

January 9, 1981

PRESIDENT: Will there be further discussion on LR 1. Senator Landis, you may close. No close, all right. The question before the House is the adoption of LR 1 found on page 82 of the Journal. All those in favor vote aye, opposed nay. Have you all voted? Have you all voted? Record the vote, Mr. Clerk.

CLERK: 30 ayes, 1 nay on adoption of the resolution, Mr. President.

PRESIDENT: The motion carries. The resolution, LR 1, is adopted. Anything further, Mr. Clerk, before we ...?

CLERK: Mr. President, yes, sir, I have a new resolution offered by Senators Goll and DeCamp. (Read LR 2 as found on pages 96-97 of the Legislative Journal.) Mr. President, pursuant to our rules, that resolution will be laid over.

PRESIDENT: We are ready then for the introduction of new bills. I would hope that all of you who have bills ready for introduction will get them up to the Clerk's desk so that we can expedite the reading in and introduction of new bills. Proceed, Mr. Clerk, with the reading of the new bills.

CLERK: Read LB 52-60 by title for the first time as found on pages 97-98.

Mr. President, if I could interrupt for just a moment, Senator Landis would like to have a meeting of the Urban Affairs Committee underneath the North balcony now for purposes of organizing, Urban Affairs Committee under the North balcony right now, Mr. President.

Read LB 61-65 by title for the first time as found on page 99 of the Legislative Journal.

Mr. President, Senator Lamb would like to have the Reference Committee of the Executive Board meet underneath the North balcony right now, that is Executive Board underneath the North balcony.

Read LB 66-67 as found on pages 99-100 of the Legislative Journal.

Mr. President, the Reference Committee would like to meet in the area where Senator Lamb is standing for purposes of referencing bills, Reference Committee over in the area where Senator Lamb is.

Read LB 68 by title for the first time as found on page 100 of the Legislative Journal.

LB 14, 18, 20, 27, 28, 29, 30
37, 41, 42, 43, 45, 46, 81
110, 121, 125, 130, 140,
143, 155, 164, 188, 188A,
207, 207A, 214, 234, 82, 64
234A

February 20, 1981

SENATOR DWORAK: I wish to close, Mr. President. I just reiterate that LB 125 be advanced to E & R initial.

SPEAKER MARVEL: All those in favor of that motion vote aye, opposed vote no. Okay, record.

CLERK: 33 ayes, 9 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is advanced. The Clerk has some items on the desk before we adjourn.

CLERK: Mr. President, before we leave Senator Kremer would like to remind the Public Works Committee that they have a hearing at noon today in Room 1517 on Gubernatorial appointments for the public roads classification for motor vehicle licensing board. That is in Room 1517.

Mr. President, I have legislative bills ready for your signature.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business I am about to sign and I do sign LB 121, LB 64, LB 41, LB 18, LB 14 and engrossed LB 140, engrossed LB 130 and engrossed LB 82, engrossed LB 81, engrossed LB 46 and engrossed LB 45. Okay, Mr. Clerk.

CLERK: Mr. President, I have an Attorney General's opinion addressed to Senator Goodrich. It will be inserted in the Journal. (See pages 608-610.)

Your committee on Enrollment and Review respectfully reports we have carefully examined and engrossed LB 110 and find the same correctly engrossed; 188, 188A, 207, 207A, 214, 234 and 234A, all correctly engrossed.

Mr. President, your Enrolling Clerk respectfully reports she has at 10:37 a.m. presented to the Governor for his approval the following bills: 28, 42, 156, 20, 27, 29, 30, 37 and 43.

Mr. President, Senator Chambers moves to reconsider the action in voting to indefinitely postpone LB 143. That will be laid over.

I have explanation of votes from Senator Haberman and Senator Sieck. (See page 611 of the Journal.)

I have a report of registered lobbyists for February 12

March 6, 1981

LB 74, 56, 269, 407,
489, 500

permit fee money that we collect from others but they do have the opportunity to go to these parks without any charge. They can go to their city parks. Of course, I know there is a swimming fee if there is a swimming pool but, anyway, the City of Lincoln and the City of Omaha obtain their funds from the general fund. There is no possible way that we can get \$4 million from our general fund to pay for our park system. So for the present time and until we do find the money, as Senator DeCamp says, to give the people of the State of Nebraska the opportunity to come and go as they please and yet find the clean and all the equipment in the state parks that we have today, then we are just going to have to charge a fee and hopefully someday we can do what Senator DeCamp and Senator Chambers mentioned, get the money from other sources to keep up the park system and I urge the members of this Legislature to advance LB 74 from General File. Thank you.

PRESIDENT: The question before the House is the advance of LB 74 to E & R Initial. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 28 ayes, 6 nays, Mr. President, on the motion to advance the bill.

PRESIDENT: Motion carries and LB 74 is advanced to E & R Initial.

CLERK: Mr. President, may I read a few things?

PRESIDENT: Yes, you may read some matters in.

CLERK: Mr. President, first of all, Senator Von Minden would like unanimous consent to add his name to LB 269 as co-introducer.

PRESIDENT: Any objection? If not, so ordered.

CLERK: Mr. President, Attorney General opinions addressed, one to Senator Lowell Johnson regarding LB 489; the second addressed to Senator Kahle regarding LB 407.

Mr. President, your committee on Public Works whose Chairman is Senator Kremer reports LB 56 to General File with committee amendments attached.

PRESIDENT: Ready then for the second bill on General File, LB 500. Mr. Clerk, you may read.

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LB 47, 56, 268, 298, 519, 245

SENATOR CLARK: The bill is advanced. The Call is raised.

CLERK: Mr. President, while we are waiting, Senator Rumery would like to print amendments to LB 47. (See page 807 of the Legislative Journal.)

Mr. President, Senator Cullan designates LB 56 as his priority bill. The Ag and Environment Committee designates LB 245 as one of their priority bills.

Mr. President, Senator Landis would like to print amendments to LB 298. (See page 807 of the Legislative Journal.)

Mr. President, your Committee on Miscellaneous Subjects whose Chairman is Senator Hefner reports LB 519 indefinitely postponed, and your Public Health and Welfare Committee reports LB 268 as indefinitely postponed.

Mr. President, Senator Haberman...oh, I'm sorry. Mr. President, your Miscellaneous Subjects Committee would like to report the Reapportionment/Redistricting Guidelines in the Legislative Journal. (See pages 806 and 807 of the Journal.)

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LB 205, 56

SENATOR CHAMBERS: Then I will wait. I won't take any more time this morning. I will wait until it is to be read.

SENATOR CLARK: Thank you. We will take up LB 56 now. We have got forty-five minutes.

CLERK: Mr. President, LB 56 was a bill introduced by Senator Samuel Cullan. (Read title.) The bill was first read on January 9. It was referred to the Public Works Committee for hearing. The bill was advanced to General File. There are committee amendments pending by the Public Works Committee, Mr. President.

SENATOR CLARK: Senator Cullan...Senator Kremer.

SENATOR KREMER: Mr. Chairman and members of the Legislature, the committee amendments are rather extensive. I will explain them and then I am offering an amendment to the committee amendments but I will refer to the committee amendments first. First of all, it has to do with the requirement of a permit in case that an industrial user wishes to withdraw groundwater in the State of Nebraska. The committee amendments stipulate a change when we are addressing the withdrawal from one thousand acre feet, the committee amendments change that to five thousand acre feet. It deletes the requirement that both the Department of Water Resources and the Natural Resource Districts have to approve that permit. It deletes the Natural Resource District, which leaves only the Department of Water Resources to grant the permit. Then the remaining amendments are somewhat important and I will try to explain them very briefly. First of all it defines what we mean by industrial purposes and it does include manufacturing, commercial, and power generation for the use of this water. Next it requires the Director to determine if an application filed is complete or incomplete, and if incomplete, to give the reasons why. It goes on to establish a deadline for the various phases of application consideration. Next it allows the applicant to file with the Director any waivers of liability signed by persons that are potentially affected. It requires the Director to issue a written order containing specific findings of fact when granting or denying this permit or the application for one. It allows the Director to grant a permit only if it is in the public interest and lists factors for the Director to consider in determining what is public interest. It allows the revocation of a permit only for three years nonuse, we are talking nonuse now, of the water or violation of what the permit conditions may be. It defines the "affected person" for the purpose of who can appeal a decision by the Director. It

requires the Director to use regulations spelling out the contents and the scope of the hydrological investigation required of the applicant. It also states that the act does not exempt the permit holder from regulations applied by the NRD for a control area established before a permit is granted. Last of all, it provides for an application fee of \$2500 for the withdrawal of 5,000 acre feet and an additional fee of \$1000 for each 1,000 acre foot withdrawal. The original bill, now here I am offering, Mr. Chairman, my amendments to these committee amendments and I expect they should be adopted first.

SENATOR CLARK: Is this the first amendment up, Mr. Clerk?

SENATOR KREMER: My amendments.

SENATOR CLARK: He wants an amendment to the committee amendment, is it number one? We have three amendments up here to the committee amendments.

CLERK: Yes, sir. Your committee amendments would be...you are addressing now your amendments to the committee amendments, is that right?

SENATOR KREMER: Yes, sir.

CLERK: Senator, I did have one question. Are those yours individually or the committee amendments to the committee amendments? It makes a difference.

SENATOR KREMER: My amendment to the committee amendments. It changes the 5,000 acre feet that is referred to in the committee amendments to 3,000.

CLERK: Well, to comply with the rules, Senator Cullan has an amendment to the committee amendments that we should deal with first as introducer.

SENATOR KREMER: Okay.

SENATOR CLARK: Senator Cullan.

SENATOR CULLAN: Okay, Mr. President, members of the Legislature, the only amendment that I have to the committee amendment is a technical one. It makes some spelling changes and corrects an incorrect reference, internal reference, within the bill. So it is really an E & R amendment and I guess I would move adoption for my amendment to the committee amendment. That has been distributed to you and it is one that first we are changing (interruption).

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LB 56

SENATOR CLARK: Is there any discussion of Senator Cullan's amendment to the amendment? If not, all those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted? It takes 25 votes. Record the vote.

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

SENATOR CLARK: The Cullan amendment is adopted to the committee amendments. Now we will take up Senator Kremer's amendment to the committee amendments.

SENATOR KREMER: Do you have them on the desk there, Pat?

CLERK: Yes, sir, I do. Maurice, would you like me to read it?

SENATOR KREMER: Yes. sir.

CLERK: Mr. President, Senator Kremer moves to amend the committee amendments to LB 56: (Read Kremer amendment offered on pages 866 and 867, Legislative Journal.)

SENATOR KREMER: Mr. Chairman and members, the committee amendments, I mean my amendments to the committee amendments are simpler than it sounds when you read them. What I am doing here, the original bill said this, that if there is an industrial withdrawal of 1,000 acre feet, you must have a permit. The committee amendment does state 5,000 thinking that 1,000 is rather insignificant. I am taking it back and it is a compromise, back to 3,000 acre feet which is the equivalent, now I am using this only as a comparison, the withdrawal of 3,000 acre feet of water is the equivalent of the operation of fifteen irrigation wells running during the season which is a considerable withdrawal of water, and this is why I feel that if an industrial user comes in, he should at least get a permit. It doesn't say he can't have one and he cannot withdraw that water. It only says that if he withdraws 3,000 acre feet of water, he needs to get a permit from the Department of Water Resources. Now the last part of the amendment does this, it changes the fee because we have changed the withdrawal of water, and it changes the fee to \$1500 for the first 3,000 of withdrawal and \$750 fee for each additional 1,000. I move adoption of my amendments to the committee amendments.

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LB 56

SENATOR CLARK: Is there any discussion on the Kremer amendment to the committee amendments? If not, all those in favor vote aye, all those opposed vote nay. Have you all voted? Record the vote.

CLERK: 22 ayes, 0 nays on the adoption of Senator Kremer amendment to the committee amendments, Mr. President.

SENATOR CLARK: The Kremer amendment is adopted. Now the committee amendments. Have you got another?

CLERK: Yes, sir. Senator Beutler now moves to amend the committee amendments by adding the word "reasonably" after the word "not" on line 9 of page 4, is that right, Senator?

SENATOR BEUTLER: After the word "meet".

CLERK: After the word, what?

SENATOR BEUTLER: "Meet".

CLERK: After the word "meet". I am sorry. Okay. Senator Beutler moves to amend by adding the word "reasonably" after the word "meet on page 4, line 9.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, this bill sets out certain criteria that the Director shall use in determining what is in the public interest in granting a permit and it lists specifically the considerations that shall be included, but it is not limited to the considerations specified. One of the considerations says, "The effect of the withdrawal and any transfer of ground water on surface or ground water supplies needed to meet anticipated domestic and agricultural demands in the area of the proposed ground water withdrawal." That is the section that I want to change simply to insert the word "reasonably" between the word "meet" and "anticipated" so that it would say "needed to meet reasonably anticipated domestic and agricultural demands". Okay, we can get in our usual big long argument about what "reasonable" means but I note for your consideration that subsection (c) uses the word "reasonably" and subsection (f) or (g), that is, uses the word "reasonably". That it is a word used in two other criteria and I think it should be inserted also in subsection (b). So that it has the effect of a limiting and narrowing the provision to some extent, that is, you can't come in and just show and just say that this is an anticipated domestic or agricultural demand. It has to, in some respect, be reasonably anticipated. It cannot be something that is totally impractical. Now that word like all words that are not precise may end up

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LB 56

being interpreted by a court but that is a much preferable place to be than to be in a position of saying that any, any dreamed up anticipated domestic or agricultural demand shall be considered. So I would ask you to insert that word "reasonably" before the word "anticipated". Thank you.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Senator Cullan, do you wish to speak to the Beutler amendment?

SENATOR CULLAN: I think the Beutler amendment is acceptable.

SPEAKER MARVEL: All those in favor of the Beutler amendment to the committee amendments vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 32 ayes, 1 nay on the motion to adopt the Beutler amendment, Mr. President.

SPEAKER MARVEL: Motion is carried. The Beutler amendment is adopted. Now what is the...now we are voting on the committee amendments as amended. Is there any discussion? Senator Cullan.

SENATOR CULLAN: Okay, Mr. President, members of the Legislature, I think now is probably the time for me to make a presentation on the committee amendments which really have become the bill, unless you want me to wait until the committee amendments are adopted.

SPEAKER MARVEL: Go ahead.

SENATOR CULLAN: Okay. LB 56 is a bill that attempts to deal with a problem that I see in the State of Nebraska. The situation that we have today, as far as water law in the State of Nebraska is concerned, is that there is absolutely no control over the withdrawal of ground water for large industrial uses throughout the state. For example, if a large industrial user desired to move into Hamilton County which is one of the counties in the State of Nebraska with the most serious water problems in the state, and put down a well field and used twenty-five to thirty thousand acre feet for any purpose, there would be no means whatsoever to stop that type of action even though we all know that Hamilton County could not stand those kinds of withdrawals without depleting the aquifer to such a level that it would be of no use to existing users in that particular region. I think that is an unacceptable situation and so

we decided to look for a remedy. The only current remedies available are the Groundwater Management Act and private suits for damages. Neither of these two remedies apply in this situation until after damage has occurred for the Groundwater Management Act does not stop the installation of these wells and neither would, of course, a suit for damages because you have to wait until you are injured before you could stop the installation of a well field of this magnitude. These remedies are inadequate even after damages occurred for several reasons. First of all, it places the burden upon the individual who has been injured and this burden is a very heavy one. He must go out and spend a great deal of money to retain attorneys to develop the hydrological information necessary to prove that it was this well field that caused the damage to his or her property and that can cost several thousands of dollars, and in some cases, perhaps hundreds of thousands of dollars, and that burden is simply too great to allow it to be a reasonable means of addressing the problem. So the approach that I have taken is in LB 56 and that bill has been amended extensively. I just put out to you earlier this morning a section by section analysis of LB 56. I would like you to know that a great deal of research went into LB 56 and we looked very carefully at how other states handled similar problems. I have available and will be happy to supply any of you who desire a copy of a summary of an eighteen state statute search which we did in preparation of this particular bill. Of the eighteen western states, only California and Nebraska do not require some type of a permitting process before large quantities of water can be withdrawn from the aquifers for industrial use. Clearly I think now is the time for us to adopt some type of a system. The proposal embodied in LB 56 and contained in the committee amendments which went through several different drafts is based upon the philosophy that we should take a look at the effects of these withdrawals of large quantities of water before rather than after the fact. Basically, Section 3 is...there is several sections I would like to review with you very quickly. Section 3 is a key section. This section requires that any person who desires to withdraw 5,000 acre feet or more of water, 3,000 with the amendments as amended, from the aquifers in Nebraska must obtain a permit from the Director of the Department of Water Resources. Section 5, then, is a procedural section which requires the Director of the Department of Water Resources to accept a completed application or to return an incomplete application within thirty days of receipt of the application. If the application is returned, the Director must inform the applicant of the reasons for returning the application. This section is designed to insure that the process is a timely one and

that the industrial user is not burdened by an unnecessarily time consuming process. I would say parenthetically that some of the language comes from amendments that have been proposed to certificate of need because we have learned a little bit about administrative law in that process. Section 8 is a unique approach and this particular section allows the applicant to negotiate with users who would be adversely affected and to obtain waivers of liability from these users. These waivers would be filed with the Director of the Department of Water Resources and would be considered when the Director determines whether or not to grant the application, the permit. Section 9, which is in your summary, is the guts of the bill. This section sets out the standard for approval or denial of an application to obtain a permit that is required by Section 3. The Director must issue a written order containing specific findings of fact either granting or denying the permit. The Director must determine if the use is in the public interest and the bill defines the factors that the Director will consider in determining whether this particular use is in the public interest. These factors include possible adverse effect on existing surface or ground water users; the effect of withdrawal in any transfer of surface or ground water supplies needed to meet anticipated domestic and agricultural demands in the area of the proposed ground water withdrawal; the availability of alternative sources of surface or ground water reasonably accessible to the applicant in or near the region of the proposed use; the economic benefit of the applicant's proposed use; the social and economic benefits of existing uses of surface or ground water in the area of the applicant's proposed use. It also considers the fact whether any of the waivers were filed in the area and other factors that affect the equity of granting the permit. So as you can see we are asking for a balance into the equities, the public interest test to be performed by the Director of the Department of Water Resources and that, of course, can be reviewed through the administrative procedures process or through the courts. Section 10 provides that the permit can be withdrawn under certain circumstances. The next Section I would like to point out is Section 17 which sets up an application fee of \$2,500 for the application for the first 5,000 acre feet and a \$1 per acre foot after that. The reason that we have provided for what appears to be an extensive application fee is that we have learned through the transbasin diversion procedure that it can be a very expensive process and it is simply my feeling that the applicant should bear at least part of the burden of paying for this process. That is the bill in a nutshell. Again I think the philosophy, the underlying philosophy of the amendments and the underlying philosophy of the bill

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LB 56

is that we ought to take a look at the effect of very large withdrawals of ground water before rather than after the fact. Thank you and I will be happy to respond to any questions that you might have.

SPEAKER MARVEL: Senator Beutler and then Senator Kahle.

SENATOR BEUTLER: I will waive my right to speak here, Mr. Speaker.

SPEAKER MARVEL: Senator Kahle.

SENATOR KAHLE: Mr. Speaker, members, maybe a question or two of Senator Cullan, if he would yield please.

SENATOR CULLAN: Oh, excuse me, yes.

SENATOR KAHLE: Senator Cullan, I haven't been privy to some of the information that you have had with the relation to the Public Works Committee and the water, but do we have a like restriction on municipalities?

SENATOR CULLAN: The municipalities undergo a permitting process and, of course, under our preference system, municipalities have the highest priority. The thing that this bill does and the way it does impact municipalities is that if all municipalities through their meters, of course, keep track of domestic versus industrial use and this bill does not exempt municipalities if they acquire water for an industry, then they can fall under the provisions of this act. So if a municipality goes out and tries to circumvent this act by drilling a well field for an industry that would use more than 5,000 or 3,000 acre feet of water, then they would have to fall under this act. So to that extent municipalities do fall under the act if they are acquiring the water for an industrial user.

SENATOR KAHLE: How would you know, though, until it was too late?

SENATOR CULLAN: The municipality, of course, could acquire the water for domestic purposes but right now all municipalities are required or do keep track through their metering process of whether it is an industrial or domestic use.

SENATOR KAHLE: If they expanded their water supply and had a surplus let's say of wells, at least, and this industrial outfit wanted to come in and they decide to furnish the water, they could without going through this process, could

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LB 56

they not?

SENATOR CULLAN: They could if the quantity of water that they plan to use for that industrial purpose was less than 3,000 acre feet. If it were more than 3,000 acre feet, they would definitely have to go through this process.

SENATOR KAHLE: I have been trying to think all morning the relativity between acre feet and gallons. Could you give me any idea of how many wells we are talking about that would produce, let's say, a thousand gallons a minute that it would take to supply 3,000 acre feet?

SENATOR CULLAN: I guess it is hard for me to put it into those kind of terms. Senator Kremer could probably answer that question better than I. It is my understanding that a power plant that would use 20,000 acre feet of water, and this is just to give you some idea of what the effect would be, would be the equivalent of between 125 and 150 center pivot sprinkler systems.

SENATOR KAHLE: That much, huh? Thank you.

SPEAKER MARVEL: Senator Vickers.

SENATOR VICKERS: Mr. Speaker and members, I simply rise to support Senator Cullan and commend him for bringing forth LB 56. This issue is one that I attempted to raise somewhat last year on this floor. I offered an amendment and then withdrew the amendment that would head quite a bit the direction that LB 56 as amended by Senator Cullan and by the Public Works Committee, Senator Kremer and Senator Beutler is going. The concern that I had at that time was the protection of the ground water as it related to the ground water users that are in existence out there now in competition with perhaps other uses of that water, users, industrial users and so forth. At that time I withdrew the amendment that I had offered and suggested to the Public Works Committee that they have an interim study in this area. It was studied somewhat by the Public Works Committee this last summer who I was a member of and Senator Cullan. Senator Cullan then introduced this bill and, as I said at the outset, I simply arise to commend him for it and to tell you, the members of this body, I wholeheartedly support LB 56 and hope the members of this body do also.

SPEAKER MARVEL: Senator Beutler. The question has been called for. Do I see five hands? Okay. The question before the House is shall debate cease? All those in favor

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LB 56, 313

vote aye, opposed vote no. Record the vote.

CLERK: 27 ayes, 0 nays to cease debate, Mr. President.

SPEAKER MARVEL: Debate has ceased. Senator Cullan, do you wish to close? Senator Kremer, do you wish to adopt the committee amendments?

SENATOR KREMER: We have not adopted the committee amendments as amended?

SPEAKER MARVEL: No.

SENATOR KREMER: Then, Mr. Chairman, I move we adopt the committee amendments as amended.

SPEAKER MARVEL: All those in favor of the adoption of the committee amendments vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 31 ayes, 0 nays on the motion to adopt the committee amendments as amended, Mr. President.

SPEAKER MARVEL: The motion now is the advancement of the bill as amended. All those in favor of that motion vote aye, opposed vote no. Record.

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

SPEAKER MARVEL: The motion is carried and the bill is advanced. The next order of business is General File, LB 313.

CLERK: Mr. President, LB 313 is a bill introduced by Senator Larry Stoney. (Read title.) The bill was read on January 19, referred to General File. I have no amendments on the bill, Mr. President.

SPEAKER MARVEL: Senator Stoney.

SENATOR STONEY: Mr. Speaker and members of the Legislature, at the present time all school district bonds by law must be redeemable on or after five years from the date of their issuance. Section 10-717 of present statute which authorizes the school district to issue refunding bonds has a limitation that refunding bonds can only be substituted in place of and exchanged dollar per dollar for bonds previously issued and only when the bonds were subject to redemption at the time the refunding bonds were issued. Well, there is no method at the present time with the statutes the way

March 13, 1981

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by Reverend Larry Spader, Central Alliance Church.

REVEREND SPADER: Prayer offered.

PRESIDENT: Roll call. While we are waiting to get everyone checked in this morning we will take this opportunity to introduce from Senator Wesely's district some 9 students from Riley Elementary School here in Lincoln, Mrs. Barth and Mrs. Frogge, teachers. They are up here in the North balcony. Would you welcome Riley Elementary School up here in the North balcony. Welcome to your Legislature. Record the presence.

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

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

CLERK: I have no corrections, Mr. President.

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

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined LB 56 and recommend that same be placed on Select File with amendments; 313 Select File; 84 Select File; 47 Select File with amendments, (Signed) Senator Kilgarin, Chair.

Mr. President, engrossed LBs 55, 114, 128, 217, 246, 279, 388, 434, 462 and LR 33 and 34 are ready for your signatures.

PRESIDENT: While the Legislature is in session and capable of doing business I propose to sign and I do sign LB 55, LB 114, 128, 217, 279, 388, 434, 462, LR 33 and LR 34. We will proceed then with Final Reading. The Sergeant at Arms will secure the floor. All members of the Legislature will please return to your desks and as soon as everyone is at your place we will commence with Final Reading. All unauthorized personnel, non-legislative personnel will leave the floor of the Legislature. We are on Final Reading. We are awaiting Final Reading then. All legislators will be at their desks. We will commence with Final Reading.

CLERK: Mr. President, while we are waiting...

PRESIDENT: Go ahead, Mr. Clerk.

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LB 204A, 56, 313

is your opening and your closing. The question then is the adoption of the amendment to LB 204A. All those in favor vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of the amendment.

PRESIDENT: The motion carries. The Wagner amendment is adopted to LB 204A. Any further amendments, Mr. Clerk?

CLERK: Nothing further on the bill, Mr. President.

PRESIDENT: Senator Kilgarin.

SENATOR KILGARIN: I move LB 204A be advanced to E & R for engrossment.

PRESIDENT: Motion to advance LB 204A to E & R for engrossment. Any discussion? All those in favor of advancing LB 204A to E & R engrossment signify by saying aye, opposed nay, that was a little better. The motion carries and LB 204A is advanced to E & R for engrossment. The Chair would like to take the opportunity to introduce some guests of Senator Richard Peterson. They are under the South balcony, Mr. and Mrs. Ronald Rousch from Madison. Would the Rouschs stand and be recognized and welcome to your Legislature. The next bill on Select File this morning is LB 56, Mr. Clerk.

CLERK: There are E & R amendments, Senator.

PRESIDENT: The Chair recognizes Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 56.

PRESIDENT: The motion is to adopt the E & R amendments on LB 56. Any discussion? All those in favor of adopting the E & R amendments on LB 56 signify by saying aye, opposed nay. The E & R amendments on LB 56 are adopted? Any further...?

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

PRESIDENT: The Chair recognizes Senator Kilgarin.

SENATOR KILGARIN: I move LB 56 be advanced to E & R for engrossment.

PRESIDENT: The motion to advance LB 56 to E & R for engrossment. Any further discussion? All those in favor signify by saying aye, opposed nay. The motion carries and LB 56 is advanced to E & R for engrossment. The next bill is LB 313.

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LB 17, 47, 56, 79, 84, 151,
220, 224, 313, 446, 485, 544.

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by Chaplain Coordinator Palmer.

DR. ROBERT PALMER: Prayer offered.

PRESIDENT: Roll call. Has everyone registered your presence?

CLERK: Mr. President, Senators Fitzgerald, Koch, Howard Peterson, Wagner excused; Beutler, Cullan, Gc11, Hoagland and Vard Johnson until they arrive.

PRESIDENT: While we are waiting for those to register their presence, the Chair would like to recognize from Senator Sieck's District, seven students from Benedict High School, Bud Exstrom, their teacher. They are up here in the north balcony. Would you folks stand up and be recognized. Welcome to your Legislature. Record the presence, Mr. Clerk.

CLERK: Quorum present, Mr. President.

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

CLERK: No, sir, there are no....

PRESIDENT: The Journal then stands correct as published. Any messages, reports or announcements, Mr. Clerk?

CLERK: Mr. President, the committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 17 and recommend that LB 17 be placed on Select File, LB 446 Select File with amendments. (Signed) Senator Kilgarin. (See pages 1050 and 1051 of the Legislative Journal.)

Mr. President, your committee on Public Works whose Chairman is Senator Kremer, reports LB 224 to General File with amendments, 485 General File with amendments, 544 General File with amendments and LB 79 indefinitely postponed. (Signed) Senator Kremer as Chair. (See pages 1051 and 1052 of the Legislative Journal.)

Your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 47 and find the same correctly engrossed; 56, 84, 151, 220, 313, all correctly engrossed. (Signed) Senator Kilgarin.

I have a report from the Legislative Accountant regarding legislative employees. It will be inserted in the Journal. (Page 1052 of the Journal.)

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PRESIDENT. I appreciate you for giving me this privilege to clear the record. Thank you.

PRESIDENT: Thank you, Senator Haberman. Senator DeCamp, for what purpose do you arise?

SENATOR DeCAMP: Just to tell Senator Haberman that I have got a heck of a deal on one that if he wants it.

PRESIDENT: We won't have any advertising and solicitation for commissions here. I think it is time we get to agenda item #4 for Final Reading. So if the Sergeant at Arms will clear the aisles, get all the unauthorized personnel off the floor, all members return to your seats, to your desks, we will begin Final Reading as soon as possible.

CLERK: Mr. President, while we are waiting, I have a motion from Senators DeCamp and Pirsch to reconsider the body's action on indefinitely postponing LB 258 yesterday. That will be laid over.

PRESIDENT: As soon as everyone gets to your desk, we shall begin Final Reading. We are waiting the clearing of the aisles and to get everyone at their desks. I think we are about ready, Mr. Clerk. We are ready to commence Final Reading. We will begin, Mr. Clerk, then with LB 47 on Final Reading.

CLERK: (Read LB 47 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 47 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Record vote read. See page 1204, Legislative Journal.) 45 ayes, 0 nays, 3 excused and not voting, 1 present and not voting, Mr. President.

PRESIDENT: LB 47 passes. The next bill on Final Reading, Mr. Clerk, is LB 56. Senator Cullan, for what purpose do you arise? The motion is on the desk, thank you. Read the motion.

CLERK: Mr. President, Senator Cullan moves to return LB 56 to Select File for specific amendment.

PRESIDENT: The Chair recognizes Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, the amendment that I had distributed on your desks earlier, and I apologize that I did not get it printed in the Journal, but I had an amendment distributed to you earlier this morning. The amendment makes a few technical changes in LB 56. It does not, in my opinion, change the intent or scope of the bill in any significant way. The amendments came to me from the Nebraska Public Power District who were concerned primarily about how the mechanics of the permitting process would work. They have expressed support for the general philosophy of LB 56 but they were concerned about the mechanics and how that might affect bonding requirements and so that is the purpose of the permit, excuse me, the purpose of the amendment which I have offered. The first portion of the amendment says that the date would require some additional information to be included in the application, namely, the date when the applicant expects to first use the groundwater. The reason that we use that, that we have suggested this amendment is that the permit is automatically, not automatically, but can be revoked if the company fails to use their water right for three consecutive years. Sometimes the construction phase is longer than that period of time so we are allowing them to set a date when they expect the use to begin. So that is what that particular section of the amendment is about. The next amendment, numbered three here on the list, talks about limiting...it makes it very clear that nothing in this LB 56 limits in any way, shape or form the current powers of eminent domain which the power companies or other utilities may in fact have. We never intended to change the scope of eminent domain but we simply at the request of the power company made it more clear that LB 56 is not changing existing law as far as eminent domain is concerned. The fourth amendment has to do with revocation or suspension of the permit and it sets out the criteria for suspending or revoking the permit. In the draft of the bill as currently written, we only provide for revocation of permits. That could create some bonding problems for the power companies. I want to clarify this because we do not want to create those bonding problems and we do not want to put the power companies in the position where their permit could be revoked and you would have a billion dollar facility that would have to set idle, and that possibility alone could create some bonding problems for the power companies and so we want to make very sure that we are not creating those bonding problems. Another couple of points I

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would like to make for the record so that if anyone is ever concerned about the legislative intent of LB 56, one of the sections provides that LB 56 does not affect existing remedies as far as damages and injunctions are concerned. In the case law search that was performed by the staff of the Public Works Committee, they could never find a case in Nebraska and some of the neighboring states where an injunction has been issued to stop construction of a power facility on the basis of their failure...excuse me, of groundwater problems, and so we are not changing in any way, shape or form the law of the State of Nebraska. I think we would be extremely unwise to provide for injunctive relief except in very extreme cases and so I just want to make it clear that we are not changing the law as far as injunctive relief or damages are concerned in LB 56. Section 10 of LB 56 provides for suspension of a permit in certain situations, excuse me, I guess we have already covered that. The last matter I want to cover for the record is that Section 3 of LB 56 refers to withdrawal of water from the aquifers of Nebraska. 56 is intended to apply to all industrial users who withdraw three thousand or more acre feet from the aquifers even though the well field may not actually be located directly in the State of Nebraska. There may be cases where the well field would be located across the state line and we are talking about total withdrawal from the aquifer, not necessarily the location of the well field. With that, I guess that explains my amendment and the concerns I wanted to get into the record, so if anyone would interpret LB 56, they would know what the intent was. I would ask you to adopt these amendments or, excuse me, to return the bill to Select File to adopt these amendments and then return it so that we can have it read sometime in the near future. Thank you.

PRESIDENT: The Chair recognizes Senator Vickers speaking to the motion to return.

SENATOR VICKERS: Thank you, Mr. President. Mr. President, members, I wonder if Senator Cullan would respond to a question please. Senator Cullan.

PRESIDENT: Senator Cullan, will you respond? Thank you.

SENATOR VICKERS: On number 3 of your amendments, could you explain to me why you are striking the language from line 4 through the "the" on line 8? Could you explain why you are doing away with the language that mentions the existing uses of ground or surface water? I don't think I heard you explain that or at least I didn't understand it thoroughly.

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SENATOR CULLAN: Okay, just a second, what language were you referring to, Senator Vickers?

SENATOR VICKERS: In Section 8, page 4, line 4 through line 8.

SENATOR CULLAN: Okay.

SENATOR VICKERS: If I understand amendment #3.

SENATOR CULLAN: Right, I can explain that. This is the section that provides for the waivers of liability from affected users and the language in the first part of that Section 8 was really surplusage because it said, "If it appears from the evidence at the hearing or otherwise that existing users are affected, then they could obtain waivers." We see no reason for them to wait until after the hearing, after the hearing process, to begin negotiate with landowners and that language was really a little bit confusing. So we just want to make it clear that the applicant can negotiate with users and that it would not have to wait until the hearing or wait until there was actually evidence that there would be an adverse effect. If the applicant decided that there were problems and he wanted to go out and negotiate with those landowners, we saw no reason to wait until after the hearing. So it is really not, in my opinion, not an important change. It just clarifies the timing as far as negotiating with landowners are concerned.

SENATOR VICKERS: Then the rest of the #3 where you insert "any"...any user of water, then in your estimation that would address the situation as far as ground and surface water both are concerned as mentioned up above, is that correct?

SENATOR CULLAN: Absolutely, absolutely, because we are concerned not only about the effect on other ground water users but the effect on surface water users as well.

SENATOR VICKERS: Yes, but in your opinion, that is still addressing that?

SENATOR CULLAN: Absolutely.

SENATOR VICKERS: Okay, thank you very much, Senator Cullan.

PRESIDENT: Any further discussion on Senator Cullan's motion to return LB 56? If not, Senator Cullan, you may close. No closing, the question is the return of...shall LB 56 be returned for the specific Select File amendment? All those in favor vote aye, opposed nay. Record the vote.

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CLERK: 41 ayes, 0 nays on the motion to return the bill, Mr. President.

PRESIDENT: Motion carries. LB 56 is returned to Select File. Is the amendment before us, Mr. Clerk? Senator Cullan, you may move the amendment.

SENATOR CULLAN: I move adoption of the amendment which was previously discussed.

PRESIDENT: All right, motion then is to adopt the amendment previously discussed. Any further discussion? If not, I presume that is your closing, Senator Cullan, so the motion then is to adopt the amendment on LB 56. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 40 ayes, 0 nays on the adoption of Senator Cullan's amendment, Mr. President.

PRESIDENT: Motion carries. The amendment is adopted. Now, Senator Cullan, do you want to readvance the bill?

SENATOR CULLAN: Mr. President, members of the Legislature, I move that LB 56 as amended be advanced to E & R for engrossing.

PRESIDENT: Motion to readvance to E & R for engrossment. Any discussion? All those in favor signify by saying aye, opposed nay. LB 56 is readvanced to E & R for engrossment. Another motion on the desk, Mr. Clerk?

CLERK: Mr. President, Senator Beutler moves to return LB 56 to Select File for a specific amendment.

PRESIDENT: The Chair recognizes Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I hope you will listen closely to this amendment. Whether you agree with it or not, I think it is an important consideration on a bill like this. Let me, first of all, refresh your memory just briefly on what this bill does. It basically says that if you are using above a certain amount of water for specific purposes, then you have to get a permit from the Director of Water Resources, and the Director of Water Resources is going to grant that permit if he finds looking at certain factors outlined in the bill that it is in the public interest that the permit be granted. The first thing that I wanted to point out to you is that the threshold level that we are talking about is 3,000 or

more acre feet of ground water per year, 3,000 or more acre feet of ground water per year. Okay, what is important to note as a matter of principle in this particular bill is that we are departing from our long established principle of correlative rights with regard to the use of ground water. Forever and ever up until this time, we have said with the regard to the use of ground water that it is the absolute right of the homeowner...of the landowner to use the ground water as much as he wants under his land to the extent that there is water for everybody, and when there is not water for everybody, then we share equally. But now we are adopting a new principle. We are saying that in an instance where a large and dramatic amount of water may come into use all of a sudden that we are not going to let the correlative rights doctrine apply. We are going to say, rather, when the use is that dramatic, when it might have severe impact, severe immediate impact on the ground water, that in that instance we had better take a look at it. We had better be sure we get a permit from the Director before we allow the use of the water. That is what the bill does and that is where we are philosophically on this bill. My amendment does this. It says instead of certain specific uses, it says basically any use, and to be quite frank with you, it throws in agricultural uses, and the same principle that applies to industrial uses I think should apply to the industry of agriculture. If there is a large dramatic use, whatever that use is, if this principle, if the principle involved in this bill is appropriate for the industrial use, then it is appropriate, I think, for the industry of agriculture. 3,000, let me give you an idea of the scale of what we are talking about. 3,000 acre feet of water per year, that is the threshold where this bill goes into effect, is the equivalent of fourteen or fifteen thousand gallon per minute pivots, center pivots, in use for an average amount of time or for what would assume to be an average amount of time in an average year. So basically what I am saying is that if somebody, some entity comes in there and all of a sudden is going to develop to the extent of fourteen or fifteen center pivots or more all at once, that is a dramatic increase in the use of water, that is going to have a profound impact if we are correct in the assumptions we have made on this bill, that is going to have a profound impact on the use of water in that area, and they, too, as well as others should go to the Director of Water Resources to get a permit. That is what this amendment is all about and I would urge you to support it. Thank you.

PRESIDENT: The Chair recognizes Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, I would rise to oppose the Beutler amendment. I am not unsympathetic with the concerns that Senator Beutler has raised. I do believe that we are going to have to face in the near future the very large scale development in some parts of the state. I had a series of town hall meetings in western Nebraska a couple of weeks ago, and in some parts of the sandhills, some ranchers who a few years ago came in and screamed about land use and some other things were coming in this year saying, "We had better have the Legislature give us some protection and it should occur in the near future", but LB 56, in my opinion, is not a proper vehicle to accomplish that and I would oppose the Beutler amendment. I do think that the change that he is suggesting has a very large effect on the people of the State of Nebraska. It is one that those developers and those land users, land-owners should have the opportunity to comment upon at a public hearing and I would, therefore, urge you to reject his amendment. I would like to make a couple of points as to distinguish the industrial use which I am talking about and concerned about in LB 56 and the agricultural use which Senator Beutler is mentioning. Much of the industrial use that I am talking about is water that will be drawn from a well field and the wells, in many of these cases, will be located very close together. Those wells will have a very large cone of depression in a relatively small area and could very adversely affect other existing users in a very short period of time. If you are talking about fifteen or sixteen center pivots sprinkler systems, even if they were all grouped together, the distance would be between those wells considerably greater than would be the case in an industrial use and, therefore, the effect on other users would not be as substantial as would be the case with a very small well field located in a more concentrated area. Secondly, those center pivot sprinkler systems which put water back on the land, a great deal of that water eventually returns to that aquifer in recharge and that is not true in an industrial use when that water is consumptively used, when that water is evaporated in a cooling tower or that water is used in processing or whatever. And so there are some distinguishing features and some factors that distinguish industrial use from agricultural use that are important. Now I believe, and Senator Beutler knows that I am serious in believing that we need to address the ground water problems that he is concerned about and I will commit myself now to work with Senator Beutler and the members of the Public Works Committee on solutions to those problems but I do think it would be inappropriate for us to use LB 56 as a vehicle to accomplish that end. I have worked on this long and hard and I would appreciate it, Senator Beutler, if

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you wouldn't mess up my bill. Thank you very much and I urge you to vote against the Beutler amendment.

PRESIDENT: The Chair recognizes Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, I rise to support Senator Cullan and to oppose the Beutler amendment as there is quite a big difference in using water to raise food and in using water to move coal or in manufacturing something material and I think the two should be absolutely separate. Your agriculture water use bills should be in bills that relate to agriculture. They should not be mixed up with industrial bills and I rise to oppose the amendment and that we support 56 in its original form and let the Public Works Committee and the ag bills and the water bills fit together and not get them mixed up. Thank you very much.

PRESIDENT: The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, those of you who have been around here know that sometimes you can go a whole session or two or three or four sessions and then out of the blue something is said, maybe from an unsuspecting or unexpected source and just, whamo, like that so much is said in such little time that has such impact that you just relook and rethink your entire position, your entire attitude, your entire philosophy on something. A few minutes ago that occurred for me and it hasn't happened here in a few years as far as I am concerned but when Senator Beutler stood up and in about five minutes said more on water than has been said on the floor on the water issue since I can remember, he pointed out a very simple little thing that we are doing that I should have been aware of, that I think every member of the Public Works Committee should have been aware of, that every member of the Legislature should now be aware of is that is if we go ahead with 56 in this form, a bill which I thought was kind of innocuous, kind of innocent, kind of good, becomes really maybe the precursor of a completely different attitude on water because we are apparently ineffectively destroying the correlative rights theory which is a foundation of everything we are doing on water in every piece of legislation we are dealing with. So I am not supporting Senator Beutler's amendment. I am supporting "Stop, look, listen, sober up and find out exactly what we are doing before we go ahead with 56", and I thought 56 was basically an innocent babe that didn't harm anybody and maybe humored the power boys and they had it in the form they could live with or didn't care about and Sam was happy and I thought it really

was nothing but I think it is something significant. If we go ahead and say we are changing the whole system of water law now in one area, where does it take us in others? So while I do not support the amendment, I will advise you now that I am going to check thoroughly before 56 would come up for final with the view to talking to the Public Works Committee about studying the whole area over again, looking it over, so on and so forth, because what Senator Beutler said is just a little scary. We are doing things, I guess, I never dreamed of there.

PRESIDENT: The Chair recognizes Senator Kahle.

SENATOR KAHLE: Mr. President and members, I oppose the Beutler amendment. I think what Senator DeCamp said just now has some bearing but I don't believe that we are trying to throttle the use of water for agriculture, at least not in a blanket bill across the State of Nebraska. I am sure that there...we have talked about a lot of legislation that has to do with the control of irrigation for agriculture. I guess if you wanted to make this bill retroactive, you would have a problem right here in the City of Lincoln with your drinking water because it is all pumped from wells in the Platte Valley and it tastes pretty good to me because it tastes like what I have at home, one of the few cities that has water that's drinkable. But I think this amendment is a sleeping giant as Senator DeCamp said and it could change the whole aspect of irrigation in Nebraska and I don't believe we are ready for that, not at least on a bill being returned from Final Reading for an amendment. If you want to go that direction, we certainly should have the right perhaps hearing, although we have had a lot of hearings on this issue already, but look at it in the right perspective because this could change the whole aspect of agriculture in the State of Nebraska if you really want to let it go as far as your mind would let it. At this time I certainly oppose the amendment. I think that LB 56 does help control some of the things that we are talking about in Nebraska. I know that there was supposed to be a power plant at Comstock which would use an enormous amount of water. I know that there was one out in Senator Cullan's area and so I feel that we need to start with this and, at least, have some idea how much water is going to be withdrawn when a large user is requesting the use of that water. So I oppose the Beutler amendment and support LB 56.

PRESIDENT: The Chair recognizes Senator Vickers.

SENATOR VICKERS: Mr. President and members, I rise to oppose the Beutler amendment, and as an individual that was interested

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in this issue brought to us by Senator Cullan through LB 56 as long ago as a year ago when I offered an amendment to this body and then withdrew the amendment and suggested to the Public Works Committee that a study be made as to the use of underground water by the industrial users in the State of Nebraska, and because of that original idea and the study by the Public Works Committee or looking into the situation, Senator Beutler then did have LB 56 drafted and I commend him for that. The problem brought forth by Senator Beutler is one that, as Senator Beutler knows, I am very interested in also but there is a technical problem with what he is attempting to do. There is a big difference that he is not I don't think aware of or at least not bringing that awareness to the body. Under the section that he is attempting to put irrigation in as well as manufacturing, commercial, power generation and so forth, it says that any person who desires to withdraw three thousand or more acre feet of ground water per year from aquifers located within the State of Nebraska for these purposes has to have a permit to get the well and it is also in that section that defines, it says that the definitions found in, or whatever, that section just above it, the definitions found in this Section 46-657 shall be used for this act. The definition of a person in 46-657 is any natural person, partnership, association, corporation, municipality, irrigation district, and any agency or political subdivision of this state. In other words, any individual that irrigates enough land to use over three thousand acre foot of water per year, and I can assure you that wouldn't be in today's operations, that wouldn't be the largest operators in the world, the largest farmers. If you are putting on twenty inches of water a year, I never figured that out but it would be somewhere around 1500 acres probably or a little over. There is a lot of irrigators in the State of Nebraska that irrigate that much. I think what Senator Beutler is attempting to get at, and I certainly agree with him with that, and I will attempt to work with him or any other member of this body. As Senator Cullan mentioned, the people are concerned about the use of underground water in the State of Nebraska. They are concerned about the large corporations coming in, setting up these large, what they term, pivot to pivot operations in the Nebraska sandhills and I share their concerns and I will attempt to work with anybody to alleviate those concerns. But this is not the way to do it. This would, in effect, do away with the responsibilities the Natural Resources Districts have, would put it in the statutes in another form, and would say that everybody, everybody, no matter whether they are causing a problem or not, no matter whether they are irrigating in an area such as around the Holdrege area where the ground water is actually rising

or not would have to have a permit and I think that would be ridiculous. I don't think that is the intention of Senator Beutler and I guess what I would really ask Senator Beutler to do would be now that we have got this matter discussed a little bit, if he would simply withdraw his amendment, I think it would be to the benefit of all of agriculture and all of the State of Nebraska. Thank you.

PRESIDENT: The Chair recognizes Senator Dworak.

SENATOR DWORAK: Mr. President and colleagues, the logic of Senator Beutler's amendment seems to me to be very sound. It seems to me to be very prudent. It seems to me that if three thousand acre feet per operator depending on what that particular usage is is reasonable. Now I have heard people on this floor very recently lament the plight of the new farmer, the young farmer, the plight of the family farm. I think we are talking in areas of eighteen pivots, fifteen pivots. That is extensive developmental agriculture and I think that if we restrict drinking water fields, industrial usage fields and we are not curtailing. All we are doing is saying a permit. We are talking about massive withdrawals of water from the ground water that obviously in some areas of this state is in short supply. We are obviously mining it in some areas of the state, mining, irreplaceable, taking it out forever, and I think we have a serious problem in that, and I think Senator Cullan's bill is a good bill and I am going to support that bill, and I am also going to vote for Senator Beutler's amendment because it appears to me it is consistent with the intent of the bill. As far as Senator Haberman saying we are talking in two different areas, we are still talking about one thing, the usage of water, and massive withdrawals, that is what we are talking about. It is just as simple as that, and if it is good for the industrial sector, if it is good for the domestic sector, it is good for the agricultural sector.

PRESIDENT: The Chair recognizes Senator Rumery.

SENATOR RUMERY: Mr. President and members of the Legislature, I wanted to ask Senator Beutler a question, if he would yield.

PRESIDENT: Senator Beutler, will you respond?

SENATOR RUMERY: Senator, would you review for us the constitutional priorities on the use of water that has been observed in this state I guess almost since the beginning.

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SENATOR BEUTLER: The priorities are first of all...

SENATOR RUMERY: On the use of water.

SENATOR BEUTLER: The priorities are first of all domestic, and second, agricultural, and third, industrial.

SENATOR RUMERY: Yes. Well, doesn't this Legislative Bill 56 conform with the Constitution, the way we think it ought to?

SENATOR BEUTLER: Yes, I believe it does conform to the Constitution. The priority system is not changed as far as my understanding of it goes, of the bill.

SENATOR RUMERY: I was wondering about your amendment. How does this fit in with the priorities as spelled out by the Constitution?

SENATOR BEUTLER: My amendment would not affect the priorities either. It just talks about when you have to get a permit. Once a permit is obtained, if you are an industrial use and you are interfering with an ag use, the priority would still exist and you would still have to compensate or take whatever action was necessary.

SENATOR RUMERY: Thank you.

PRESIDENT: The Chair recognizes Senator Wagner.

SENATOR WAGNER: Mr. Speaker and members, I have got a question of Senator Cullan.

PRESIDENT: Senator Cullan, will you respond?

SENATOR CULLAN: Yes.

SENATOR WAGNER: Senator Cullan, during the hearing on LB 56, was basically the concept of this amendment discussed in relation to LB 56?

SENATOR CULLAN: No, it was not. Senator Beutler did ask me if I wanted to extend it at that time to agricultural use but the people in the agricultural community, water users, and people throughout the State of Nebraska had no conception that LB 56 would be expanded to include agricultural uses as per the Beutler amendment.

SENATOR WAGNER: Okay, thank you, Senator Cullan. I guess that is my real concern here is that what we are starting to

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do is mixing apples and oranges together, and I would think that if this amendment is adopted to LB 56, the bill is probably dead and I would oppose it. Thank you.

PRESIDENT: The Chair recognizes Senator Schmit.

SENATOR SCHMIT: Mr. President, members of the Legislature, I also oppose the Beutler amendment. I think basically for the reasons given by Senator DeCamp and I think it is imperative that we take a really good look at the bill. I was concerned about the bill in the move off of General File and discussed it just briefly with the sponsor. I think that there is very serious chance of jeopardy of the basic and long held correlative principle here, and if we move with the bill, we had better be awfully careful even with the amendments as proposed by Senator Cullan that we protect that right. I certainly agree with those people that have spoken in opposition to the Beutler amendment that it would be a very dangerous thing to mix that amendment with this bill and I would hope that we not adopt the Beutler amendment.

PRESIDENT: The Chair recognizes Senator Burrows.

SENATOR BURROWS: Mr. Speaker, members of the body, I feel I have to oppose the amendment for different reasons than have been given because the last three lines of the amendment were never spoken to and they exempt a public water supplier, as defined in Sections 46-638 which come under another permit, but in substance what this does, it exempts most of industry because most of industry comes through a public water supplier. They come up next to a town or city, hook onto the municipal water supply, and, thereby, are exempted from the provisions of this act. So we are turning a total U-turn with the bill and substantially exempting...at least exempting from the provisions of this act most of the industry in the state while we catch the irrigation wells. I think it would be in order to catch the irrigation wells but in no way to exempt industry that comes through a municipality to get its water. I would like to leave the remainder of my time to Senator Cullan, if the Chair would allow. Could I leave the remainder of my time to Senator Cullan?

PRESIDENT: Yes, you certainly may. Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, I would simply like to raise the concern expressed by Senator DeCamp and it surprised me to hear that Senator

DeCamp, such a light bulb went off this morning when he heard Senator Beutler, because this concept of correlative rights was discussed I think rather extensively at the public hearing on LB 56, and, yes, we are departing from the correlative right system, and, yes, I think we should depart from the correlative right system when there is justification to do that, and maybe there is a time we will depart from the correlative right system in other areas, but what we are saying, I guess part of the underlying philosophy of the correlative right system is that we will share and share alike. And that may be fine until we share and share alike and there is not enough left for anyone. But in the areas where the impact on other users is tremendous and the potential for adversely affecting many other users and most of those other users with higher priorities as Senator Rumery has mentioned, then I think there is a basis to depart from the correlative rights doctrine. Now this bill does not change that preference system or priority system but it does build upon it to that extent and that is one reason that we picked industrial use. So it does, I think, reenforce the preference that domestic and agricultural uses have over industrial uses. To that extent I think it is a good deal but this isn't anything new. We are departing from the correlative right system. It makes a lot of sense to do it where the impact can be very large. So I urge you to reject the Beutler amendment and to move the bill.

PRESIDENT: Senator Kremer.

SENATOR KREMER: Mr. Chairman, I would call the question.

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

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

PRESIDENT: Motion carries and debate ceases. Senator Beutler, you may close on your motion.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I would just make a few short points. What I said with regard to the departure on the matter of the principle of correlative rights, I said, to point out to you what is happening, I said not to indicate that what was happening was negative or bad, I think it is necessary. My amendment is also, in my opinion, necessary. It is necessary to give us a means of controlling large scale immediate developments, a method we do not have presently in our regulatory setup,

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a means of controlling dramatic large scale developments, and that is why this bill came to us. The need was recognized but the need is there to control dramatic large scale immediate developments in agriculture as well as industrial type developments, and it is needed as much to protect the small farmer as it is to protect anybody. If somebody like Foxley or one of the big development corporations comes in and makes this immediate kind of dramatic development, it is the rancher next to him that has the wet meadows that dry up, it is the rancher next to him that grows a little bit of grain for his livestock who can no longer get ground water that is dramatically affected. There are a lot and lot of agricultural people who are dramatically affected by the large scale developments and we are coming to a time in this state when we have to start thinking about whether we can allow development to go on without any regulatory scheme whatsoever. Think of our regulatory scheme in two parts. We are developing now our ground water control system. We are developing a system that allows NRDS in the long run, in the long run, to take a look at the situation and with the concurrence of the people in their district set up a scheme that regulates development for the benefit of all, for the benefit of existing water uses, for the protection of existing water users. But that system is not suitable or has no application to and cannot be directed against the immediate large scale development that is going to take place just like that and it is done, and then there is nothing you can do to stop it. The mechanism that we have does not go into effect quick enough to deal with that kind of a problem. So I view Sam Cullan's idea as a very good one, a very sound one. It is an interim measure. It is a way that we have of taking a step back temporarily and looking at the situation and saying, "Should we jump into this so fast? Should we consider these factors outlined in the bill?" I think the answer is yes. It is yes for a power plant that could affect everybody in the region. It is yes for industrial uses that could affect everybody in the region. Now Sam talked about concentrated uses as opposed to nonconcentrated uses. Well, let me tell you, fourteen or fifteen center pivots right altogether is a fairly concentrated use.

PRESIDENT: One minute, Senator Beutler, one minute.

SENATOR BEUTLER: If concentrated use were what we're concerned about, there wouldn't be this bill because we would rely on our judicial system which allows you right now to sue somebody next door to you who creates a cone of depression and, thereby, takes away your use of the

water. There is no problem with that. The problem is with the long term drawing down of the water and the effects of that drawdown on the whole area, on the broad area. It doesn't make any difference whether the use is real concentrated or whether it is wider if as long as the amount withdrawn is large, it will have the long term effect on the aquifer regardless of the degree of concentration. So that argument, I think, doesn't hold water. Let me point out to you, let me point out to you another thing. With regard to the factors that are to be considered by the Director of Water Resources when he considers whether the granting of this permit is in the public interest, he has to look at the effect of the withdrawal and any transfer of ground water on surface or ground water supplies needed to meet reasonably anticipated domestic and agricultural demands in the area of proposed ground water withdrawal. So he has to look at the effect on domestic and agricultural demands. And my amendment doesn't change that, my amendment doesn't change that. So if, for example, a large scale agricultural developer came in and wanted to get a permit, he doesn't have to compete with anticipated industrial uses. The Director doesn't have to look and see if it is going to affect possible industrial uses. I didn't change that part of the statute. What he has to look at is to see whether it affects other agricultural uses and domestic uses. So the amendment that I am proposing to you is essentially not for the protection of city and domestic supplies. They are protected all over the place in the law, and it is not for the protection of industrial uses. It is for the protection of the agricultural uses. It is for the protection of the existing agricultural uses and that is why I find it curious and ironic...

PRESIDENT: Time, Senator.

SENATOR BEUTLER: ...that one rural Senator after another has stood up and opposed the amendment which is both logical and in the interest of the agricultural community. Thank you.

PRESIDENT: The question is the adoption of the Beutler amendment to LB 56...that is the return for the specific amendment, return to Select File. The motion is to return to Select File for the Beutler amendment. All those in favor vote aye, opposed nay. Senator Beutler. How many are absent or excused? They are all here though because we are on Final Reading. They are supposed to all be here. Record the vote.

CLERK: 13 ayes, 28 nays, Mr. President, on the motion to

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LB 56, 84, 151, 220, 313

return.

PRESIDENT: The motion fails. Anything further on the bill? It is right there, it is on E & R for engrossment. We are then ready, Mr. Clerk, for Final Reading on LB 84.

CLERK: (Read LB 84 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 84 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Record vote read. See pages 1206 and 1207, Legislative Journal.) 47 ayes, 0 nays, 1 excused and not voting, 1 present and not voting, Mr. President.

PRESIDENT: LB 84 passes. Next bill on Final Reading is LB 151, Mr. Clerk.

CLERK: (Read LB 151 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 151 pass? All those in favor vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: (Record vote read. See page 1207, Legislative Journal.) 27 ayes, 21 nays, 1 excused and not voting, Mr. President.

PRESIDENT: LB 151 passes. The next bill on Final Reading is LB 220.

CLERK: (Read LB 220 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 220 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Record vote read. See page 1208, Legislative Journal.) 46 ayes, 1 nay, 1 excused and not voting, 1 present and not voting, Mr. President.

PRESIDENT: LB 220 passes with the emergency clause attached. Before we take up the last bill for this morning on Final Reading, the Chair would like to introduce some guests of Senator Wagner, Harry Knecht, Bonnie Dzingle, Elaine Reiter, all from Loup City. They are in the South balcony. Would you folks stand and be recognized by the Nebraska Unicameral? Welcome to your Legislature. The final bill on Final Reading this morning is LB 313.

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LB 44, 47, 56, 84, 113, 151,
173, 218, 220, 308, 313, 331,
370, 379, 392, 478.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: The Reverend Sidney D. Ellis of the Church of Christ, Lincoln, Nebraska.

REVEREND SIDNEY D. ELLIS: Prayer offered.

CLERK: Mr. President, Senators Beyer, Fowler and Vard Johnson would like to be excused for the day. Senators Hoagland, Cullan and Wiitala until they arrive.

SPEAKER MARVEL: Record the vote, Mr. Clerk.

CLERK: Quorum present, Mr. President.

SPEAKER MARVEL: Do you have anything for item #3?

CLERK: Yes, sir. Mr. President, first of all I have got a correction in the Journal found on page 1221. (See page 1230 of the Journal.)

Mr. President, your committee on Education whose Chairman is Senator Koch reports LB 218 to General File with amendments; 370, General File with amendments; and 308 indefinitely postponed. (Signed) Senator Koch. (See pages 1230 through 1235 of the Journal.)

Your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 56 and find the same correctly reengrossed.

Mr. President, LBs 47, 84, 151, 220 and 313 are ready for your signature.

Mr. President, I have a Reference Report from the Executive Board referring LB 556 to the Appropriations Committee and that is signed by Senator Lamb as Chairman of the Reference Committee.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business, I am about to sign and do sign LB 47, LB 84, LB 151, LB 220, LB 313.

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 379 and recommend that same be placed on Select File with amendments; 44, Select File with amendments; 173, Select File with amendments; 331, Select File with amendments; 392, Select File with amendments; 478, Select File with amendments; 113, Select File with

April 6, 1981

LB 311, 355, 56, 327

with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. LB 311 on Final Reading. Have you all voted? Record the vote.

CLERK: 43 ayes, 3 nays, 1 excused and not voting, 2 present and not voting. Vote appears on pages 1293-94 of the Legislative Journal.

SPEAKER MARVEL: The bill is declared passed on Final Reading. Next bill on Final Reading, LB 355. Clerk will read.

CLERK: (Read LB 355 on Final Reading.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass on Final Reading. LB 355. Those in favor vote aye, opposed vote no. Have you all voted? Have you all voted? The Clerk will record the vote.

ASSISTANT CLERK: 41 ayes, 4 nays, 2 excused and not voting, 2 present and not voting. Vote appears on page 1295 of the Legislative Journal.

SPEAKER MARVEL: The bill is declared pass on Final Reading. Finally LB 56. The Clerk will read on Final Reading.

CLERK: (Read LB 56 on Final Reading.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass on Final Reading. All those in favor vote aye, opposed vote no. Have you all voted? Record the vote.

ASSISTANT CLERK: 39 ayes, 8 nays, 1 excused and not voting, 1 present and not voting. Vote appears on pages 1295-96 of the Legislative Journal.

SPEAKER MARVEL: The bill is declared passed on Final Reading. Do you want to read some items in?

CLERK: Yes sir. Mr. President, I have a Attorney General's opinion addressed to Senator Vard Johnson (Pages 1296-98 of the Legislative Journal). And, one addressed to Senator Landis regarding 327 (Page 1298-99 of the Legislative Journal).

Mr. President, the Government Committee will meet in Executive Session at the noon recess underneath the north balcony. The Government Committee at the noon recess underneath the north balcony.

April 7, 1981

LR 48, 49
LB 56, 209, 291, 311, 355

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Morning prayer is to be given by the Reverend T. M. Rollerson, the Pastor of God's Missionary Baptist Church.

REVEREND T.M. ROLLERSON: Prayer offered.

SPEAKER MARVEL: Please record your presence. Are you ready to record? You've got a quorum, I think.

CLERK: Quorum present, Mr. President.

SPEAKER MARVEL: How about number 3?

CLERK: Mr. President, a communication from the Governor addressed to the Clerk. (Read communication as found on page 1321 of the Legislative Journal regarding LB 446.)

Mr. President, your Committee on Government, Military and Veterans Affairs reports LB 209 to General File with amendments. (See pages 1322 and 1333 of the Legislative Journal.)

Mr. President, LB 291, 311, 355, and 56, as well as LR 48 and 49 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 291, LB 311, LB 355, LB 56, LR 48, LR 49. Do you have anything else under item 3? Okay, item 4. Item #4.

CLERK: Mr. President, the Public Health and Welfare Committee reports on the appointments of M. L. Chaloupka, John Estabrook, Ramona Freeman, Dwaine Peetz, Robert Quick and Tod Voss. That report is found on page 1299 of the Journal, Mr. President. Signed by Senator Cullan as Chair of the Public Health and Welfare Committee.

SPEAKER MARVEL: The Chair recognizes Senator Cullan. Item #4 on the agenda.

SENATOR CULLAN: Mr. President and members of the Legislature, I believe this is the Committee on Committee reports from the Public Health and Welfare Committee. I would ask you to adopt the nomination to...in this particular case these are individuals from the Rural Health Manpower Commission, and one individual from the Board of Health that the committee heard. The committee sent these recommendations to you and asked for your approval.

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

SENATOR PIRSCH: Okay, ther are. . . .

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

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

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

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

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

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

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

SPEAKER MARVEL: Motion is carried, bill is advanced.

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

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

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

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LB 3, 56, 58, 87,
LB 283, 284, 322, 330,
LB 35, 437, 491

SENATOR VICKERS: Well I guess we will have to have a roll call vote then.

SENATOR CLARK: Call the roll. We are still short two. Is that all right with you?

SENATOR VICKERS: Who are missing?

SENATOR CLARK: Senator Goodrich and Senator Schmit.

SENATOR VICKERS: No, I want to wait until they get here.

SENATOR CLARK: We are required to stay in our seats under the Call of the House. Is the Sergrat at Arms looking for those two? Senator Schmit, we are voting on the advancement of LB 35. Call the roll. Senator Goodrich is not in the building that we can find. Here he comes. Now we don't have to find him. Senator Goodrich, we are voting on the advancement of LB 35. Senator Goodrich, we are voting on the advancement of LB 35. Do you want a call-in vote? Call the roll.

CLERK: (Read roll call vote as found on page 1339 of the Legislative Journal.) 25 ayes, 21 nays on the motion to advance the bill, Mr. President.

SENATOR CLARK: The bill is advanced. Senator DeCamp, would you like the honor of adjourning us until tomorrow morning at nine o'clock?

SENATOR DeCAMP: Yes.

SENATOR CLARK: We have a few things to read in first.

CLERK: Mr. President, your Appropriations Committee will meet tonight upon adjournment in Room 1003. The Public Works Committee will meet in executive session in their regular hearing room immediately upon adjournment. All members are encouraged to attend. Senator Higgins offers explanation of vote, Senator Nichol to print amendments to LB 87. (See page 1343 of the Journal.)

I have a communication from the Governor. (Read same regarding LB 311 and 56. See page 1343 of the Journal.)

Mr. President, Senator Goodrich would like to print amendments to LB 3; Senator DeCamp to LB 284. (See pages 1340-1342 of the Journal.)

Your committee on Enrollment and Review respectfully reports we have carefully examined and engrossed LB 58; 283 engrossed; 330 engrossed; 437 engrossed and 491 engrossed.