a very disastrous fashion. I object very strenuously to the passage or the advancement of LB 252.

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

SENATOR DWORAK: Mr. President and colleagues, I will be very brief. The bill has been debated very extensively. Each amendment has been given very serious consideration. I think the bill is close to perfect. It is good legislation. I am just a little bit disappointed, however, at Senator Vickers' allegations of provincial viewpoint on this bill by district. I looked very closely at the map that he passed out. I see vast areas of white. I see areas of blue. I see areas of red, and really about the only specific voting pattern I have noticed seems to be a concentration in the red area. So I have a little bit of a problem accepting the accusation that we are looking at this from a narrow perspective. I think the consistent attempt to treat both basins under the identical criteria doesn't make sense. Circumstances are different for each basin. I think as a State Senator, as a representative of all of the people in

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the State of Nebraska, we have to recognize both types of circumstances for both unique problems and I believe that to make an accusation that this is purely a provincial issue is absolutely not so. I think the bill is well worked out now and urge its passage.

SPEAKER MARVEL: Senator Kremer.

SENATOR KREMER: Mr. Chairman, members of the Legislature, I am going to have to oppose the advancement of LB 252 the way it is presently written. I would have supported it if we would have gone along with the Vickers amendments which made this a fair type of guideline, if and when the time ever comes when we will attempt to move water at a directive of the Director of the Department of Water Resources. I want to emphasize once again, and I do not know how accurate it is, but if it is accurate to any degree at all, the High Plains study brings out very clearly that we are going to lose about two million acres of irrigated land in the State of Nebraska in the foreseeable future. We know where that is. The study also brings out that Nebraska is a water rich state. We are most fortunate. Nebraska, of all the western states, seems at least to have an abundance of water to take care of all the needs in the foreseeable future, and I talk about foreseeable future, the study goes as far as the year 2020, which sounds like it is a long ways away but that is only 39 years, not too long, really. I really believe that the bill the way it is presently written is unconstitutional. I have submitted a letter asking for an opinion from our Attorney General. We are dealing with water being taken out of a river and why should we use a different formula when it is diverted from the river within the basin or without the basin. The attorney, or I mean the court has plainly said that all the water in all the rivers belongs to all the people, and all we are talking about when we talk about transbasin diversion, it is always water that is surplus. No way are those of us in a water short area ever going to ask for something that you need, that has been allocated, and need when you need it. If we are going to build more reservoirs and we are going to retain some of the water that is leaving our state, there is going to be water for all of us. But when we write a bill that is unfair, that is unbalanced, I cannot accept it. If we would have adopted the amendments offered by Senator Vickers, I would have gone along. We need to give some guideline, but the way it is now written it is not fair and I will oppose the bill.

SPEAKER MARVEL: Senator Lamb. Senator Lamb and then Senator Haberman.

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SENATOR LAMB: Mr. President and members, I rise to support the bill. As you will notice, as a member of the Public Works Committee, I did not support the bill when it came out of committee. The reason I did not support it is because I did not think it gave enough protection to the basin of origin. I think the basin of origin should have first shot at the water. I think any reasonable person will say that water should be used at home before it is transferred somewhere else. It is expensive to transfer that water. So the basin of origin should have a little bit of protection. I see this bill as giving almost no protection to the basin of origin. However, at this point I will support the bill because it does lean in that direction. Now, Senator Kremer, and this, we have gone over this before, but the debate has been so extensive that I am afraid some people have forgotten about it and I apologize for taking the time, but I must repeat some of the best arguments in support of this bill. Now we have been quoting the High Plains study of the Ogallala aquifer and I will just quote part of it. Now admittedly this is talking about basins, big basins between states, but in my opinion the same reasoning applies to smaller basins within states, and I will quote, "The present uses and perspective future needs for beneficial purposes for the foreseeable future in the potential basin of origin of surplus water will be considered as having prior rights to the waters involved." Now this is from the High Plains study of which Senator Kremer is a member. So if it applies to huge river basins, there is no logical reasons to believe that it does not apply to small river basins. I think Senator Vickers has overreacted to this bill. This bill is not designed to stop interbasin transfer of water. What it merely does is give the basin of origin a chance to utilize that water before it is transferred to another basin for an equal use, very logical, very reasonable assumption, and that should become law. I certainly support LB 252.

SPEAKER MARVEL: Senator Haberman. There are one, two, three, four, five, six more.

SENATOR HABERMAN: Mr. President, members of the Legislature, I rise to oppose 252. Senator Lamb said that the bill is not designed to stop the intertransition of water. There isn't a Senator on the floor of this Legislature that is not concerned with the millions and millions and millions of acre feet of water that goes down the river to the ocean and that is wasted every year. Every Senator on this floor will agree that that is a fact, that it goes to waste. We cannot use it. 49 Senators will agree to that fact. So what does this bill do? This bill makes it harder,

it places obstacles in the way of us using that water. Without this bill it will be easier to use that water. Why should we support a bill that would make it harder and harder and harder for the people of Nebraska to be beneficial of that water that runs to the sea and we receive no use of it. So I feel, and I have not discussed or debated this, that it behooves us not to make this a jurisdictional fight, the North versus the South, or this basin versus that basin, or what have you. We should look at the overall fact of the water that we are losing and we should strive and work together to save that water for the citizens of the State of Nebraska, and this bill will not help do that, and, therefore, I ask you to vote no on LB 252.

SPEAKER MARVEL: Senator Vickers, you want to make one comment. The floor is yours for a comment.

SENATOR VICKERS: Mr. Chairman, thank you. Mr. President and members, it was suggested by Senator Dworak a little bit ago that we were voting...that I suggested that people were voting by districts and he made the suggestion that my side was voting more from districts than his was. I want to point out the map that I distributed to you with the red and the blue. If you will check my district, the five counties in my district, you will find I have a lot more blue than I do red. I have got very little red. As a matter of fact, other than Senator Barrett, I have got more of an increase in the aquifer in my area I think than any other district in the State of Nebraska. So I guess I am coming from the position, I just want to clarify that I am not coming from a position of an area that is extremely water short. I am coming from a position that I know what surface water can do. I know the benefits to be derived. Thank you, Mr. President.

SPEAKER MARVEL: Senator Kahle, then Senator Cullan, and then Senator Peterson, Howard Peterson. Senator Kahle.

SENATOR KAHLE: Mr. Speaker and members, I have sat here for days now listening to the debate on water legislation and on diversion and many others. I guess outside of Senator Kremer there is no one in this body that has handled more water, watered more acres and had their hands dirty and wore out more shovels than I have. I have been irrigating for forty-seven years to be exact and what I would like to draw your attention to this morning, and, of course, I have people in my district on both sides of this issue, and have ever since I have been in the Legislature, and my philosophy has not changed over that time. And those

of you represent strictly Platte Valley may disagree, but there is one point I want to bring to your attention this morning is the fact that without the conservation of water and the building of more dams and the capturing of this water as it runs through the state, you are just whistling Dixie in the dark about talking about diversion. The only river in the state that is completely captured is the Republican and we talk about dry weather. We have had a terrible dry year last year and it looks like we could be in trouble again. 1934 was the driest year I ever remember, probably one of the drier ones we have ever had in Nebraska. In 1935 we had the Republican Valley flood which killed nearly 100 people if I remember correctly. After that the dams were put in. Actually the Republican Valley needs a little bit of a flood to fill those reservoirs once again and that is part of the problem but the water that is going down the stream that you are talking about is not going to do any good unless we learn how to capture it and use it, and I know that there is a Prairie Bend project in a red area north of Kearney, Nebraska and in Holt County and they are talking about doing something about it but I think we are just kidding ourselves when we make it so difficult that you can't develop the use of water in Nebraska. For that reason I am going to oppose 252.

SPEAKER MARVEL: Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, I'd call the 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 is the question? Have you all voted? While we are waiting, in the North balcony from Senator Cope's District we welcome 34 sixth grade students and three adults from Ravenna Elementary School, Ravenna, Nebraska. Mrs. Sherry Kissler and Mrs. Liz Wroblewski are the adults and they are in the North balcony, and if you will raise your hands, we will welcome you to the Unicameral? Where are you located? From Senator Chronister's District, 10 eighth grade and one adult, eighth grade students from Dodge Junior High School, Dodge, Nebraska. Mr. Rex Anderson is the teacher, in the North balcony. Where are you located? There you are. Okay. And finally from Senator Goll's area, 26 K through 6 students from Washington County, Rt. 1, Sheridan School, Rt. 1, Herman, Nebraska, Shirley Wagner, Marge Galligan are teachers, in the North balcony. Where are you located? Okay. Record the vote.

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LB 252

CLERK: 25 ayes, 4 nays to cease debate, Mr. President.

SPEAKER MARVEL: Debate is ceased. Senator Beutler, do you wish to close on advancement of the bill?

SENATOR BEUTLER: Yes, Mr. Speaker, members of the Legislature, I really think that the fears of those who are saying that this bill will prohibit transfers are in fact exaggerated. I stick by my original statement that it is slightly in favor of the basin of origin. I don't deny that but I strongly believe that it will not prohibit transfers either. First of all, keep in mind that all of the factors that we have identified in the bill are in a sense minimal factors, in the sense that the bill says, you shall consider these factors, but they are not exclusive. You can consider other factors, too. So if the proponents of an interbasin transfer want to bring in additional information, if the Director of Water Resources finds that relevant, he can accept it. There is nothing in the bill that prohibits that. Secondly, I think this is very important to remember. If you do not adopt the bill, once again what happens is that the Director of Water Resources acting with the oversight of the Supreme Court will decide what is in the public interest, and for somebody to stand up on the floor and suggest that this bill makes it more difficult to effectuate transfers than what would be the case if you did not have the bill is purely speculative and ridiculous because no one, no one, will be able to anticipate what the Director of Water Resources is going to say is in the public interest. So once again, if you do not have a bill, all you are doing is copping out on the Legislature's responsibility to declare the policy of the State of Nebraska and letting the head of an administrative agency and the judiciary make that decision for you. And what they will decide is a roll of the dice. Senator Vickers, Senator Kremer, you may well come out worse if we didn't have this bill than if we have this bill. There is no way of knowing but ultimately the responsibility is ours to declare the policy and I ask you to vote for the bill and to do exactly that. Thank you.

SPEAKER MARVEL: The motion is the advancement of the bill as explained by Senator Beutler. All those in favor of advancing the bill vote aye, opposed vote no. Record the vote.

CLERK: 25 ayes, 9 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The motion is carried. The bill is advanced. Okay, Senator Kilgarin, are you ready? Okay, the first bill

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LR 181
LB 376, 252, 499, 529,
529A, 412, 451

CLERK: Yes, sir, I do. Mr. President, I have an explanation of vote from Senator Warner.

Mr. President, you committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 252 and recommend the same be....and find the same correctly engrossed. LB 451 correctly engrossed, 499, 529 and 529A all correctly engrossed. Those are signed by Senator Kilgarrin as Chair.

Mr. President, new resolution LR 181 offered by Senators Clark and Beutler. Read LR 181. That, Mr. President, will be laid over pursuant to our rules.

SENATOR CLARK PRESIDING

SENATOR CLARK: LB 412.

CLERK: Mr. President, LB 412 introduced by Senator Newell. Read title of LB 412. The bill was first read on January 20th it was referred to the Revenue Committee for public hearing. The bill was advanced to General File. There are committee amendments attached, Mr. President. The membership considered the bill April 6th of this year. At that time the committee amendments were adopted. There was a motion by Senator Warner that was adopted at that time. I now have, Mr. President, an amendment by Senator DeCamp to the bill.

SENATOR CLARK: Senator DeCamp. Senator Newell, would you like to briefly explain the bill again. A short explanation and then we will let Senator DeCamp take over.

SENATOR NEWELL: Yes. Mr. President, members of the body this is the green belt law, basically there has been agreement on the language of the bill in terms of clarifying just when and how it is to be used. The only issue outstanding at this time is what the interest rate should be in terms of those taxes not paid. Basically the present law says the interest rates will be 6%. The original proposal was to raise that to 14% to be in line with what we have done on all other interest rates, delinquent interest rates. The amendment that I have, I know that Senator DeCamp has an amendment, the amendment that I will be offering I will explain later.

SENATOR CLARK: Senator DeCamp. Oh, are you going to withdraw them?

CLERK: I believe that he is, yes, sir.

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LB 179, 252, 451, 499

having been complied with, the question is, shall the bill pass with the emergency clause attached. All those in favor vote aye. All those opposed vote nay.

CLERK: Senator Clark voting aye.

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

CLERK: (Read record vote as found on pages 2130-2131 of the Legislative Journal.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President.

SENATOR CLARK: 179 is declared passed with the emergency clause attached. The Clerk will now read LB 252.

CLERK: (Read LB 252 on Final Reading.)

SENATOR CLARK: All provisions of law according to procedure having been complied with, the question is, shall the bill pass. All those in favor vote aye, opposed no. Have you all voted? Once more, have you all voted? Record the vote.

CLERK: (Read record vote as found on pages 2131-2132 of the Legislative Journal.) 40 ayes, 8 nays, 1 excused and not voting, Mr. President.

SENATOR CLARK: 252 is declared passed. The Clerk will now read 451 with the emergency clause.

ASSISTANT CLERK: (Read LB 451 on Final Reading.)

SENATOR CLARK: All provisions of law according to procedure having been complied with, the question is, shall 451 pass with the emergency clause attached. All those in favor vote aye, opposed nay.

ASSISTANT CLERK: Senator Clark voting aye.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Have you all voted? Okay, Clerk, record the vote.

ASSISTANT CLERK: (Read record vote as found on page 2132 of the Legislative Journal.) The vote is 46 ayes, 0 nays, 2 present and not voting, 1 excused and not voting.

SPEAKER MARVEL: The bill is declared passed with the emergency clause attached, LB 451. The Clerk will now read LB 499.

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LB 39, 39A, 179, 252,
451, 499, 506, 529

RECESS

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Record your presence, please. Okay, record.

CLERK: There is a quorum present, Mr. President. 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 reengrossed LB 39, reengrossed LB 39A, reengrossed LB 179, engrossed LB 252, engrossed LB 451, engrossed LB 499. Do you have anything to read into the record, Mr. Clerk?

CLERK: Mr. President, one other item. Senator Chronister moves that the Legislature reconsider their action on the final passage of LB 529.

SPEAKER MARVEL: What was that announcement again?

CLERK: Mr. President, I have an Attorney General's Opinion addressed to Senator Lamb regarding LB 506. (See pages 2140 and 2141 of the Legislative Journal.)

SPEAKER MARVEL: From Senator Wesely's District we welcome forty-five students from Northeast High, Lincoln, Nebraska. Melvin Berka is the teacher. In the north balcony. Will you hold up your hands so we can see where you are? Welcome to the Unicameral. From Senator Sieck's District nineteen 4th Grade students and 2 adults from York Edison Elementary School, York, Nebraska, Mrs. Sue McDaniel, teacher, also in the north balcony. Where are you located? Welcome to the Unicameral.

SENATOR NICHOL: Senator Marvel.

SPEAKER MARVEL: Somebody says be kind. This is the time for action. I would like to read two or three paragraphs to you to emphasize the fact that we either get off of dead center, stop amending so many bills, stop putting discussion on certain pieces of legislation when we could do with maybe one-tenth of what has been offered. And I have indicated it is perfectly all right with me from a selfish standpoint if you want to continue the debate, if you want to continue to clog up the machinery, and it is clogged up, believe it or not, you can do that and you are going to lose some important legislation that practically everyone has, including reapportionment as an example. Now let me

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LB 39, 39A, 179, 252, 451,
LB 548, 499

sure that they would do that, but I don't want to, because of equity the reasons I guess I don't want to create a problem but I am concerned about it because it is my impression that there are those groups that go around the country looking for these kinds of instances and I assure that the attorneys doing it probably have a fifty-fifty or something better share. I do not know on this particular case that that is true, but I can well imagine that there well may be other examples that could be significantly greater than \$13,900 that is involved in this issue today. And I think it...there is a great deal of reluctance on my part to establish a precedent of picking up with General Fund money those funds that were erroneously as it turned out or illegally as it turned out placed into this fund, and I think it is even hard for me to imagine that they couldn't file a suit on an equity basis and maybe have some basis as to when inasmuch as the money was not placed in the fund originally correctly. But again, as I have indicated, I probably...I guess I will withdraw the amendment, having called attention to it, but I have a great reluctance to see this precedent started and I think that certainly by next session we need to establish by statute some clear policy so that this does not result in some future substantial amount of funds being charged to the General Fund because of an error somewhere along the line on property that was escheated back to the state. So with that comment and because of my reluctance to for equity of the individual attempt to stop the payment entirely, I will withdraw the amendment, Mr. President, but I do so very reluctantly.

SPEAKER MARVEL: The motion is the advancement of LB 548. All those in favor vote aye, opposed vote no. All those in favor say aye. Opposed no. The motion carried. The bill is advanced. Okay, we are ready for 512. We are ready... yes, go ahead, and then we will take up 512.

CLERK: Mr. President, a few items to read in if I may. Mr. President, Public Works would like to have a meeting with the Natural Resources Commission at Noon on May 27 in Room 1517. Any Senators are invited to attend. That announcement is offered by Senator Kremer.

Mr. President, LBs 39, 39A, 179, 252, 451 and 499 have been presented to the Governor for his approval.

Mr. President, I have a proposed rules change offered by Senators Wesely and Beutler. That will be referred to the Rules Committee for their consideration. (See page 2144 of the Legislative Journal.)

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LB 252, 317, 317A, 512

Mr. President, Senator Koch moves to override the Governor's veto of LB 317, and a motion to override the Governor's veto of LB 317A.

Finally, Mr. President, Senator Warner would like to print amendments to LB 252. (See pages 2144 and 2145 of the Legislative Journal.)

Mr. President, Miscellaneous Subjects will have an Executive Session today at 4:00 p.m. underneath the north balcony.

Mr. President, with respect to LB 512, I have a series of amendments, the first I have E & R amendments to be adopted.

SPEAKER MARVEL: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 512.

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

CLERK: Mr. President, then I have a series of amendments. The first is offered by Senator Peterson, on page 12. I understand you wish to withdraw those, Senator.

SPEAKER MARVEL: Are they withdrawn?

CLERK: Yes, sir. Mr. President, the next is an amendment from Senator Peterson, 1355. That is to be withdrawn. Mr. President, I now have one from Senator Goodrich that is on 1595. I understand he wishes to withdraw that. Mr. President, I now have an amendment from Senator Vickers and Goll. It is on page 1668 of the Journal.

SPEAKER MARVEL: Senator Vickers.

SENATOR VICKERS: Mr. President, I would like to just lay that back until the last one, if I may lay it over for a moment.

CLERK: I then have an amendment from...again from Senators Peterson, Nichol, Sieck and Johnson. That is to be withdrawn as well, Senator? Okay. Mr. President, I then have an amendment from Senator Burrows. The Burrows amendment is on 1897. Senator, did you wish to withdraw that? You did? Okay. Mr. President, the next amendment I have is then offered from Senators Pirsch, Kilgarin and Beutler.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature,

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LB 252, 561

SPEAKER MARVEL: All right the motion now is on 252.

CLERK: Mr. President the first motion on 252 is a motion by Senator Warner to direct the Clerk to request the Governor to return 252 to the Legislature for further consideration.

SPEAKER MARVEL: Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, Hi Betty! As you perhaps know this is cable television. A special message. Mr. President, I would have made this motion yesterday.

SPEAKER MARVEL: Senator Carsten.

SENATOR CARSTEN: For the moment I would suggest to the Speaker that we pass over this bill. Perhaps we can return to it shortly.

SPEAKER MARVEL: Okay, sure.

CLERK: Mr. President, I have a motion from Senator Chambers. Senator Chambers would move to reconsider the body's action on their vote to override the ADC veto.

SENATOR CHAMBERS: Mr. Chairman, members of the Legislature, I have talked to some of you and I don't want to discuss the issue, I just want to take a vote. I'm not going to ask for a roll call. Everything I could think to say has been said. But to ensure that everybody is here I will ask for a Call of the House and then when we are here I will take a machine vote, so you will know what the motion is, it is to reconsider our action on the vote to override on the ADC appropriation.

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

CLERK: 18 ayes, 0 nays, Mr. President, to go under Call.

SPEAKER MARVEL: Record your presence. Senator Chambers I think everyone is accounted for. There were two absent, Senator Pirsch and Senator Maresh and they are still absent. I mean they are excused. Do you want to go ahead? Okay, call the roll. A machine vote? Okay, read the motion.

CLERK: Mr. President, the motion offered by Senator Chambers is (Read Chambers motion).

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LB 561, 406, 252

SPEAKER MARVEL: All those in favor of ~~that~~ motion vote aye, opposed vote no. Record the vote.

CLERK: 22 ayes, 18 nays on the motion to reconsider the body's action.

SPEAKER MARVEL: The motion failed.

CLERK: Mr. President, if I may while we are waiting, I have some material to read in. A hearing notice from the Rules Committee, it is signed by Senator Wesely as Chairman.

Mr. President, I have a report from the Retirement Committee regarding gubernatorial appointments to be acted on by the full legislature.

Mr. President, I have a unanimous consent request from Senator Hefner to print amendments to LB 406.

SPEAKER MARVEL: Okay, the next order of business is the LB 252, Senator Warner's motion.

CLERK: Mr. President, Senator Warner would move to direct the Clerk to request the Governor to return LB 252 to the Legislature for further consideration.

SENATOR WARNER: Mr. President, members of the Legislature, I would have made the motion yesterday but I offer it now and I want to indicate two things initially. No one is asking me to do this, it is a position that I have come to on my own. But as I listen to the debate on 252, both on General File and as I recall on Select File, it seemed to be almost unanimous that no matter which side you were on on water diversion that there ought to be some criteria as a policy matter that is used by the appropriate department, the Department of Water Resources to consider any kind of a transfer. But it seemed to me that most of the arguments that were given did not deal with the procedure that should be considered but whether or not water diversion itself was right or wrong. As I thought about the discussion in the bill itself and I begin to look at the bill in that light of only what process does it set up, it seemed to me there were some things that maybe could be improved upon. I have a specific amendment up on the Clerk's desk which does two things, which are relatively minor, but not particularly insignificant, one of which adds to those things that properly should be considered, any court decrees that

determines interstate water rights. The language in the bill itself talks about interstate compacts and we have a few of those, but by and large a great majority of those compacts that might exist are not in fact interstate compacts but rather are court decrees allocating certain portions of water between Nebraska and whichever what other state might be involved. I will acknowledge that that is not excluded from the language, but it seems to me that it would not be inappropriate to add it. Secondly, the other portion of the amendment that I would propose to put on the bill is up there, is specific direction that all agencies of state government are authorized and in fact required to be of assistance to the Director of Water Resources in compiling the information they may feel is relevant. I think both of those things are oversights that ought to be added to the bill. Now in addition I have had passed out to you another concept which if the bill came back I would have drafted into specific language, none of which deals at all with the criteria that is to be used with one exception. That one exception is that I have some difficulty with the one criteria that indicates that any reasonably foreseeable future benefit of uses of water for the basin of origin. My problem lies probably with many of these that they are somewhat vague and undefined and obviously would lead I am sure, as one supporter indicated to me this morning, it was intended to be, it would probably lead to a number of court cases come up with some kind of a definition. So the thing that I had passed out suggested at least one definable way to limit the reasonable foreseeable future, was to condition that the right of a transfer should be granted, would not extend for a period longer than a period of time that the cost for transversion would have to be advertised to be paid off. That could be ten years, fifty years or whatever year period of time, but there is no reference to reversing water diversion and it may well be in the long run that it would be appropriate to reverse a water diversion should it occur, but I don't know if the bill now permits that. It seems to me a very clear definable criteria could be used if that process was one that was put into the bill of measuring that time frame and it could be appropriately changed or be suitable rather for different conditions. The other suggestion that is included in these proposals is one that I'm trying to get back to the concept that I thought the legislature talked about three or four years ago when we first embarked upon a water study in that almost all of us no matter which side we came from on the whole issue of water, almost all of us said water decisions ought to be based as much as possible

on factual information and while we would never be able to avoid the political decisions, at least the basic decision ought to be one based on fact. So the suggestion I have here is something I believe is similar to what the United States Supreme Court uses in which a special master can be appointed to ascertain the facts of the case. What I would be envisioning, which would be amending page 7, starting in line 20, would be the authorization of appointment of such an individual to gather the facts as they saw them together with a requirement that various departments of state government have responsibilities in this area would present their facts. That then this special master at a public hearing, and I think it ought to be spelled out that they would be required and in the areas affected, that those facts would be presented in which the applicant and those that opposed the applicant could address what is purportedly the facts, contest them if they wish, agreeing on those that they could. The basis of that hearing would become the basis for an appeal should they go to a court decision. From that point a decision could be rendered by the director of water resources. The papers that I have passed out also suggest the possibility, although I am not necessarily advocating it, that you could even expand the Director of the Water Resources to include maybe a special appointed board to make a recommendation again of experts, perhaps an attorney, an engineer, someone with background would again evaluate the factual matter to make a recommendation eventually to the board, to the Director of Water Resources. I think it would not be inappropriate to also make some indication as to how clear and convincing their evidence ought to be whether it is just a preponderance of evidence, I think that probably relates more frequently to criminal cases but I think here we need assurance both at the basin of origin as well as to the basin that might receive the water that the facts, for the people that live in those areas, that the facts are really as clear as they could possibly be based upon the information that is available. Now I'm not unaware that I am suggesting, I'm sure that some one will indicate that coming in with a proposal at a late date, for which I apologize, but I also agree that this can be a significant piece of legislation. I hate to see something designated as significant legislation, which is probably as vague at least as vague to me as some of these provisions are that can only be subjected to numerous law suits in the future. What I am proposing I do not believe affects anyone pro or antiwater diversion. My concern is that the process is one that can more generally reflect a factual decision to the extent that we can rather than one that is perhaps more politically influenced. I would hope that at least the

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LB 252

body would consider the proposal that I have suggested at this time. Thank you.

SPEAKER MARVEL: Senator Dworak.

SENATOR DWORAK: Mr. President and colleagues, I very much respect Senator Warner and his opinion and I very carefully looked at the two additions to LB 252, which he is proposing, and I, this is a complicated and a technical bill which was very adequately debated, very carefully debated, some of the very concepts Senator Warner is challenging were specific amendments that Senator Vickers had introduced on Select File and if I am not incorrect I believe one of those provisions was introduced both on Select and General File, in fact, I think I was on this microphone complaining at Senator Vickers' persistence on that particular issue so I think the body has made a decision on that. Now the two other criteria that Senator Warner wants to add to the bill I'm not sure that I'm in opposition to but in looking at them I don't see where they are that intensely critical to help or hurt the bill at this time and if this criteria is justified I don't think that this transbasin diversion thing is going to be something that we are all going to be stampeded to in the next twelve months. I think we have ample time next session to bring these concepts forward, have a public discussion and a public hearing on it and make our minds up without adversely affecting anyone during the interim. I think that is the proper way to do it. Now here we have got a bill that we have debated thoroughly, the bill has passed, it has passed with a large number of votes, I think it was over 40, the bill is on its way to the Governor's office and I think this body has spoken. I think the bill was thoroughly debated and I strongly oppose bringing this bill back at this time. I think Senator Warner's ideas merit discussion, intense discussion, thorough debate and I think to put these concepts in at this late date would be a mistake. I think it was the type of bill that was going to adversely affect people in the next two or three or four or five months then I would say that there would be some justification for it. But I certainly do not foresee a sudden stampede of permits, court cases, etc., in the next twelve month period. If in fact, if in fact that is the case, these additional concepts that Senator Warner is introducing should have thorough and adequate study, legislative debate for court records. I think that it would be wrong at this time to bring this bill back. I think we have spoken. We have made the decision. I'm willing to look at Senator Warner's ideas next year and will look at them carefully

and closely and after proper and thorough input and debate and understanding if they are all right we will certainly support them next year. I reject and urge you to reject, personally I reject the Warner amendment to bring this bill back.

SPEAKER MARVEL: Senator Lamb.

SENATOR LAMB: Mr. President and members, I guess I would echo Senator Dworak's remarks, the proposals that Senator Warner has in the sheet which he has on our desk may have merit. But at this late date it is more like a proposal that should be presented to a committee at a committee hearing than to be presenting after the bill has been passed on Final Reading. I think Senator Beutler has made a real effort to construct a bill here that is beneficial, that will do what it was supposed to do, that will provide some protection to the basin of origin but will not eliminate the possibility of transbasin diversion. So I believe that the bill should go on its way, should be signed by the Governor and next session if Senator Warner has his proposals perhaps defined a little bit better that would be the time to come back, consider them at that time. I would oppose the Warner amendment.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, of course I would like to object very strongly to the suggestion being made to you today. We have talked a little bit about suggesting such major amendments at such a late date, but let's be clear in our minds on just how late this date is. The bill has been passed by the Legislature and the motion to reconsider.....of reconsideration is to reconsider a bill that has been passed by the Legislature. In the short three years that I have been in the Legislature I have not seen this happen except for a bill that had technical flaws to it. I think each and everyone of us in here is owed the courtesy by everybody else of having their objection brought up front and early on General File or on Select File or if you can't get around to some of the bills then on Final Reading. But to come in after a bill has been passed by a 39 to 8 vote or whatever it was and to suggest a series of amendments, most of which were considered either by the committee or on the floor, or by the introducers and rejected, seems to me to be a use of process which is uncharacteristic of the person who is suggesting it in this instance. I don't even know whether to try and address the suggestions in the amendment because I really can't believe that this body is going to allow this

process to take place. But let me make just a couple short comments. The bill is not going to be made less vague unless you are going to get into the process of minutely outlining each and every factor and the extent to which you are going to consider each and every factor. You and I and all of us considered that alternative at the beginning and rejected it. We put the bill in terms of broad principles, broad but meaningful principles with some very specific definitions. Very specific definitions as to beneficial uses. Very specific broad principles, reasonably foreseeable uses. . . . lawsuits and I have never denied the fact that there probably will be lawsuits on questions this big after 252 is passed. As I have argued to you from the beginning, I am totally confident that there will be far fewer lawsuits than if you and I refuse to act and declare legislative policy and if we allow the director of water resources acting in conjunction with the Supreme Court to simply declare that policy. I hope that I am talking too long. I hope that you are not going to take this whole business seriously. Again, the amendments that Senator Warner is proposing are by and large not original. They have been considered. They have been by and large rejected. Thank you.

SPEAKER MARVEL: Senator Kremer.

SENATOR KREMER: Thank you Mr. President, members of the Legislature, of course I arise to support Senator's motion to return the bill. While it has not been done very frequently it has been done, if there is evidence that it should be done. Secondly, I want everyone to know that I in no way ask Senator Warner to do this or even suggested it to him. This is on his own. In my previous discussion on LB 252 I made it well known that I did not vote to bring the bill out of committee for the very reasons that Senator Warner is setting forth in his proposal here. I felt rather strongly that this was of such great importance that we need a considerable time to look into ways and methods and rules and regulations dealing with the moving of water from one river basin to another. I don't think we gave that attention. I said before to Senator Beutler, I admire him and I thank him for being active in this area. We need it and I'm in total support that the Legislature should give the guidelines. However, I felt that we did not give the time and we should. I can see all kinds of legal problems unless we do give guidelines. Furthermore I wish to emphasize with the best of my ability that the time is going to come that we are going to have to move this water around when it is feasible and when it is reasonable. If we don't, I've

got the most recent report today on what well is going to happen in the future unless things like this are provided for. We are going to lose something between 750,000 and 1.8 million acres of irrigated land that is being irrigated now unless we act very, very wisely. So I'm going to support Senator Warner's proposition to bring this bill back so we can have a good look at what we are doing and lock into place standards, rules and guidelines that will be to the benefit of the entire State of Nebraska, not to the basin of origin necessarily or to the basin that is requesting water. So I am going to support Senator Warner and I trust that we will have enough votes to bring the bill back, even though it may be a little bit unusual. Thank you.

SPEAKER MARVEL: Senator Wagner.

SENATOR WAGNER: Mr. Speaker and members, I oppose bringing this back and I'll tell you why. Senator Kremer talks about time and I would like to remind Senator Kremer that the first reading of this bill was on January 16th, the committee hearing was on February 25th, it was on General File on March 25th, it was on Select File April 25th, and on Final Reading on May 25th. I think this bill has had plenty of time to discuss the material that is in it. But, Senator Warner's amendment is a completely different concept, it has not had a public hearing and I guess I objected to some of this. Whenever we make a change like that I think if you are going to incorporate material like this you really need to go back for a public hearing and it is kind of going contrary to what we have normally been speaking about many time this year. Therefore, I oppose the motion. I sympathize with Senator Warner, his concerns, but I think it can also be incorporated in a bill next year or come up with a public hearing. So at this time I oppose the Warner amendment. Thank you.

SPEAKER MARVEL: Senator Carsten.

SENATOR CARSTEN: (no response).

SPEAKER MARVEL: Senator Schmit, do you wish to be recognized?

SENATOR SCHMIT: Call the 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.

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

SPEAKER MARVEL: Debate has ceased. Chair recognizes Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, I . . . those of you who are expressing concern of the lateness, I understand and I appreciate that. I don't believe though that I am suggesting any change in the criteria as the bill has spelled out with the exception of one. That one criteria would be that there would be some kind of a definition to the foreseeable future use. I would defy anyone on this floor to define what the foreseeable future is. What that date is. That is to be determined by court, obviously no one can possibly put a definition. My only suggestion is that that could be a defying term that would be relative to each application and have something specific and would secondly provide a second opportunity to reassess then. I would even agree with those who say there is plenty of time, because I'm sure there won't be any adverse effect from this legislation to anyone either. The reason I say that is it is not going to do anything other than go to court. You can not possibly defend or define the vagueness of most of those criteria. I would suspect the pot shots will be taken at the director of Water Resources regularly over the next few months if he attempts to promulgate rules and regulations to implement the vagueness of those criteria. Mark my word I can tell you I told you so, I'll bet anything come January. The guts of the amendment that I would propose that the bill is returned has nothing to do with criteria. It is an attempt to devise a system in which the factual situation of what the water question is, whether or not it should be diverted or not, that is all that I am talking about in the . . . in the amendment. Now whether or not that was discussed or not somewhere else rejected, I don't know. I do not recall any discussion on the floor relative to that part of the process. The only process that I remember being discussed was the criteria themselves and they had nothing to do really with the criteria, it was whether you were pro or anti-diversion and that was about it. I would hope that you would consider bringing the bill back to consider these kinds of amendments because I think it would make a much more meaningful piece of legislation than what we have now and a much more effective one in spite of the lateness of the session. With that, Mr. President, I close.

SPEAKER MARVEL: The motion is the adoption of the Warner motion. All those in favor of the Warner motion vote aye,

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opposed vote no. Have you all voted? Have you all voted?
Senator Warner. Record the vote.

CLERK: 17 ayes, 17 nays Mr. President on a motion to
adopt the Warner motion.

SPEAKER MARVEL: Motion lost. Do you have any items to
read in?

CLERK: Yes sir, I do. Mr. President your Enrolling Clerk
has presented to the Governor for his approval the bills
that were read on Final Reading this morning.

Your Committee on Miscellaneous Subjects whose Chairman is
Senator Hefner reports LB 551 to General File with amend-
ments, 552 General File with amendments, 553 and 554 both
General File with amendments. All signed by Senator
Hefner as Chairman.

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LR 188
LB 179, 181, 252, 273, 273A, 303, 322,
346, 376, 381, 384, 389, 441, 451, 470, 472A
485, 497, 501, 543, 512, 552, 545, 553, 554.

Senator DeCamp. All those in favor vote aye. All those opposed vote nay. It takes 30 votes.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Once more, have you all voted? Senator DeCamp.

SENATOR DeCAMP: How many are excused? Eleven?

SENATOR CLARK: Two.

SENATOR DeCAMP: Two? Okay, we still stand a shot, so I would ask for a Call of the House and take call in votes if that would be okay. But I would ask for a Call of the House first.

SENATOR CLARK: 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: 19 ayes, 3 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All Senators will return to their seats, and if all Senators will check in, please. The Clerk would like to read some things while we are trying to get everyone registered in here.

CLERK: Mr. President, while we are recording our presence, I have a communique from the Governor addressed to the Clerk. Engrossed LBs 181, 252, 303, 381, 441, 451, 470, 485, 497, 543, 179, 346 and 384, 273, 273A, 501 and 545 were signed by me May 22 and delivered to the Secretary of State. Sincerely, Charles Thone, Governor.

Mr. President, I have an Attorney General's Opinion addressed to Senator Barrett on 376; one to Senator Hefner on 552. (See pages 2228 through 2233 of the Journal.)

Your Committee on Enrollment and Review respectfully reports they have carefully examined 406 and recommend that the same be placed on Select File with amendments; 551 Select File; 552, 553, 554 all on Select File with amendments. (See pages 2233 through 2234 of the Journal.)

Your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 322 and find the same correctly engrossed; 376, 389 and 512 all correctly engrossed.

Mr. President, new resolution, LR 188 by Senator Wagner.