

January 20, 1981

LB 389-433

SPEAKER MARVEL: Senator Higgins.

SENATOR HIGGINS: Mr. Chairman and Senator Chambers, I merely want to state the fact that your very presence here and the fact that we are listening to you is a contradiction of your remarks that you do not have freedom. Thank you, Mr. President.

SPEAKER MARVEL: Senator Burrows.

SENATOR BURROWS: Mr. Speaker, members of the body, I would like to request permission we lay over the resolution until the hostages are in the air.

SPEAKER MARVEL: Any objection? If not, so ordered. We will go to item #6 now, introduction of bills.

CLERK: Mr. President, new bills. (Read by title LB 389-432. See pages 271-280 of the Legislative Journal.)

SENATOR CLARK PRESIDING

SENATOR CLARK: Could I have your attention just a moment, please? The AP has reported that the American hostages will fly out of Iran in the next thirty minutes. (applause).

CLERK: (Read by title LB 433. See pages 280-281.)

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

SENATOR NICHOL: Mr. Chairman, members of the Legislature, I wanted to say something but I don't want to say it if we have urgent business to do. This will take about two or three minutes.

SENATOR CLARK: Continue, we don't have any business right now.

SENATOR NICHOL: Okay, Senator Marsh has a bill in having to do with mammals and I wanted to tell you the story of the three mammals if I may. May I do that, sir?

SENATOR CLARK: Go right ahead if it is funny.

SENATOR NICHOL: Well, I don't know about that but once upon a time there were three mammals who lived happily in Mammalary Land. There was a papa mammal that we called Pappy and mama mammal that we called Mama and baby mammal we called Babble and the reason we called baby mammal Babble was because he talked a lot and asked embarrassing questions.

March 19, 1981

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

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

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

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

SPEAKER MARVEL: Hearing no objections, so ordered.

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

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

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

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

Edited by

Arleen McCrory  
Arleen McCrory

March 26, 1981

LB 174, 190, 401

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Prayer given by Pastor James Hoke from the Trinity Lutheran Church, Madison, Nebraska. He is Senator Richard Peterson's pastor.

PASTOR JAMES HOKE: Prayer given.

SPEAKER MARVEL: Record your presence, please. While we are waiting for a quorum it is my privilege to introduce, first of all from Senator Richard Peterson's district, 7 students from Norfolk High School. Their teacher is Jim Kubik, in the North balcony. Will you raise your hands so we can see where you are. We welcome you this morning. Also in the North balcony arranged by Senator Sieck we welcome 55 foreign exchange students from Nebraska high schools. The area representative is Betty Koch, K-o-c-h, in this Legislature is Koch...is Koch right or...? Okay, and I would like to explain that Senator Sieck has a present from the foreign exchange students, a boutonniere, a white carnation which has been given to him by the students and by the Youth for Understanding. So we appreciate all of you. Will you raise your hands and show us where you are.

CLERK: Mr. President, Senator Chronister would like to be excused today and tomorrow.

SPEAKER MARVEL: Do you have any other items? Okay. Then you do have other items. Have you all recorded your presence? Okay, record.

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

SPEAKER MARVEL: While we are fixing the machine up here I would alert the Legislature to the fact that this afternoon we will send you a copy of the proposed consent calendar and the consent calendar would be presented for action tomorrow over the noon hour. So we would meet over the noon hour and adjourn early. Okay the Clerk will read in some reports, item #3.

CLERK: Mr. President, the committee on Enrollment and Review respectfully reports we have carefully examined and engrossed LB 174 and find the same correctly engrossed; LB 190 correctly engrossed, (Signed) Senator Kilgarin, Chair.

Your committee on Public Works to whom is referred LB 401 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendments, (Signed) by Senator Kremer.

CLERK: Mr. President, LB 401 was introduced by Senator Howard Lamb and Senator Koch. (Read title.) The bill was first read on January 20 of last year. The bill was referred to the Public Works Committee for hearing. They ultimately referred it to General File. There are committee amendments attached by the Public Works Committee.

SENATOR NICHOL: I don't see Senator Kremer for the Committee amendments. Senator Beutler, as vice chairman are you... Oh, yes, Senator Kremer is coming in.

SENATOR KREMER: Mr. Chairman, the amendments to 401, is this the issue?

SENATOR NICHOL: 401, yes.

SENATOR KREMER: Okay, Mr. Chairman, members, the committee amendments, and there are four of them. Number one, it deletes all the parts of the bill that relate to pollution. You will recall we passed LB 146 in the previous session and all of those are taken care of in LB 146 and now law. Number two, in the committee amendments it redefines a qualified voter and it brings them under Chapter 32 and of course says that anyone living in a proposed area is a voter and he has to be qualified according to Chapter 32. Number 3, it excludes all the land that is involved in an incorporated city or a village and if the committee amendments are adopted anyone living within an incorporated city or village will not be included or no area will be included. Number four, it authorizes that the election can be held only on a regular scheduled primary or general election and it will not, if this passes, it cannot be held on a special election. Those are the committee amendments and I move for their adoption.

SENATOR NICHOL: We are now voting on the adoption of the committee amendments on LB 401. All those in favor vote aye, opposed nay.

CLERK: Senator Nichol voting yes.

SENATOR NICHOL: Have you all voted? Record, Mr. Clerk.

CLERK: 31 ayes, 1 nay, Mr. President, on adoption of committee amendments.

SENATOR NICHOL: The committee amendments are adopted. Are there any other amendments, Mr. Clerk?



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

SENATOR NICHOL: Senator Lamb, are you going to handle the bill please?

SENATOR LAMB: Mr. President, members of the Legislature, this is a rather important water bill. It has not had much publicity and so I would suggest you may want to look at the bill closely and listen to the debate. This is a bill I introduced last session to deal with a problem that many people say occurs in the administration of the Ground Water Management Act and that came to light in at least one instance that I know of in Wheeler County where some of the people were unhappy because although the local natural resources district petitioned for a control area, then the Director of Water Resources did not grant a control area in that area. And so they are saying that the Director, therefore, had too much power. So what this bill does is to establish a procedure by which the people in the area can, through the petition and voting process, establish a control area after the Director of Water Resources has declined to do so. In other words the procedure starts out just as it does now in declaring a control area in that the local natural resources district decides there should be one and they have the required hearings and so forth and then that proposal is sent to the Director of Water Resources. Under the current situation, if the Director of Water Resources says no, there is no reason for a control area, then that is the end of the matter and there is no recourse. This bill provides a procedure through which the people can then petition and vote to establish a control area. I will respond to any questions that there may be on the bill.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Senator Schmit, your light is on.

SENATOR SCHMIT: Mr. President and members of the Legislature, you might have noticed I voted against the committee amendment. I think it is kind of interesting that we adopted a set of committee amendments which exclude from the control area the residents of a subdivision, of an incorporated area. I really don't know how we are going to rationalize that when it comes right down to the problem of whether or not we are trying to address the issue of whether or not we need a control area. Senator Lamb says that if the Director of Water Resources rules against you, even though the local people want something, then there is no alternative.

It is kind of interesting that in this we have a peculiar context here. If the state authorities happen to rule against us then the state has too much power and we want to return it to the locals. If on the other hand, the state happens to rule or if the NRDs say we don't need a control area, then we think we ought to transfer power in the other direction. You can't have it both ways. I would suggest that the bill, present language, by virtue of the fact that you exclude the incorporated areas from ever being a part of a control area, that you have reduced the financing for a control area to the extent that it is going to be very...any help you can get out of that funding is going to be very limited and you will probably not allow the NRD to have enough money to do anything, and number two, I don't think you're ever going to be able to get away with disenfranchising the people of the incorporate area. Now some of my urban friends are going to think it is strange that I am standing up here trying to defend their right to participate but I want to point out, I think it is an inconsistency that you cannot, you probably cannot support. It may well be that it is not necessary because of the peculiar nature of an area and the problem may not be involved or may not involve the incorporated area but we have heard on this floor hundreds of times the necessity for the urban people to be involved and we are saying here we're not going to involve the urban people. Now Senator Kremer and myself have LB 375 which provides a mechanism whereby if the Director of Water Resources denies a control area or if the local natural resource district feels that they do not need the extended controls of a control area, that they can adopt the management area. It is an inbetween mechanism for managing your water supplies. I think what we have here now is a situation where we are saying if the Director of Water Resources rules against a local natural resource district then we change the boundaries of the area, we change the number of people who can vote and we rewrite the rules so that by one method or another, we can declare a control area. It doesn't make any difference if we have to reduce the area in scope to the point that there is no sufficient financial base to do anything. There will not be sufficient financial base to assist the natural resource district to carry out the problems of the control area. If you do that, ladies and gentlemen, let me tell you what is going to be the next step. The natural resource district will naturally have to come back to this Legislature and ask for funds from the development fund or the conservation fund. Now I think we all know how generous this body is going to be in that area. Senator Sieck has a

bill which will take care of that if you want to pass it and I can support that kind of a bill but I think that most of us if we support that kind of a bill are going to feel heat like we haven't felt in a long time but if you are going to create a control area and not provide the financial base to take care of the problems, you really haven't done anything. It is a cosmetic approach. It comes back to what I said earlier about my favorite floor criteria for a bill. We have told you we have solved the problem, but we haven't really addressed the problem. I think that you want to remember this. If you pass the bill as it is drafted today, number one, you are going to have constitutional problems. I don't think you're going to get thirty days down the road and someone is going to challenge it on the basis that an urban area resident must have the right to vote. Number two, if that is held to be constitutional, you're going to handicap the natural resource district by not giving them the financial base they need to affect any of the control that they need and so then, number three, the natural resource district will have no alternative except to come to this Legislature and say, now you've given us the authority to create the control area but you have not given us the funding. You have destroyed our base. So having destroyed the base it is then your responsibility to provide us with the finances we need.

SPEAKER MARVEL: Time is up.

SENATOR SCHMIT: And that means that the Legislature will have to drastically and dramatically increase the contribution to the development fund and the conservation fund. That is round one. Thank you very much.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, I have to have some additional information before I think I or anybody in this room can make an intelligent decision as to what we are going to do on LB 401. 401 implies basically a system to go with control areas, a system to get the control areas no matter what. Now it is my understanding from reading the media quite frankly, and some talks with some of the senators here, that a consensus has been reached by Senator Kremer, by Senator Schmit, by a variety of groups on LB 375 and I would suggest to you that there is a certain inconsistency between the direction 375 provides which is management immediately of the resources under a system of immediate determination of the needs and the use and the tools and techniques of management, in other words, the theory of management to avoid a crisis, to avoid getting in a situation of control area crisis reaction. If that is the case



and if we intend to deal with that as I had thought we did, the 375 concept with all the mechanisms and tools there, then I think we'd better be getting some information from somebody in this body that is involved in this to tell us where we are or where we are going on that as opposed to this approach which says really that the crisis type thing, panic and have a vote of the people on control areas, the whole idea of election of your NRDs and your water resources director, and say, "hey look, this is a complicated area, it is a complicated field. We want what is best for the entire system ecologically, agriculturally, economically, environmentally." We want what is best and that is why we're putting these experts in charge and this system basically says with 401 as I read it now, it says, "Hey look, we got all these experts and everything else. No matter what they say we're going to have an alternate system for reacting to a supposed crisis and implementing a control area by votes of the people who may or may not have the facts or anything else." Pray tell, could Senator Schmit or Senator Kremer answer me where we are on 375 because I feel it is impossible for us to act intelligently on 401 until we know what direction we are going on water with 375. You've got two roads that go off in pretty divergent directions here, and if this is the trail you want to take off on, fine, but let's hear it from the people that have been working on it. I think 375 with management immediately of the resources, with expertise is the approach we should take. We already have a system for control areas. Pray tell, where are we? And I would like one of those to kind of give me some direction.

SPEAKER MARVEL: Senator Sieck.

SENATOR SIECK: Mr. President, members of the body, I cannot answer Senator DeCamp's questions on 375 because I was not involved with that but I do have a question of Senator Lamb and this deals with the control area. As I understand, that particular area voted...was denied a control area by the Department of Water Resources. Now are they going to try to initiate a smaller area and would it not be just the opposite of what we debated the other day with Senator Beutler on 94?

SENATOR LAMB: I'm not sure I quite understand your question but let me see if I've got it right. The procedure is that first the NRD decides what the area should be and the Director approves that area I believe and so then when he turns it down then it comes back and the voting procedure started only the incorporated areas are not involved either from voting or, as Senator Schmit pointed out, from paying for it and the thinking is very simple

and I'll be very frank, that its primarily an issue that involves the people out there on the land and they are the main ones that should be involved.

SENATOR SIECK: Is this area going to be smaller than the area originally was intended which the Department of Water Resources turned down?

SENATOR LAMB: Not except for the incorporated areas.

SENATOR SIECK: It is just the incorporated areas would be taken out?

SENATOR LAMB: And that is a very important part of it because I think the area has to be big enough, hydrologically sound, you know. I don't want a situation where you have very small tracts that you have in a control area. We had a bill a few years ago which would let townships vote themselves a control area or similar and I think that is not good because it doesn't take into consideration the hydrology of the whole area which is affected.

SENATOR SIECK: This is my question. I was wondering whether it would contain the whole hydrological area, whether the whole area that is involved in this particular problem would be included and it does. Okay, I am willing to listen further on the debate before I finally make a decision on how I vote on it but it sounds, and I'm always for local people having a chance to vote in something that they want and I kind of like this approach but whether it is going to involve 375 I do not know at this time and I will have to consider it further.

SPEAKER MARVEL: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, this is really difficult to be looking at 401, 375 and 94 all at the same time. Senator Kremer, for those of us that are not on Public Works and not acquainted all that well with all three of these bills, can we possibly have a situation where we would pass all three of these bills?

SPEAKER MARVEL: Senator Kremer, do you yield?

SENATOR KREMER: I'm sorry, what is the question?

SENATOR NICHOL: Senator Kremer, what my question was, we have three bills, specifically 94, 401 and 375, what would happen if we passed all three of these bills?

SENATOR KREMER: It would be interesting.

SENATOR NICHOL: That's what I thought. Do you have in your mind which of these bills, one or two or none, ought to be passed at this time the way they are sitting? My problem is I don't know enough about all three of them to make an intelligent decision as to what should be happening.

SENATOR KREMER: When you get through I will make some comments, whatever they are worth.

SENATOR NICHOL: Okay. I would welcome comments from you, Senator Beutler, Senator Lamb as to what should be happening. You see, I think that perhaps certain areas are addressed in each of the bills and it looks like we are going three different directions, maybe not, but this is the confusion that I have and I think perhaps some of the other members may have and so as you debate the bill I would hope that you and others would bring out what we should be doing with each of these bills because so many of us don't have a full comprehension of all three of them. Thank you.

SPEAKER MARVEL: Okay, we have four lights on and the first one is Senator Kremer.

SENATOR KREMER: Thank you, Mr. Chairman. I will follow up on the question that Senator Nichol asked, what would happen if all three of these bills were adopted. Of course, Senator Beutler's bill, LB 94, would stand on its own and you heard the argument a day or two ago. We would allow an NRD to ask the Director to consider taking in another area that was causing the problem that may be existing in the requesting area. So that would stand by itself. Under LB 577 which is the Water Management Act, it provides that if there is a request to initiate a process which would bring the Department of Water Resources director into the picture, he would set up a hearing. After the hearing was held he would counsel with people that we feel are experts such as the Conservation Survey Division, the Water Center at the University of Nebraska, the Natural Resources Commission and others that should have some expertise. After counselling with them and considering what the situation was in the request area which is related principally to the depletion of the ground water supply, then if he felt in talking with these other people it was necessary to go under control, he could declare a control area and designate the boundaries. Now under this bill, under Senator Lamb's bill, we would bypass the people that are considered to be experts because they should have the data that is collected through the Data Collection Bank that we established at the same time we adopted the framework study so we would eliminate all that. Then you go right back to



what the people said this is what we want. It could be based on emotionalism, it could be based on strong leadership, whatever, but it would give the people that right that there would be...I always seen fit to maintain that people have got a right to initiate and petition and to vote. So that is the other side of the argument. Now I have made a strong appeal and I will make it again when 375 comes up that we leave LB 577 intact so the natural resource district can take either course that they wish. They can go under a management practice or a management program like 375 will indicate or they can go under a control under 577. Now I do agree with Senator Schmit and I brought this to the attention of Senator Lamb who is introducing the bill that I think we will be limited in funds if we take away that quarter of a mill levy that is available once you go under control. You will lose that and there may be a little bit of a handicap if you wouldn't have the money to carry out the practice. I do have that same concern. I think, Senator Lamb, you will agree. I called your attention to that this morning. I don't really feel that it will be in conflict with 375. It will be only to the extent that there will be an expert counsel involved in the process but just goes back to the emotions of the people if you want to call it emotions. So, Senator Nichol, that is kind of my analysis of the whole situation. At that point I am not going to say anything further about how I am going to vote.

SPEAKER MARVEL: Senator Vickers, do you wish to be recognized? We've got about six lights on now and this obviously is going to spill over until afternoon. Senator Vickers.

SENATOR VICKERS: Mr. President, members, I rise to support Senator Lamb in LB 401. I think the point that Senator Lamb is bringing before this body is a good one and I think the point needs to be made, this Legislature, as Senator Kremer just got through explaining through the creation of the Water Management Act, created a system whereby we gave the responsibility to the local people to control their destiny, if you will, through the natural resources districts and it seems rather strange to me that this Legislature gives lip service to local control, yet is deathly afraid of local control. We give lip service to local control by telling them, you've got the responsibility yet we put various things in the statutes, various criteria telling these are the only things you can do and only the things you can do. What are we afraid of? Are we afraid of local people overregulating themselves? Come on, let's be reasonable. We know that local people are not going to overregulate themselves. If they want to regulate themselves in a certain fashion that is their business. It is their area. If they want to regulate themselves more stringent

than what some of us might think that they should be regulated, we don't live there, they do. I think it is as simple as that. I think it is an issue of do we trust local control or do we not. Do we want to give those people the authority to establish a control area? Remember this bill as drafted is only after their locally elected board of directors have petitioned the director and the director has turned their request down. First their local elected board of directors has got to make the request, has got to jump through the hoops that everybody else does to get a control area established. What Senator Lamb is saying is that once that happens and if there are certain criteria that we have put into the statutes, that the director interpreted the statutes and says these criteria are not present, therefore, you can't have a control area legally. Then Senator Lamb is saying, "Look, local people, if you still want one, here is a procedure and you can have one." So it seems to me the vote on this bill is going to indicate to the people of the State of Nebraska, those of us that really believe in local control as far as the water resources of this state are concerned, and those of us that don't. It is just that simple.

SPEAKER MARVEL: Senator Beutler. Senator Lamb. Excuse me?

SENATOR LAMB: Am I closing?

SPEAKER MARVEL: No.

SENATOR LAMB: Well my only comment at this time, Mr. President and members, is that I don't believe there is any... I agree with Senator Kremer, that there is no conflict between the three bills that Senator Nichol mentioned, no conflict at all. This is just a refinement of what we have now in regard to control areas under the Ground Water Management Act. It is another way to establish those control areas so that if 375 comes along and does whatever it does in regard to management areas, it doesn't affect control areas and so there is no conflict in that area.

SPEAKER MARVEL: There is a motion on the desk.

CLERK: Mr. President, Senator DeCamp would move to indefinitely postpone LB 401.

SPEAKER MARVEL: The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, I really wish you would listen and I know I am



going to be misunderstood on this but I really think this is pretty important. I want to use a simple example that I think we are all familiar with because Senator Nichol and I, fellows that have been here a while, have all lived through it. A few years ago we had the strictest drunk driving law in the United States, the famous .10 law. We were the first state to pass it. Arbitrarily it took licenses. It started really cracking down and then we created a loophole, a major loophole, and we basically gutted it and what we did, we created the work permit thing that automatically eliminated the suspension of the drivers licenses. Anybody can get it today, it doesn't matter what, they can't refuse it, so on and so forth. Okay, so what has that got to do with this? It's got everything to do with this. It is the same principle. Senator Kremer, Senator Beutler, myself, Senator Vickers, we have read report after report, you people have voted millions of dollars over the years to set up a system of gathering information, to setting up experts, water resource directors, committees with some expertise on it, one thing and another so that when we made our decisions we would force them into a system based upon knowledge of what is there, damage that can result, all these things. That is what the existing control system is. It says, "Look, natural resource district, gather your information." Not only do we have that gathered, then we have soil conservation offices. You have to gather so cottonpickin' much information it is incredible and then that decision is based, at least theoretically, upon all this information that our laws forced us to gather and the decision, theoretically at least, is based upon knowledge of all these things. Now you are saying with this bill, "whappo", make a big barn door here on the left and say, in effect, don't worry what happens on the gathering of information, don't worry about what the decision of the directors are based upon all this. You simply go around the left end and you get a vote of the people and then somebody can stand up and say, well you are opposing local control, DeCamp. Not really. Water is so important, so critical, that you'd better not be risking the whole system you created over here to gather information with a big barn door over here that jeopardizes it all. Now, I know it sounds like I am trying to sabotage 401 or whatever the number is. I'm not. I'm really concerned that you are destroying everything you are creating. Your management systems, why worry about management systems when you can come up with something twenty-seven times stronger for a group that wants it by simply having a vote of the people. And you say, well the people will decide intelligently. Maybe. But the people are going to be denied the quantities of information that have to go

into decisions on water and I don't care if you got Solomon out there voting, Solomon himself isn't going to be able to get all the information by the time he says yes or no on a ballot walking in there, to make the decision on this issue. Why did we create all this thing in the first place to gather the information? It has cost millions to put it together. Why did we create it if we are going to have an alternate system that is so much easier and is it much easier? You better believe it and I will give you one final example to prove that and it is only one because there is lots of others. Remember the litter bill and the bottle bill? You had 60, 70% of the people who were supposedly in favor of the bottle bill, and it might have been a good law quite frankly, but the point is, you spend a few bucks and you have a good campaign and you turn people around just like that. That is what you are subjecting the whole system of water to. You are saying the expertise, the work, the system we created to make her fly we are now going to open up and destroy the other way. I know I am going to lose on it and I am going to be misinterpreted but I would just hearken back to those people who were here a few years ago when I stood up in frustration and warned you about some of the things that were in the famous land use zoning laws. Everybody denied they were there except they all were there and everybody that was sponsoring it came back and we spent the next three, four years repealing them quietly one after another the things that .... You are destroying all the things you built if you set this alternate system. The alternate system just guts all the work we've done, in my humble opinion.

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

SENATOR SCHMIT: Mr. President, members of the Legislature, although I would not have offered the kill motion, I think perhaps that the bill could use some more discussion. Perhaps we can accomplish the same thing on the kill motion and I would rise at this time in support of the kill. First of all I would say, I heartily endorse all of the things that Senator DeCamp has said relative to the expertise. We've been told many many times the value of having expert witnesses, expert information, developing a lot of information. Now we are saying that because perhaps of an emotional issue, as Senator Kremer has pointed out, whipped to a fever pitch by uninformed journalists or so forth, whoever you want to call it, they can create a panic situation whereby we create a control area and I want to ask you one more thing. Say for example my own area, and I have used

this analogy before. Those of us who are at the present time irrigators have the numerical superiority to bring in effect a control area. I have all my wells in. My land is developed and I'm irrigating and I see across the road my neighbors may decide to put in a well. What better method do I have to preserve the value of my investment and to deny my neighbor the right to improve his investment than to create a control area and limit his right to develop his area? I think you want to look long and hard at this thing from the standpoint of the ability of the majority to deny to the minority, some of their property rights. Now I have said many times I am in favor of allocation, various methods necessary to preserve our resources but I'm in favor of equity and I have said on this floor and I am going to say it once more, I'm not in the position to stand here and ask that those of us who have created the problem by use of the water should resolve the problem by denying underground water to those who have never used it. That will be a first in the history of this state. Several members here have talked about the local people that want to create a control area. It is kind of interesting. If the local people want to create a control area that is supposed to be good. If the local people choose not to create a control area, then those same legislators want to transfer to the state the ability to create one contrary to the wishes of the local people. It is kind of interesting isn't it? In other words, as long as you want to tighten the screws, tighten down the clamps, take away any individual property rights, we don't give a darn how you do it, that's good. But if the people decide locally they don't want to do it, then that is bad. I think that we need to recognize most of all, the thing I said earlier. You will create a control area under this procedure and you will not provide sufficient funding to do anything substantive with it which will result in having to come back to this Legislature and ask for funds time after time after time. This Legislature will not provide those funds, has not provided those funds in the past, we have not seen the willingness to do so and as a result the control area will mean nothing. I want to ask once more, how can members of this body arbitrarily say that no incorporated area shall be included in a control area. I don't think you can do that. There may be sometimes when it will be and sometimes when it will not be but there is no doubt in anyone's mind on this floor who has any concept of what is going on as to why the incorporated area has been excluded.

SPEAKER MARVEL: You have thirty seconds.



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SENATOR SCHMIT: Because we know if you include the incorporated area the rural people will be outvoted ten to one most times and we don't like that and so as a result we exclude them. Ladies and gentlemen, it won't work and as Senator DeCamp has said, we will be coming back here next year and try to bail ourselves out quietly, peacefully and piecemeal. Rather than to get ourselves out of a trap, let's stay out of the trap.

SPEAKER MARVEL: I think we need to recess now. Let me indicate the order after the recess. Senator Koch, Senator Lamb, Senator Beutler and Senator Haberman. Do you have something to read in?

CLERK: Mr. President, new bills. (Read by title for the first time, LBs 814-819 as found on pages 266-267 of the Legislative Journal.)

Mr. President, a new resolution, LR 206 by Senator Chambers. (Read as found on pages 267-268 of the Legislative Journal.) That will be laid over, Mr. President.

Mr. President, Senator Richard Peterson would like to print amendments to LB 267. (See page 268 of the Journal.)

And, finally, LR 203, 200 and 197 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 LR 203, 200 and 197. Senator Vickers, do you want to recess us until one-thirty, please?

SENATOR VICKERS: Mr. President, I move that we recess until one-thirty this afternoon.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion is carried. We are recessed until one-thirty.

Edited by L. M. Benischek  
L. M. Benischek

January 13, 1982

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Record your presence, please. Senator Rumery, will you record your presence, please. Okay, record.

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

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

CLERK: Mr. President, Senators Nichol and I guess there is a request from Senator Nichol requesting unanimous consent to switch hearing rooms with Revenue for Tuesday, January 19, and I understand Senator Carsten has generously agreed to that request....to switch hearing rooms for next Tuesday with Senator Nichol.

SPEAKER MARVEL: Hearing no objection, so ordered. We revert back to LB 401. Senator Koch, do you want to be recognized on the bill and then I will recognize Senator Lamb. Senator Koch.

SENATOR KOCH: Mr. Speaker and members of the body....

SPEAKER MARVEL: The motion at the moment is to kill the bill.

SENATOR KOCH: I understand, and I'm going to speak to that motion. I think Senator DeCamp is premature in that motion and I am hopeful that the body would not take him that seriously. We haven't had ample time to discuss the merits of 401. I think there is some misunderstanding. And while 375 was brought up this morning we worked on that bill extensively. We put it out here on the floor early last session and what happened was we were too tough, so we had to take it back to committee and we watered it down quite a bit, excuse the pun, and so as a result you've got another bill that is coming at you talking about management. This was on control areas. And I think that we should defer. And that shows you how forgiving I am because Senator Lamb did vote against 338 yesterday but I have forgiven him and I hope we do not indefinitely postpone LB 401.

SPEAKER MARVEL: Senator Lamb.

SENATOR LAMB: Mr. President and members, here I thought the bill would be passed and on its way long before this. This is totally unexpected. And Senator DeCamp is certainly overreacting in this matter because this is really a good bill, nothing wrong with it. Senator DeCamp says that we are losing the expertise. We are not doing that. The

same hearing process is involved in this that you have in declaring a control area under the conventional manner. And so what it is doing is substituting the judgment of the people in the area for the judgment of the director of water resources, and I am perfectly comfortable with that situation. I think those people should have the final say about the situation in their area. I see nothing wrong with it. All the arguments that have been presented in opposition to the bill are really very minor. It is a good bill and I urge you not to kill the bill and to advance it to E & R.

SPEAKER MARVEL: Senator Beutler, do you wish to be heard? Senator Haberman....is Senator Haberman here? Senator Vickers. Senator Schmit, and then Senator DeCamp.

SENATOR SCHMIT: Mr. President and members of the Legislature, I would just like to ask a theoretical question. I wonder how many of the urban legislators would be coming out of the woodwork...I'll bet you they would be five abreast and fifteen deep if I were to propose an amendment to a bill that would deny them the opportunity to vote in an area related to water. You know, really actually Howard and I had the thing all worked out to begin with and we are just kind of...this is kind of like the Polish resolution the other day that Senator Labeledz and Senator Fowler came up with. It almost got unanimous Republican support for it. But the point I want to make is this, if you are going to do it in this area, maybe we ought to extend it, Senator Lamb, so that urban legislators can't vote on anything that has to do with water because certainly it is a rural issue. It is a rural item. Now I think that would cause great consternation if it caused the kind of a repercussion that caused people to get retirement early in the area of politics. But I think also there are a number of other questions that haven't been established. We haven't decided about the cost of elections. Who is going to pay the cost of the elections. We have been trying to work out an election process for the commodity checkoff boards, and maybe we will get one worked out but at the present time they are expensive. We know they are. We hope we can get that resolved, but I haven't seen that resolved here. Under the bill it isn't even clear whether a renter can vote or not. Does the renter have the right to vote? Or does he not? How about an absentee landowner? I think you have a lot of unanswered questions here which are going to come back to haunt you. I will make one more prediction. If the bill should become law...if the bill should become law, there will never be a control area organized under this statute. It will not happen. It will be on the books. It will be



something you can pacify your constituents with. It will be something you can go back and tell them you got done. But you are not going to do one positive thing for water conservation. I happen to sort of agree with Senator DeCamp. You are not going to listen perhaps. You are going to go ahead and do it, but many a time I have sat on this floor in 13 years and heard the old argument, well, give good old so and so a bill because it is not going to hurt anybody. And as Senator Lamb said, he thought the bill would be on its way, and it ought to be on its way, Senator Lamb, to retirement, because if it isn't, it is going to come back to haunt us all some day and if not to haunt us at least to plague us a bit and perhaps embarrass us. So I am going to ask you again, consider this, where are you going to get the funding? How are you going to rationalize the denial of the vote, and what happens if you try, or we try to expand that in future legislation? I don't think you can find yourselves comfortable with the answers to those questions. If you can, then you are mighty ambivalent. Thank you very much.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, I have no doubt that when we are done with water by the end of the year Schmit is going to hate me, Lamb is going to hate me, Kremer is going to hate me and so on and so forth. They may already, but they will more. Now I have hung back and I have tried to work behind the scenes with all parties on it, and I will continue to do that. But I am not going to sit by and see some bad things done if I have any ability to stop it, so let's just play a game and show you what is in the bill for a minute. The bill says, after going through I don't know how many hundreds of thousands of dollars would be involved of research for the Director of Water Resources to decide A or B, but whatever his decision is after all this time and money is spent and looking at the whole state picture, all you have to do to upset that whole thing if he rejects it, a control area, is to have a vote of the people. Here is the other side. Are you ready for this? If you want to be consistent, if you want to be honest, if you want to be fair, if this is such a great idea, why just put B's side on it too. What if he says it should be a control area and Schmit doesn't like it, or somebody doesn't like it, why not go have a vote of the people then too, and undo everything? That is the precedent you are setting. That is the principle. You say, well, no, that ain't the way it is going to work. Baloney. That is exactly what was in 375 of Schmit's bill and Kremer's bill, the other half of this coin, and I was outraged when I saw it there too, and I took it out. Now, if you are going to deal

with water, if you are going to make these reports meaningful, if you are going to start doing something on it, then hold your system together. You have got 375 and I think at one time when we put that bill out on this floor, I am going to say about 90 percent of it was just doggone good. Sure it was stronger than anybody wanted, mandatory management areas and so on and so forth, and I am not so sure but what that isn't what we had better go back to, a lot closer to what we originally had out on this floor and I am going to be working for a lot of those things. But if you are going to go this route and say all the work we have done, all the reports, all the years don't mean anything if you don't like what happens, you just go have a vote of the people and then babble something about local control to sanctify it, then forget water, just throw it up and have a vote of the people on this and a vote of the people on that. It is a complicated area. We are spending millions of dollars. How about making all the tax decisions of the tax commissioner subject to a vote of the people when somebody gets a petition or something? It is not going to work. Eliminate the system if you are going to do it that way, or make your system work, make those decisions they say have meaning. Now I repeat, I know doggone well I am going to lose here. You are not going to kill the bill. But if you would kill it, then you would be forced to deal with these issues on 375. And Senator Schmit and Senator Kremer might not like 375 when we have finished. But we said we are going to make her into water and the Governor came and paraded there and said how he supports getting her done, well, by God, let's do it this year and quit "baloneyizing" and let's make her function, make those management areas function, but you are not going to get it done if you have three different versions parading across the floor here with one undoing what you are doing over on the other side. You have got a confined system. Senator Kremer was one of the chief architects of the natural resource districts. If LB 401 passes and if LB 375 had passed in its original form, Senator Kremer would have been the chief architect of destruction of the natural resource districts. That is what it is all about in 401. You are going to destroy the very thing we have been harping on that we are creating. I will repeat again, I am serious about this. I have hung back on it but water is too important to be left in the hands of water experts almost I am ready to say. Like somebody once said, war is too important to be left in the hands of generals. Start learning about what is in these water bills. Start getting involved. I am not saying that I don't trust and believe all of them. I think they are all just as sincere as God ever made any men. But I am telling you....I am telling you it is time for you to start



looking and understanding what is in these things yourself. And I claim, and if I am wrong, check it out, research it, get some people and talk to them. Talk to your natural resource districts. I claim you are destroying your natural resource districts with this. If you say it is okay to do one, to repeal it, why not put in the other half. You can undo the control areas. Well, I guess that is it.

SPEAKER MARVEL: Senator Haberman and then Senator Vickers.

SENATOR HABERMAN: Mr. Speaker and members of the Legislature, I apologize for not being here the first time you called on me. Senator DeCamp, the reason the bill is here is because water is critical. That is why they have the bill. This morning you said, water is critical, and actually this bill will help save water. Senator DeCamp says, let's wait for 375, 375, let's wait for 375. Stall, stall, stall. Something will happen between now and 375. Let's don't pass this one, let's wait for 375. I've seen these tactics used before. Let's advance this one to Select File and then change it if we don't like it, instead of killing it. What happened, we got a sleeper here. We had a bill that came up and they didn't have their forces together, but I would like to call your attention to something. The same people who were supporting this bill are supporting the vet college, so they must be good people. Senator Schmit and Senator DeCamp. We have got the Farmers Union, the Grange, the Farm Bureau, Livestock Feeders, Stockgrowers, Southwest Nebraska Irrigators, Electrical Association, Sandhills Resources Council, Nebraska Association of Resources District, Nebraska Water Association, Resources Association. They are supporting this bill, so it can't be all bad. Who opposed it? One person opposed the bill, and it has been around since February of '81. But, no, now all of a sudden it is bad, let's kill it, let's wait for 375. Let's put all these things in 375. You can holler, take away local control and turn everything over to the citizens on every bill that comes up here, if you want to use those kind of scare tactics. I have heard them before. You have all heard them before. So I am not going to fall in and follow the scare tactics, eliminate the system. I have heard that over and over, somebody who really wants to fight a bill. So I say this, let's do not IPP. Let's advance the bill and then those people who feel there are things so tremendously wrong, let them change it on Select File. That is the way to do it. And I am in a groundwater control area. I know how people feel in a groundwater control area. They voted it in themselves when they voted the board, the same thing that we are doing here. So let's advance it to

Select File and those people who really don't like some of the things in it, let's sit down at a table if they want to and work it out, and who knows about 375? We don't know about 375. We don't know how it is going to be changed. We don't know how it is going to be amended. So I say, no, let's don't kill. Let's go ahead and advance the bill to Select File and take it from there. Thank you, Mr. President.

SPEAKER MARVEL: Senator Kremer, your light was on originally. Senator Kremer, do you wish to be recognized? Your light was on.

SENATOR KREMER: Mr. Chairman and members of the Legislature, when I tried to explain the three bills that we were discussing this morning, I did not take a position. I am going to take a position now and I am going to oppose the bill on two points. First of all, I think it is unwise to leave the urban voters out and the urban areas out. When we get to the use of water in some resource districts at least, the urban users may be using more water than the rural users, could be and could not be, but they could be. But we are all involved in this thing together, and I think the urban voters and the urban areas should be included in any control area. That is number one. Number two, I think it is unwise to bypass...and I used the word bypass this morning which is wrong, it is "override" the counsel that is received from the people that should have the figures, the knowledge, the wisdom based on the data that has been collected, and then to just take a vote of the people which I am always reluctant to take that right away from them, and say we will go this direction because we have got 50 percent of the votes to do it or over 50 percent. I hate to do that. I think to override the expert facts that have been put into the attempt to go under control would be unwise. For those two reasons I am going to vote in opposition to the bill.

SPEAKER MARVEL: Do you wish to speak?

SENATOR VICKERS: Mr. President, I call the question.

SPEAKER MARVEL: The question has been called for. Okay, the question is, shall debate cease? All those in favor vote aye, opposed vote no.  
Mr. President.

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

SPEAKER MARVEL: Debate is ceased. Senator DeCamp, do you want to close?

SENATOR DeCAMP: Mr. President and members of the Legislature, I got out of the habit of killing bills in here about five or six years ago. Try to help pass bills or go to the bathroom when I really violently oppose one and don't want to make anybody mad. But I repeat again, we have jacked around on water so long it is time to start doing her. Now it is my understanding that we are going to do it, and I don't care whether it is 375 or 573 or anything you want to name, we are going to have one vehicle basically for the overall package and apparently by sanction of the Governor and the various opponents and proponents, they selected that particular bill and you can put the name of everybody in the Legislature on it before you are all done. But you can't have one pony running across that undoes everything you are doing in the other one, and I know you think I am exaggerating. But when you set up a highly complicated system such as we have, the natural resource districts, the water resources, the jillions of studies, and then you basically render them inoperative, inoperative by having a way to get around them all and render them meaningless, you are defeating your whole purpose. And I used that example earlier and I was dead serious. We had the toughest drunk driving law in the nation. I wrote it, and I also made the mistake that I thought Senator Kremer was going to make. I destroyed the doggone thing by going along with people that said, well, oh, this is too heavy, now we have got to have these work permits so that anybody that gets busted gets a work permit and basically wiped out the drunk driving law because the suspension suddenly meant nothing. Well, you are doing the same thing here. You have created your system. You have got it built up. It is just starting to function and some people are getting scared that it might actually work and maybe they might not like everything, and I am talking about this interest group. I don't care whether they be cowboys or stockgrowers, or whoever, they don't want to have a system that really does start doing something without at least them having the option to undo her, or to do what they want. And I am saying, no, don't start breaking her up. Don't do what we did on some other bills. We created our system, now let's make it fly. And the reason I am moving to kill the bill is because as long as it is there our attention is going here with this process, our attention is diverted from this, we don't have any clear direction on water. I think if we killed it...now I know the votes aren't here, I know it has been lined up the other way, but if we killed her today, it would be a declaration by the body that it is time to put up, and I mean put up or shut up by Schmit, by Kremer, by myself, by that Public Works Committee and put into 375 the things that we know



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need to be done. I urge you to kill the bill, not because I have any animosity in any way against any member here, but as long as it is there we aren't going to be dealing with the issue headon. We are always going to have this side diversion. I understand Senator Haberman's approach to, aw hell, move it on to Select File. I have done it myself a hundred times. Some issues I can't participate in that process in, they are too important. A lot of things it doesn't matter, you can correct them. But you get this one which really undoes everything and I think you are getting in dangerous territory. I would urge you to kill it and then I would urge every member here to start demanding that Schmit, Kremer and that Public Works Committee get 375 up, get that thing going, and get the things in there that we know need to be in there, a strong management area, a strong system. If we finance these NRDs and people have paid their taxes, it is time we start getting some return on them. Why create them only to destroy them next year, and you can destroy them either directly by wiping them out or making them ineffective with pieces of legislation like this.

SPEAKER MARVEL: Senator DeCamp, you have one minute.

SENATOR DeCAMP: I will quit now. Oh, I thought you told me I was done. No. One minute? I will quit.

SPEAKER MARVEL: The motion before the House is the indefinite postponement of LB 401. All those in favor of indefinitely postpone vote aye, opposed vote no. Have you all voted? Have you all voted? Senator DeCamp. Have you all voted? Five.

SENATOR DeCAMP: Well, I am not dumb enough to beat a dead horse, but I just called some people to look at the responsible people on water that have worked on it that are voting to kill.

SPEAKER MARVEL: Record the vote, Mr. Clerk.

CLERK: 15 ayes, 23 nays on the motion to indefinitely postpone the bill, Mr. President.

SPEAKER MARVEL: The motion lost. Okay, the motion is to advance the bill. Do you want to move your machinery over there so I can see you? Okay. Senator DeCamp.

SENATOR DeCAMP: Mr. President, I would seek to amend the bill then at this point, and I know I am annoying some people

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but what my amendment would be...and we have to get the exact language that if the Director approves a resource district you can have this same whimsical vote, and I would ask Senator Lamb a question. Do you have any opposition to this? It is exactly and identically what you are doing on....?

SPEAKER MARVEL: Senator Lamb, do you yield?

SENATOR LAMB: Yes. It's fine with me, I don't care.

SPEAKER MARVEL: You put a motion up here. What is the final conclusion of the motion?

SENATOR DeCAMP: I have to get the exact wording. But I can talk on it. The principle is very simple, Senator Lamb and others understand it.

SPEAKER MARVEL: Go ahead.

SENATOR DeCAMP: If we are going to have a vote rejecting everything the Director has done and all these people have come up with after it is all done one way, then why not have the vote rejecting and repudiating all this work the other way? And that is what my amendment would do. It is by the way the proposal that was originally in 375 that I thought was irresponsible for the one side to be doing it. You can destroy your natural resource districts and your water system, your whole system one way as they were going to do there originally, well you can just as well destroy it that way too. As long as we are destroying things, let's wipe them out in both directions. And there is no way you can vote against this amendment logically, no way at all. It is the exact opposite side of the same coin. Additionally, as long as we are saying city people don't count in voting, I am maintaining that in the bill, city people would be just as impotent under my proposal. I am not changing that at all. You still would have no vote, not counted as Senator Lamb has in the original bill. And I noticed all the Omaha and Lincoln Senators almost exclusively, inclusively, voted to emasculate their peoples' right to vote, so recognizing that I am not changing that part of the bill at all. I am keeping that intact. You still would be emasculated as you have indicated you wanted under this proposal. So I urge adoption of the amendment. Yes, Marge, even you.

SPEAKER MARVEL: Senator DeCamp, the amendment...I have discussed this with the Clerk, the amendment is not ready to be presented.

SENATOR DeCAMP: Mr. President, I recognize that, I apologize. I will maybe try it on Select File if the bill advances.

I personally will not be voting for the bill, hoping that I won't have a chance to offer the amendment.

SPEAKER MARVEL: Okay, the motion at the moment is to advance the bill. Senator Haberman, do you wish to speak to this motion? You don't. Senator Cullan, do you wish to speak to the motion to advance the bill? Senator Schmit. Senator Schmit. Senator Schmit, the motion before the House is to advance the bill. Do you wish to speak to that motion?

SENATOR SCHMIT: Yes, but I won't take a lot of time, Mr. President. But I wish that some of you who are so determined to have this would just think a little bit. For example, even without this bill I believe it is probably possible for the citizens of an area by an initiative procedure to create a control area. I believe it is in the law. I think they could do it today. You cannot stop the will of the people. By the same token, you can go to the referendum procedure, couldn't you, Senator Lamb, and throw it out if the people really felt badly enough about it. We always have that protection. It is still there... it is still there. So in reality, in reality what Senator Lamb is doing is laying down a few guidelines perhaps, but it is unnecessary. The people have the right of initiative and referendum and you cannot deny them that right. And I just want to say once more, I have seen about everything that could possibly happen during 13 years plus a few weeks happen on this floor but this is the first time in all the time I have been here that I have seen an almost unanimous vote of urban members voting to disenfranchise themselves, voting to say, we don't want anything to say about this. I begged...I beg your forgiveness, I thought I must have been mistaken. I am wondering how it is going to read in the paper tomorrow. I hope that it reads the way I understand here today because if this things works, ladies and gentlemen, and especially those of you of the press, this is a tremendous idea which can be expanded tremendously into a lot of areas. People who don't have an interest in education shouldn't be allowed to vote, if you don't happen to live in a certain area, if your children are all grown. There are tremendous possibilities here, and it is almost overwhelming in its consequences. So get this list, look down the list and as I have seen before, we sometimes make a change from time to time, but, ladies and gentlemen, if we advance 401 with the present language, you will have taken the step which is going to haunt you from this day forward.

SPEAKER MARVEL: The motion before the House is the advancement of the bill. I am going to go back over the list once



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more. Senator Haberman, do you wish to be recognized?

SENATOR HABERMAN: Yes, I do, Mr. President.

SPEAKER MARVEL: On the motion to advance?

SENATOR HABERMAN: Yes, Mr. President. Mr. President, and members of the Legislature, to answer Senator Schmit. There have been areas who have been trying to get control areas, who have been trying to conserve water, who have been trying to save their water, and the Department of Water Resources says, no, you have got to wait 5...6 years, you have got to spend all this money for all these studies. You have got to go through all this hoopla, you cannot have a control area until you do all this study and spend all these hundreds of thousands of dollars. So while this is all happening, what is happening? People are coming in and drilling thousands of water wells and using the water. Why? Because bureaucracy drags its feet. Bureaucracy is so slow. Bureaucracy says, no, we take another look. That is why maybe we need legislation like this, to let those people in those areas who have a water problem have water legislation. I have been down here three years and what water legislation have we put out, to help the people in the Sandhills, to help the people in North Platte? Name me, what legislation have we put out? We haven't. We haven't put any out. But this bill will give those people the opportunity to put in an area now when they need it if they want it. That is why I say we need a bill like this because they can act and they can act now and they don't have to wait and study and wait and study and hire attorneys and do this and do that. If the people vote it, they can do it. So that is why I am supporting this bill. And I am saying if we move it to Select File and there are some things in it, we can change it. So let's pass it on to Select File and go on from there. Thank you, Mr. Speaker.

SPEAKER MARVEL: Senator Cullan. The motion is the advancement of the bill.

SENATOR CULLAN: Mr. President and members of the Legislature, at this point in time I am going to vote against advancing LB 401 because I believe that LB 401 is in need of some amending. I seriously question the constitutionality of the bill in its respect to allowing rural people to vote on this issue and not allowing urban people to vote on water on establishing a control area. Once that is resolved, however, I think that LB 401 would be a step in the right direction, and I would urge the introducers of the bill to

prepare the necessary amendments to correct any constitutional problems with this bill and particularly to allow urban people to participate in the process because water is just as important to the person who steps to the kitchen to fix breakfast as it is to the farmer who starts the center pivot sprinkler system, and if this system is going to work at all there has to be a cooperative effort between those who live in town and those who live on the farms, and I think it is unrealistic to assume that only those of us who live on the farms have an interest in this. But I support the general philosophy of LB 401 because I think that the people of the State of Nebraska and particularly those on the farms recognize the need for control areas and for controls on the withdrawal of water much beyond those of us in this Legislature and much beyond those who work in the natural resource districts and in state agencies. The people attitude wise are years ahead of us now I think in their approach to water. They want us to...the attitudes have changed so much in the last few years it is amazing. Four or five years ago when I would go to a townhall meeting in the 49th Legislative District, people would tell me that they are concerned about the state being too involved in water issues. But today they are telling us that we had better do something about development which is adverse because they want to ensure that there is water today and there is water tomorrow, and I think that we ought to give people a mechanism to establish a control area when government fails to establish those regulations which people will want and which people need. So I like the philosophy of LB 401. I think Senator Lamb and the others who have participated in this process have done a good job, but I cannot support the bill until such a time as they correct what I believe is a basic philosophical mistake and probably a constitutional problem as far as those who can participate in the process is concerned. At this point in time I would vote against the bill. I would urge you to do likewise until these amendments are presented to us.

SPEAKER MARVEL: Senator Beutler. Senator Lamb.

SENATOR LAMB: Am I closing? Is this the close, Mr. Speaker?

SPEAKER MARVEL: No, you are not closing yet.

SENATOR LAMB: I will wait and close, please.

SPEAKER MARVEL: Okay. Senator Vickers. Okay, Senator Koch. The motion is the advancement of the bill.



SENATOR KOCH: Thank you, Mr. Speaker. I am a co-signer and sponsor of this with Senator Lamb's permission and I think it is time that I speak. First of all, if you look at the proponents of this, I don't believe you can say that they are being selfish. There are people here sincerely concerned about water issues. Oftentimes you have elected boards who are not always as responsible as we would like them to be. What this does is allows for a petition that people who have a great interest in water because it is a main source of their livelihood and allows them to establish a control area when others may not do it. So, therefore, even though I might be a suburban Senator...Senator Schmit always calls me an urban, but I am suburban and so I do understand water a little bit. And I serve on the Public Works Committee and I think that there are times when I sit there in frustration when we really don't want to do much about water because we believe it is there forever. What is wrong with a group of petitioners who have as their livelihood agriculture and who see it being drained away and nothing being done about it because no one thinks it has yet reached a crises or catastrophic stage. This is action by people responsible and knowing something must be done. Let's try it. And I would remind Senator Cullan there is a severability clause in this bill that if there is any part of it that is unconstitutional, that will take care of itself.

SPEAKER MARVEL: Senator Lamb, you are recognized to close. The motion is to advance the bill.

SENATOR LAMB: Thank you, Mr. Speaker, members of the Legislature, first I would like to comment on Senator DeCamp's kill motion which was....or amendment, I should say, which would allow....and that amendment was withdrawn and probably will be offered at a later time, and that amendment would allow a vote to withdraw from a control area. My initial reaction was that there is nothing wrong with that but let me explain why I may have second thoughts about that proposition. And to do that, let me run back through the way a control area is formed. First the natural resource district directors decide there should be a control area. Those are the people that are elected by the people. Those directors are elected by the people. So here is the method which really springs from a vote of the people to form all control areas. Now then it goes to the Director of Water Resources for his approval. Okay, it has already had a tacit approval from the voters through the NRD directors. It has had that. Then it went to the Director for his approval. If he declines, then the whole thing is down the drain because of the Director's disapproval. So there is a significant difference between what Senator DeCamp is proposing

and what I am proposing simply because the initial action is proposed by the NRD directors who are direct representatives of the people and whereas the Director of Water Resources is not an elected official by the people. That is the reason I may have problems with Senator DeCamp's amendment when he comes back with it on Select File. The other point that I would like to discuss is one that has to do with the voting...who votes? And under the provisions of the bill now the people in the incorporated areas do not vote. We all know that it only takes a small amendment on Select File to change that if it should be the wishes of the body. And I would agree that there is some logic in that. If that is the way you want it, you can offer the amendment and it can be done that way. Basically, you are not going to get....I agree, you are not going to get away from the will of the people, the whole body, all the people in the state in regard to water. So if that is what you want, there is every chance to amend the bill to do that on Select File. I move that the bill be advanced.

SPEAKER MARVEL: The motion is the advancement of the bill, LB 401. All those in favor of advancing the bill vote aye, opposed vote no. Have you all voted? Have you all voted? Do you want to clear the board? Okay, the question before the House is shall...do you want to place yourselves under Call? All those in favor vote aye, opposed vote no. Record.

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

SPEAKER MARVEL: Okay, the House is under Call. All legislators please return to your seats, record your presence. Unauthorized personnel please leave the floor. And prepare now for a roll call vote. Is everybody in their seats? Unauthorized personnel off the floor. All legislators must be in their seats and until then we cannot continue or start with the roll call vote. Senator Lamb, there are two excused, Senator Clark...who is the other one? Senator Dworak. Senator Kremer, would you record your presence, please? Mr. Sergeant at Arms, we need Senator Goodrich and Senator VonMinden. Senator Lamb. Senator VonMinden is on his way up. Senator Goodrich has just come in. Shall we proceed with the roll call? We are ready to proceed with the roll call vote. The vote is the advancement of the bill. Proceed, Mr. Clerk.

CLERK: (Commenced reading the roll call vote). Senator, I am sorry.

SPEAKER MARVEL: It is almost impossible for the Clerk to

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LB 127A, 287, 401,  
498, 820-824

hear your votes, so would you please cooperate with him and with us. Proceed.

CLERK: (Read the roll call vote as found on pages 269 and 270 of the Legislative Journal). 22 ayes, 20 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The motion fails. Senator Landis. The Clerk has got some items to read in and then we will go to LB 410.

CLERK: Mr. President, new bills. LB 820 offered by the Urban Affairs Committee. (Read title as found on page 270 of the Legislative Journal). LB 821 offered by the Urban Affairs Committee. (Read title). LB 822 offered by Senator Fowler. (Read title). LB 823 offered by Senator Chronister. (Read title). LB 824 offered by Senators Haberman, Nichol and Labeledz. (Read title). See pages 270 and 271 of the Journal).

Mr. President, I have a series of notice of hearing reports. The first is offered by the Urban Affairs Committee for January 20 and January 27, signed by Senator Landis. One for the Miscellaneous Subjects for January 28, 29, February 4, 5 and 11, signed by Senator Hefner. A third from the Ag and Environment Committee for January 28 and 29, signed by Senator Schmit. One for the Revenue Committee for Monday, January 18. That is offered by Senator Carsten as Chairman. (See pages 271 and 272 of the Journal).

Mr. President, new A bill, LB 127A offered by Senator Sieck. (Read title). (See page 272 of the Journal).

Mr. President, the Speaker gives notice of priority bill scheduling for general floor debate.

Mr. President, Senator Koch would like to print amendments to LB 498 in the Legislative Journal. (See page 273 of the Journal).

Mr. President, your committee on Nebraska Retirement Systems to whom was reported LB 287 instructs me to report the same back to the Legislature with the recommendation that it be advanced to General File with amendments. That is signed by Senator Fowler as Chairman. (See pages 273 through 275 of the Legislative Journal).

Mr. President, Senator DeCamp would like to print amendments.....that's all I have, Mr. President.



April 16, 1982

LB 401, 754, 761, 953

SENATOR LAMB PRESIDING

SENATOR LAMB: The Prayer this morning will be offered by the Reverend James Cooke of the Fourth Presbyterian Church of Lincoln and this church will celebrate its seventy-fifth anniversary on Sunday, April 18.

REVEREND COOKE: Prayer offered.

SENATOR LAMB: Thank you, Reverend Cooke. Roll call. Have you all recorded your presence? Have you all recorded your presence? Record, Mr. Clerk.

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

SENATOR LAMB: Item #3, messages, reports and announcements.

CLERK: Mr. President, first of all, page 1945, line 31, correct the spelling of the word "peace." Mr. President, I have messages from the Governor that were received in my office on April 14. The first pertains to LB 754. (Read.) Mr. President, the second message addressed to Dear Mr. President and Senators. (Read message Re: LB 761. See pages 1951-1954 of the Legislative Journal.)

Mr. President, I have an Attorney General's opinion addressed to Senator Vickers regarding LB 953 and one addressed to Senator Lamb regarding LB 401. Both will be inserted in the Journal. (See pages 1957-1961 of the Legislative Journal.)

I have the annual report filed by the Department of Correctional Services. That will be on file in my office; a report from the Department of Roads pursuant to Statutory Section 66-476, and Mr. President, I have a series of auditor reports submitted by the State Auditor. Those two will be on file in my office.

SENATOR LAMB: Item #4, motions. Senator Rumery, for what purpose do you arise?

SENATOR RUMERY: Mr. President, members of the Legislature, I would like to rise for a point of personal privilege.

SENATOR LAMB: Please state your point to the Chair.

SENATOR RUMERY: The Pages are going to hand out an invitation to each one of you to attend the Nebraskaland Days held in North Platte and we want to emphasize the fact that you are all invited and they are going to attempt to have antique cars for all of the legislators to ride in in the parade. You will be extremely welcome and we hope you can attend.