

January 8, 1982

LB 264, 710-726

Mr. President, the Ag and Environment Committee gives notice of hearings on gubernatorial appointments. That is offered by Senator Schmit. (See page 170 of the Journal).

New bills. LB 710 offered by Senator Wiitala. (Read title). LB 711 offered by Senator Nichol. (Read title). LB 712 offered by Senator Fowler. (Read title). LB 713 offered by Senator Schmit. (Read title). LB 714 offered by Senator DeCamp. (Read title). LB 715 offered by the Judiciary Committee and signed by its members. (Read title). LB 716 offered by the Judiciary Committee. (Read title). LB 717 offered by the Judiciary Committee. (Read title). LB 718 offered by the Law Enforcement Criminal Justice Advisory Committee. (Read title). LB 719 offered by the Law Enforcement and Criminal Justice Advisory Committee. (Read title). LB 720 offered by the Law Enforcement and Criminal Justice Advisory Committee. (Read title). LB 721 offered by the Law Enforcement and Criminal Justice Advisory Committee. (Read title). LB 722 offered by the Law Enforcement and Criminal Justice Advisory Committee. (Read title). LB 723 offered by the Law Enforcement and Criminal Justice Advisory Committee. (Read title). LB 724 by the Law Enforcement and Criminal Justice Advisory Committee. (Read title). LB 725 offered by the Judiciary Committee. (Read title). LB 726 offered by Senator Vickers. (Read title). (See pages 170 through 174 of the Legislative Journal).

SPEAKER MARVEL: We are ready for LB 264 on General File.

CLERK: Mr. President, LB 264 offered by the Public Health and Welfare Committee and signed by its members. (Read title). The bill was first read on January 16 of this year, or last year, excuse me. It was referred to the Public Health and Welfare Committee for hearing. At that time it was advanced to General File, Mr. President.

SPEAKER MARVEL: The Chair recognizes Senator Wesely.

SENATOR WESELY: Mr. Speaker and members of the Legislature, this bill was brought to the committee by the Department of Welfare in terms of trying to make a conformity with the present age of majority statutes. It is a rather small technical change. All it would do basically at this time lower it from the age of 20 to the age of 19 the age at which a guardian would be appointed for a mentally retarded individual and then the possibility of placing them in a Department of Welfare local mental retardation facility would take place. I don't see much of a problem with it. There was very little testimony as you can see from the committee statement, and basically it is a technical change.

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LB 726

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Prayer by the Reverend Marsha Jark-Swain, St. Matthew Lutheran Church of North Bend and St. John Ridgeley Lutheran Church of Scribner.

REV. JARK-SWAIN: Prayer offered.

SPEAKER MARVEL: Do you want to record your presence, please. Do you have any other items? Okay, record.

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

SPEAKER MARVEL: Okay, go ahead.

CLERK: Mr. President, your committee on Public Works whose chairman is Senator Kremer to whom we referred LB 726 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with committee amendments attached. (See page 1003 of the Journal.)

Mr. President, LR 227 and 228 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 227, LR 228. The next order of business is under item #4, resolutions, LR 230.

CLERK: Mr. President, LR 230 offered by Senator Wesely, found on page 867 of the Journal. (Read.)

SPEAKER MARVEL: The Chair recognizes Senator Wesely.

SENATOR WESELY: Thank you. Mr. Speaker, members of the Legislature, God, motherhood, apple pie and Girl Scouts all go together and this resolution tries to recognize the role the Girl Scouts have played in our country. This is now the 70th year they have been serving our nation and building strong character in our women and it seems to me that we should recognize the Girl Scouts and the role that they play. Next week has been designated Girl Scout Week and they are planning a series of events and this is a recognition on the part of the Legislature that the Girl Scouts are important to the State of Nebraska and deserve our support and respect. That is the resolution.

SPEAKER MARVEL: The motion is the adoption of the resolution as explained by Senator Wesely. All those in favor of that resolution vote aye, opposed vote no.

CLERK: 33 ayes, 0 nays, Mr. President, on adoption of the resolution.

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LB 870, 653, 726, 749A, 971

SENATOR CHAMBERS: Here is what I want to ask, would we come back to this this afternoon?

SENATOR CLARK: Yes, if we don't get a motion now.

SENATOR CHAMBERS: Then I have something I want to say because I have an amendment...

SENATOR CLARK: All right, then we will hold it until this afternoon at one-thirty.

SENATOR CHAMBERS: Well, since you only have three minutes, should I wait until this afternoon to speak?

SENATOR CLARK: Yes, I will hold your name up here. You will be the first to speak this afternoon. Senator Stoney, would you like to recess us until one-thirty please after he reads some things in.

CLERK: Mr. President, I have a reference report referring a gubernatorial appointment.

Senator Koch would like to print amendments to LB 653.

A new A bill, 749A by Senator Kilgarin (read title). Mr. President, a new bill LB 971 introduced by the Speaker at the request of the Governor (read title).

Mr. President, finally, Senator Beutler asks unanimous consent to add his name to LB 726 as cointroducer.

SENATOR CLARK: No objection, so ordered.

CLERK: I have nothing further, Mr. President.

SENATOR CLARK: Senator Stoney.

SENATOR STONEY: Mr. President, I would move that we be in recess until 1:30 p.m.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. We are recessed until one-thirty and we will continue with 870.

Edited by

Arleen McCrory
Arleen McCrory

March 17, 1982

LB 619, 629, 726, 816

CLERK: Mr. President, very quickly Senator Kremer would like to print amendments to LB 726; Senator DeCamp to LB 619; Senator Carsten to LB 816. Mr. President, a new resolution LR 254 offered by Senator Koch. (Read. See pages 1234-1238 of the Legislative Journal.) That will be laid over, Mr. President.

Mr. President, LB 629 is a bill introduced by Senator DeCamp. (Read.) The bill was read on January 6 of this year. It was referred to the Miscellaneous Subjects Committee for hearing. The bill was advanced to General File, Mr. President.

SENATOR LAMB: Senator DeCamp.

SENATOR DeCAMP: Mr. President, I move advancement of the bill. I will try to be very brief because I know we have a lot of business to get done here. The bill simply for the first time in eleven years tries to provide the newspapers who are ordered by law to print certain items that normally they probably wouldn't print, in fact have no reason to print, the opportunity to recover close to actual costs of printing those things. The increase is from, well its about one-third. The last time, I repeat, it was increased was eleven years ago. Additionally the legislation does one other important thing and that is it puts a system where you can look in the book and have uniformity of price, so that whether you go to Ogallala or Neligh or O'Neill or Omaha, you have a standard price for a certain amount of words. Previously, because different people used different kinds of type, different kinds of newspaper, nobody really knew for sure whether they were paying fifty cents in one place and twenty cents in another for identical things. This would establish a uniform system. Mr. President, I urge advancement of the bill. As I say, I would try to answer any questions. Let me just say that this increase is probably very small compared to what it should be. I repeat again the last increase to cover these mandated publishings was eleven years ago. As an example newspaper, the paper itself, has gone from like a \$17⁴ a ton to five hundred and sixty some dollars a ton and a printing of this material, the types of things we're talking about, legal notices, so on and so forth, notices of bids, interestingly enough, even with this increase, incredible as this sounds, would still be only one-third the cost of me putting in, for example, an ad or a publication on something for an auction or a legal advertisement or something like that. It probably doesn't even recover the actual cost of printing it but we mandate the papers do it. I urge advancement of the bill.

SENATOR LAMB: Amendment on the desk.

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PRESIDENT: Well, I suppose we will get started then on agenda item #6, General File, priority bills with special order, LB 726.

CLERK: Mr. President, LB 726 offered by Senators Vickers and Beutler. (Read title.) The bill was read on January 8, referred to the Public Works Committee for hearing. The bill was advanced to General File, Mr. President. There are committee amendments pending by the Public Works Committee.

PRESIDENT: The Chair recognizes Senator Kremer for purposes of discussing the committee amendments. Senator Kremer.

SENATOR KREMER: Thank you, Mr. Chairman and members. The committee amendment is a rather simple amendment. The bill provides that if a certain area...and I will read it. The committee amendment provides that if an adjoining township petitions for a more restrictive control, that has to be supported by at least 75 percent of its residents and 75 percent of the landowners. So if there is going to be a petition to provide more restrictive control in a township that is not inside of a control area, it has to be supported by this majority of petition signers. I move the adoption of the committee amendment.

PRESIDENT: Any further discussion on the committee amendments on LB 726. Seeing none, Senator Kremer, I guess that is your opening and closing. So the question is the adoption of the committee amendments on LB 726. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 25 ayes, 0 nays on adoption of the committee amendments, Mr. President.

PRESIDENT: The motion carries and the committee amendments are adopted. Ready then to have the bill explained and I believe, Senator Beutler, you are going to start out with the explanation. So the Chair recognizes Senator Beutler at this point.

SENATOR BEUTLER: Mr. President and members of the Legislature, I wish there was some way of extending those very rare and pleasant moments of unanimity that we have in this body because they are so enjoyable. I am afraid though that we are back to the bloodiest of issues, water. Let me say in opening that Senator Vickers has done the lion's share of the work on this bill but he has given me the privilege of introducing the bill to you. And I would

just like to briefly explain, I hope clearly, exactly what the bill does and then let Senator Vickers and others discuss why it needs to be done, and, of course, there will be many who will be willing to discuss why it should not be done. But the bill is basically a local control bill. Basically, it is going to give to the local Natural Resource Districts additional power to regulate the competing interests of different water users. Let me refresh your memories just briefly. You may recall that the mechanism that we have adopted in this state for the control of water is to allow each of the local NRDs to do the job and if they think there is a problem, then they have a process by which they can declare a control area, and once they declare a control area, there are a number of things they can do. They have a number of tools that they can use. They can regulate the withdrawal of water. They can implement a rotation system. They can implement well spacing requirements, and then down at the bottom it says, they may adopt such other reasonable regulations as are necessary to carry out the intent of the Groundwater Management Act. Now all of these are on page 10 of the bill in our current law in case you wanted to look them over. That is what a control area is. That is what you can do if you have a control area. Then the next question is, under what conditions can you declare a control area? Under the current law there are three specific situations that can exist that would allow you to declare a control area, and if you look on page 5 and 6 of your bill, you can see the current law and basically it says that a control area may be designated following a hearing under these conditions. The development and utilization of the groundwater supply has caused or is likely to cause within reasonable foreseeable future..the reasonably foreseeable future, the existence of any of the following conditions. An inadequate groundwater supply to meet present or reasonably foreseeable uses for beneficial use of the groundwater. Okay, inadequate supply, dewatering of an aquifer resulting in the deterioration of the quality of the groundwater. That is the second condition under existing law, dewatering. And the third condition where you can have a control area is that pollution of groundwater has occurred or is likely to occur in the reasonably foreseeable future. Okay, I have stated the present law for you. What the bill does now, it adds two additional criteria that the local NRD can use to establish a groundwater control area, and those two additional criteria are shown on page 6 of the bill. The one is this, interference with present or reasonably foreseeable uses of surface water in the district, that is a conflict between groundwater and surface water. And the

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second one is the reduction or loss of subirrigation within the district, trying to regulate, trying to allow the NRDs to regulate conflicts between subirrigated users of water who rely on subirrigation and other users of water. That is the main and basic thrust of the bill. Now subirrigation is not a term that we have had in the law before and, therefore, it became necessary to set forth what we mean by subirrigation and that is shown on page 5 of the bill. And for you people like myself who are city people, it might be well to read that. Subirrigation shall mean the irrigation of any type of plant or vegetation for agricultural purposes through the natural occurrence of the groundwater table within the root zone of such plants or vegetation. In other words, the groundwater level is so high that it soaks the roots of the plants that are being irrigated. Obviously, if somebody is pumping groundwater heavily in an area, there is the possibility that the groundwater level may decline, that meadows that have relied upon subirrigation for years and years and years may no longer be subirrigated and thereby the conflict is created that we in this bill would give the power to the NRDs to help negotiate and regulate. In addition, the bill has one additional provision which is really peripheral to the rest of the bill, but it simply allows the district to adopt controls on a township basis, that is, it can make controls more restrictive in one township than in another and this is done through the petition process and it would require the signature of 75 percent of the people residing in the township and those persons would have to own 75 percent of the property within the township in addition. That is a relatively minor point. But with that, Mr. Speaker, that explains the bill, what it does. I would move for the advancement of 726.

PRESIDENT: Ready for....motion on the desk, Mr. Clerk.

CLERK: Mr. President, Senator Kremer would move to amend the bill. Senator Kremer's amendment is found on page 1238 of the Journal.

PRESIDENT: The Chair recognizes Senator Kremer.

SENATOR KREMER: Mr. Chairman, I am going to ask that we pass over that amendment for now. Leave it on file.

PRESIDENT: You want to leave it on file and pass over it.

SENATOR KREMER: Leave it on file but pass over it for now.

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PRESIDENT: All right, we will pass over it. Okay, the Chair recognizes Senator Cullan.

SENATOR CULLAN: Mr. President and members of the Legislature, I rise to support LB 726 and I would urge you to support it as well. Let me say initially that there are some who are concerned about handling more water legislation and there are some who are concerned about this conflicting with LB 375. And I see no conflict between the two pieces of legislation. I think it is perfectly consistent to vote for both of them, and I think LB 726 is one of the most significant pieces of water legislation that we have dealt with in some time. Senator Beutler has already explained to you what the bill does, and as a Senator that represents a good piece of the Sandhill, I would like to talk to you about why the bill should be enacted. One of the main reasons I have for concern is that groundwater users are the only water users who have available to them the mechanism to protect or ration water in the best interests of their district. Persons owning subirrigated land presently have only one option, wait until they can prove loss of subirrigation and then proceed with court action to establish damages. Now that is difficult first of all because damages are difficult to prove and difficult to establish in a law suit. But more significant than that, by the time that that litigation has ripened, by the time that you can file those law suits and they can be successful, the damages have occurred, the injury has occurred and the subirrigation is gone. That is a remedy after the fact. Court cases in western Nebraska have set precedent by awarding damages in this type of litigation, but these actions are an after the fact recognition of the rights of water users. LB 726 allows Natural Resource Districts the option to protect and preserve these water users. There is no guarantee what their decision will be, but the Natural Resource District Board can make their decision on the best information available to them before they apply for a water control area. This is the key point in the process since they must manage their natural resources in the best interests of their locality. The persons affected by these decisions could then proceed accordingly. It all sets up the process of some common sense in the development of our natural resources. We cannot continue to ignore these water user's rights to at least attempt to preserve their basic resources. Loss of subirrigation is an early warning sign of overdevelopment and an appropriate time for consideration on preserving subirrigation or allowing continued groundwater development. I feel that

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the scope of this problem is not generally understood. A 1978 study by the U.S. Corps of Engineers is very revealing. The study which is entitled "The Wetlands Inventory of the Omaha District" and through the use of a remote sensing laboratory and using satellite imagery the study concluded there are 1,190,285 acres of sub-irrigated meadows in the Sandhills region, that excludes open water marshes and riparian land along rivers. Imagine if you will for a second the additional groundwater development that would be necessary if these subirrigated acres were lost. Those ranchers would be forced to irrigate in order to survive. If we fail to protect subirrigation in the State of Nebraska, we are moving down the road to forcing tremendous development of the Sandhills....

PRESIDENT: One minute, Senator Cullan.

SENATOR CULLAN:that is land that has been irrigated naturally for a century. Think of those million acres when you vote on this bill. Think about this issue. Allow the local people through their Natural Resource Districts to have this simple tool to protect subirrigated acres in the State of Nebraska. I urge you, vote for LB 726 for the Sandhills.

PRESIDENT: The Chair recognizes Senator Vickers.

SENATOR VICKERS: Thank you, Mr. President. Mr. President and members, Senator Beutler has outlined the bill very thoroughly. Senator Cullan has explained some of the reasons for the need for LB 726. I would like to just briefly tell you from my perspective what LB 726 does and what it doesn't do. First of all, the Public Works Committee a couple of years ago when I was a member of it held some hearings across the Sandhills, one in Mullen, one in Ord, and then again last year held hearings in those two cities. We heard from a number of people and a number of people in those areas are concerned. They are concerned about how their wet hay meadows are being affected. They are concerned about how their lakes and their streams in those areas might be affected as irrigation development takes place. The issue is very clear that should the local people have the authority and the ability to control the top of their aquifer, or should they only have the ability to control the aquifer following a significant decline? Now it seems to me that if it is the concern of the people, that we should put the criteria in the statute to meet that concern. There was a poll conducted of the Sandhills people and more than 82

percent of them indicated that we should give them some sort of ability to control development within their area. What 726 does is address an area of the statutes that provides for local control. This is simply the criteria to give the local people the authority to have a control area based on the losses or the potential losses that they see within their area. It does address a major step. There is no question about it. This would for the first time recognize clearly that there is a correlation between underground water and surface water. Perhaps for those of you that don't quite understand, when underground water is treated as underground water but when it reaches the top of the ground, then it becomes surface water and we in the State of Nebraska through our laws have not recognized that correlation at all. But as a matter of fact, that is what the wet hay meadows are. That is what the lakes and the streams and the Nebraska Sandhills are, is the top of the aquifer. This does recognize that relationship and it does give the authority to the local people to have a control area based on the loss of the top of their aquifer. That is something again that we haven't done in the past. Now that is briefly what it does do. What it doesn't do, at least in my opinion, and I know there are others in this body that feel differently, but what it doesn't do is that it doesn't conflict with LB 375. As Senator Cullan pointed out to you, a vote for 375 and a vote for 726 is not a conflicting pair of votes. LB 375 created a management area concept. LB 726 deals with the control area concept that we have always had in the Water Management Act since its enactment. There are two separate sections of the statutes. What it does do is give the local people the authority to choose which of the two they would care to use. Now the proponents of 375 I think told us all along and I agree with that, that it wasn't mandating that the Natural Resources Districts use the management area, neither does 726 mandate to the Natural Resources Districts that they use a control area. It leaves it up to the discretion of the local people. No matter what we put in the control area as a criteria, it is all discretionary. And a good example of that is the fact that we do have declines in certain areas of the State of Nebraska right now where there are no control areas established at all even though the criteria is there right now for a control area to be established based on declines. The same thing can be said for pollution. One of the things that it does do differently as far as the control area and the management area is concerned....

PRESIDENT: One minute, Senator Vickers.

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SENATOR VICKERS: Thank you, Mr. President. It allows the Natural Resources Districts to use different mechanisms for regulations. The mechanisms in the Water Management Act under the control area right now is very broad. It allows the people to do basically...the Natural Resources Districts whatever they choose to do within reason, and on the other hand the management area concept gave them some narrow guidelines that they had to follow. Those are the two major differences. The total amount of development could be controlled in a management area but it can be controlled only in total not in parcels. The difference is that in a control area they could instigate controls to control development so that it would take place in an orderly fashion. One more point needs to be made. Some people are indicating that with the passage of 726 there would be no more development whatsoever in the Sandhills and I don't believe that is true at all. I don't believe the local people want that to be true. I would simply point out that the philosophy that I have always espoused is that I don't believe we can give the local people any authorities....

PRESIDENT: Time.

SENATOR VICKERS:that would cause them to overregulate themselves. Thank you, Mr. President.

PRESIDENT: The Chair recognizes Senator Kremer.

SENATOR KREMER: Thank you, Mr. Chairman and members, I rise to oppose the bill. I know the first question that is going to be asked if you have made up your mind is why then did you vote to bring it out of committee? Well, my explanation for that is that this committee and some of us before we worked on the committee did go into the Sandhills and listen to the ranchers and the farmers, people living in that area, about what complaints they may have had, what is happening in development and so on. We have done that about three or four different times and I will have to agree that everyone never wants to be provided any legislation that would allow this thing to be aired in the Legislature itself. I compare that and I have always liked to hunt and never once have I ever shot a pheasant or a duck sitting down. I like to give them a chance and generally they got away. And I feel the same way about this. Let's give them a chance to air the thing. However, I oppose it for the following reasons. First of all, we have passed major legislation in the last several years and it took two years of work,

hard work to bring the people that were interested together and have some semblance of agreement what maybe should or could be done. We took two years to get LB 577 passed that set up a program for a control area. We took two years to get LB 375 passed. It took lots of time, lots of exchange of ideas and exchange of opinions and I think it has paid off. Coming out very soon and in fact it is out, the report to the Governor and the Legislature by the Natural Resource Commission on Planning and Review just came out about two weeks ago and it is available, and that has to do with instream flows. We have not yet addressed that. Coming out later on this fall or this summer will be their report on reservoir management. Coming out sometime in the distant will be their report on the Sandhills study itself. Now then, we just passed LB 375, now I think we should go a little bit slow and take our time and study this situation that some people feel is very real and I am sure it is. I would like to go on and say there is considerable disagreement in this area among the ranchers. Many ranchers are saying, yes, I do have a wet meadow but I can improve the production of that wet meadow if I put down a well and irrigate that wet meadow. Now what this bill does in my opinion if the water table lowers because of the use of groundwater and surface water is in there now too, it could virtually stop the development. Maybe some ranchers that want to put down a well can't do it. That is an individual ranch as well as some of the larger operators. I feel strongly that it is time for us to let the dust settle and the smoke clear away on what we have already done, take our time and have a look at what we are trying to do with this bill. I further want to say that I feel strongly there is every...every indication that the irrigation is going to develop in our state. Now that is not all bad. Some say we already have an overproduction of feed grains and so on, but mark you well that when some of the other states south of us run out of water which they are going to, Nebraska is going to have to pick up the slack and we are going to become a food producing state that is going to lead the pack.

PRESIDENT: One minute, Senator Kremer.

SENATOR KREMER: Thank you very much. Therefore, I think the development of irrigation is important. We need to be careful. We do not want to hurt anyone if we can help it. I said before that some of the legislation that has been passed is not perfect but here we go again. We have spent much time, a lot of time on discussing the development and the use of water in our state, but I think

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we have done enough now for this year and I think it is not timely to proceed with a further look at water management at this time. I think LB 375 will take care of a lot of the problems that are brought forth in LB 726. Thank you.

PRESIDENT: All right, that...we will break now for lunch, after the Clerk reads some matters in. I would just say that we have this speaking order. After lunch we are going to return to LB 726 and there are some three amendments from Senator Haberman which will be next on the discussion list. And then these names have been submitted that are in line of priority for speaking when we get back on the bill after the consideration of the amendments so that you know that the speaking order will be retained. Senator Kahle, Senator Hoagland....Senator Kahle, Senator Schmit, Senator Hoagland, Senator Howard Peterson, Senator Vard Johnson, Senator Cope, Senator DeCamp and Senator Koch. That will be the speaking order when we return to the bill after consideration of the three Haberman amendments. So we will return at that time. Mr. Clerk, do you have some matters that you would like to read into the record?

CLERK: Very quickly, Mr. President, Senator Fenger would like to print amendments to 714 in the Journal. That is all that I have. (See pages 1259 and 1260 of the Journal.)

PRESIDENT: Senator Lamb, would you tell us what time you want the Legislature to come back?

SENATOR LAMB: Mr. President, I move that we recess until 1:30.

PRESIDENT: Motion by Senator Lamb that we recess until 1:30. All those in favor of recess until 1:30 signify by saying aye. Opposed nay. We are in recess until 1:30.

Edited by Arleen McCrory.
Arleen McCrory

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RECESS

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: The Legislature will come to order. Register your presence please. Senator Beutler, Senator Apking, Senator Remmers, Pirsch. I'm just calling attention to those of you that are here that aren't showing your presence. Record the presence, Mr. Clerk.

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

PRESIDENT: All right, do you have some matters you want to read in while we're waiting for Senator Haberman to get here for his amendments on LB 726. We will take up with LB 726 as soon as we can.

CLERK: I have nothing to read in, Mr. President.

PRESIDENT: All right, we'll just stand at ease and see if the Sergeant at Arms can find Senator Haberman because we want to get started on his amendment. I think we have, while we're waiting, we have some 30 seniors from Red Cloud High School from Senator Kahle's district with Sally Meyers and Mr. Macy and Arch Keegler (phonetic), their driver and two sponsors. They are up here in the North balcony. Would you kindly indicate where you are while waving. There you are. Welcome, Red Cloud, to your Legislature. Senator Haberman is here so we can start, Mr. Clerk, with the first of the Haberman amendments on LB 726.

CLERK: Mr. President, Senator Haberman would move to amend LB 726. (Read Haberman amendment as found on page 1260 of the Legislative Journal.)

PRESIDENT: Now the lights that I have on now I am going to recognize for purposes of discussing the first Haberman amendment and we're calling on Senator Haberman first to present his amendment.

SENATOR HABERMAN: Mr. President, I would like to have this considered as one amendment. One amendment.

PRESIDENT: Senator Haberman.

SENATOR HABERMAN: The whole thing is one amendment.

PRESIDENT: The Legislature will stand at ease for a moment.

EASE

CLERK: Mr. President, in that case the amendment that Senator Haberman is going to offer is one that Senator Kremer had

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printed in the Journal. It is on page 1238 of the Journal.

PRESIDENT: Alright, I want to once again remind you that I have the following priority for speaking order when we get back on the bill after the amendments. We have Senators Kahle, Schmit, Hoagland, Howard Peterson, Vard Johnson, Cope, DeCamp and Koch, in that order. All of you need not put on your lights for speaking on the bill itself. Unless you want to speak to the amendments you may turn off your lights now and only those who are wanting to speak to the amendments as they are being discussed, please turn on your light. So, Senator Haberman, if you would proceed on your first one.

SENATOR HABERMAN: Mr. President and members of the Legislature, I started out opposing this bill but after visiting with many people from Grant County and hearing their input, after considering the problems of the sandhills and of sub-irrigation and upon the removal of any groundwater, the removal of surface water from the sections, I can support the bill. It deals now just with subirrigation. Surface water is removed from the bill. It is not tied into the bill. I think it will help. I know it will help the sandhills. This is a different problem than in the control area where I now live because we do not have the problem with sub-irrigation and meadow irrigation and I think it is a separate problem. It should be treated separate. It is going to be kind of hard possibly to have two water bills but I think we need two water bills and this is important to that unique group of people and they should be entitled to have this bill as because they will be putting it upon themselves, the control on themselves, we won't be doing it, they will be doing it. They live there. It is their land. It is their problem. They understand it and I feel very strongly we should give them the right and the opportunity to control their destiny. If they abuse it and do not use it properly, this body will have the authority to take it away from them but I feel they should have it and I feel this body should give it to them. So that is why I am asking that you adopt this amendment to 726 and then I can support the amendment which I would like to do and which I am sure that some of the other members on this floor can do when you remove any reference to surface water. How much time do I have, Mr. President?

PRESIDENT: Seven minutes.

SENATOR HABERMAN: Tom, would you like to have those seven minutes?

PRESIDENT: Senator Vickers, alright.

SENATOR VICKERS: Thank you, Senator Haberman. Mr. President and members, I will consider this as a friendly amendment and will accept the amendment with the understanding as Senator Haberman indicated that he will then support the bill. I understand that some people did have some problems with the fact that we were dealing with both surface water and sub-irrigation and as I indicated earlier, I knew that was a major step, recognizing the correlation of surface water and underground water. So with that understanding that Senator Haberman then will support the bill and I will also tell you that probably we will be dealing with this issue in years to come but I certainly will accept the amendment at this time and urge the body's adoption of it.

PRESIDENT: The Chair recognizes Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, of course the oldest trick in the books is one which you are seeing Senator Haberman offer here today. It kind of reminds me of an ornery steer I had in the pen one time. He had horns and he wouldn't let anything up to the bunk and we took the horns off of him and then we thought he wasn't such a bad steer but it didn't change his disposition a damn bit. He is still the same kind of a steer. Taking the horns off of this thing isn't going to make it any better bill and I want to call your attention to the fact that just because you are going to get stomped and gored and trompled later on, it's not going to make it any less or any more enjoyable. I want to call your attention to a couple of things. First of all as Senator Kremer said this morning, for two full sessions virtually we argued water on 375. We heard the committee discuss the bill time after time. We heard the committee wrestle with the problem in committee. The bill came to the floor by a majority vote of this body. The bill was debated and debated and debated clear across the board. There were dozens of attempts to amend the bill. Some of the very issues that you are going to discuss in 726 were soundly rejected in 375 and so what you do you come in with another bill and you attempt to run the thing through and the good old boy syndrome comes into play. They say, well we gave somebody else a bill, let's give this guy a bill. Now that is how you get into a lot of trouble on this floor and next year or the year after or a couple of years from now you come back and say, well we made a mistake. We've got to correct this and we've got to correct that. Except I want to warn you that you are working with an item, a resource which is not easily repaired, damage is not easily repaired once it has been caused. You talk about the surface, subsurface. I have walked, ridden, driven, flown over the sandhills for thirty-five years. I think I know the sandhills as well as anybody. I can tell you that in the '30s there were thousands of lakes out there that dried up and there

wasn't an irrigation well within hundreds of miles of it and you can sit here today and you can blame an irrigation well forty miles downstream for draining your meadow. It has nothing to do with it. For the most part I want to tell you something else. I'm a little bit inclined to look at this amendment like I am some of the other ideas that have been proposed by certain local groups. It is unfortunate you cannot pass a bill just for the South half of Section 12 in Summit Township which covers my farm. You can't do that. When you pass a bill in this Legislature you pass it for the entire state. The entire state lives and dies by it. Unfortunately you can't pass legislation by the press. The press would like to think sometimes they are the extra body or the fiftieth member but the hue and clamor for the various types of legislation by certain elements of the press does not necessarily make it right. If you were to have read the news reports on LB 375 you would have thought that LB 375 narrowly passed this Legislature. It passed by 45 to nothing. It would have been 46 if one member had been here. Then you turn right around and you say now we're going to dive right back into this issue again and there won't be five of us on this floor that have read this bill through from cover to cover and understand it or realize the implication of what you are doing except that you have a tremendous desire to balance things up. Now balancing things up which is what has caused the most imbalance in this society in the last forty years whether it is on water or any other issue you want to talk about, you ought to look at it on the basis of what is right, work....

PRESIDENT: One minute, Senator Schmit.

SENATOR SCHMIT: ...on the basis of knowledge and not on the basis of emotion, commotion or rhetoric. 375 is a good bill if enacted by this body to do a specific purpose, it will do that. It ought to have a chance to work for a little while and I do not agree with those individuals of this body who say that these bills are compatible. They're not compatible and you heard Senator Kremer say so this morning. So there I would hope you would not adopt the Haberman amendment in an attempt to dehorn an unruly steer to make him an acceptable member of the pen.

PRESIDENT: The Chair recognizes Senator Beutler.

SENATOR BEUTLER: I would like to call the question, Mr. President.

PRESIDENT: Alright, 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. Have you all voted?

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We're voting to cease debate. Record the vote.

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

PRESIDENT: The motion carried. Debate ceases. Before we have Senator Haberman close on the amendment, the Chair takes the opportunity of introducing from Senator Carsten's district, 21 juniors and seniors from the Weeping Water High School, Mr. Larry Amends, teacher. They are in the North balcony. Would they show us where they are. Welcome to your Unicameral, Weeping Water. Senator Haberman, you may close now on your amendment.

SENATOR HABERMAN: Thank you, Mr. President, members of the Legislature, it sure pleased my heart, it made me feel good to have Senator Schmit bring up the good old boy issue because if I remember correctly we've had a few good old boy issues on this floor, the good old boy Senator Schmit supported. Wheat checkoff, well we'll give it to them so now let's give it to the good old boys and have acorn checkoff. So we gave the corn boys a checkoff and gave the soybeans a checkoff. Now the beet people want a checkoff. Those are all good old boy things. They aren't doing any harm. They are all different areas. They are all promoting their own individual groups of agriculture. Nobody sees anything wrong with this where the wheat people promote wheat, corn people promote corn so what would be wrong with letting the people in the sandhills who have a particular problem, by their own vote and their own NRDs, control themselves because it is a problem that is unique to them? And the issue that a well so many miles away will not affect you, come out to my control area and I'll show you where people have lost their domestic wells due to irrigation wells. Talk to them and see if it doesn't make a difference. And I say we remove surface water from the bill and makes it palatable to me so I would like you to adopt this amendment and pass the bill and give those people the opportunity to put these controls on themselves with 75% of their vote, 75% of the vote and they put it on themselves, not a simple majority and they do it by precincts. They don't take in a whole big area. Let them be the judge. And again I say, then if it doesn't work and they abuse it, we can come back and change it. So I ask you to support this amendment and support the bill. Thank you, Mr. President.

PRESIDENT: Alright, the question is the adoption of the first Haberman amendment to LB 726. All those in favor vote aye, opposed nay. Senator Haberman, I don't know how many are absent, excused I should say. How many are excused? Nine.

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SENATOR HABERMAN: Okay, I'll take call in votes.

PRESIDENT: You'll take call in votes? You're not going to call the...

SENATOR HABERMAN: I'll ask for a Call of the House and call in votes.

PRESIDENT: Alright. Senator Haberman asks for a Call of the House. So put what is on there and record it and now all those in favor of a Call of the House vote aye, opposed nay. Record the vote.

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

PRESIDENT: The motion carries. The House is under Call. The Sergeant at Arms will see to it that all members return to their desks, all other persons leave the floor. The House is under Call. Register your presence at this time, please register your presence and the House is under Call. Everybody is here. Okay, Senator Haberman, do you want call ins or what do you wish to do? Have a roll call? Well, better to have a roll call. Any further call ins. Why don't you go ahead and take...he said to take in the call ins so let's just try that first and then...

CLERK: Senator Vard Johnson voting yes.

PRESIDENT: Any further call in votes?

CLERK: Senator Beyer changing from no to yes. Senator Carsten voting no.

PRESIDENT: Is that it? Call the roll up yonder.

CLERK: (Read roll call vote as found on page 1261 of the Legislative Journal.) 29 ayes, 12 nays on adoption of the amendment, Mr. President.

PRESIDENT: The motion carries. The Haberman amendment is adopted. As I understand that is the...that was a combination of all of those so that is the amendment. Any further amendment on the desk, Mr. Clerk?

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

PRESIDENT: Alright, we're now back onto the discussion and we will go to that priority list that I announced to you as we came in commencing with Senator Kahle.

SENATOR KAHLE: Mr. President and members, we've spent a lot of time with water and I hope that we don't take all afternoon. Many of the things that I have written down here that I want to talk about have already been mentioned such as the fact that I'm not sure that irrigation wells really affect wet meadows and lakes to the extent that some people would like to have us believe and Senator Schmit I believe mentioned the lakes in the '30s were dry. In the dry years you're going to have dry meadows no matter whether you have irrigation or not. I guess the thing that bothers me the most and I talked to quite a few people from the sandhills and of course have been affected with land that is subirrigated all my life. What does a rancher do if we get a dry spell and his wet meadows go dry? What does he feed his cows? What he is going to do he is going to have to have some irrigation in order to supplement his feed supply. I have a feeling that those who support this bill so strongly think that in some way it is going to stop the development of irrigation in the sandhills. Now I suggest that if that is your attitude and what you want to do, there is surely a better way than hurting the people that are there now and finding a way to slow down the insurance companies or whoever may be moving in. If you think you are going to stop them with this legislation, you are going to find out that they are going to be there and it is going to be too late to do anything about it anyhow. In the last several weeks I've been quite surprised to find the attitude of people that seem to think that underground aquifer that we have, whether it be in the sandhills or under any part of Nebraska is like a big old bathtub full of water and every time somebody puts a straw in and starts drawing a little bit out, why there is that much less for everybody else. That really is not true at all. It may be true in certain sections of our state but it certainly is not true in general. I remember back in the early '40s when wells were going into my particular area where I live and we were putting them in ourselves very rapidly. You could see well rigs working all the time, many of the old-timers especially and some of the people that lived in other areas would say, well you guys are going to pump all the water out and there is not going to be any left and you go back to desert, the same story we are hearing right now. Well it didn't happen. In fact, the water table went up. One thing you have to remember that even though you are irrigating you are only irrigating a couple months out of the year and the water that you pull out and put back on the ground, some of it goes back in. I think that it is too bad that Howard Lamb hasn't had a chance to speak yet. I'm sure he will speak. He probably knows more about this than all the rest of us put together, living up in that area. I know that they have what we would call streams or creeks or sloughs in our area that up in his area have no end. They just soak into the aquifer into the underground water table and that is fed by the

good Lord up above rather than from anything that man does. It is all going to depend on how much rainfall we get whether we pump that aquifer down or up in those sandhills. So I think it is kind of foolish for us to think that we can determine exactly how much water is going to be drawn out of there in time to stop development. Now if you want to stop development, let's stop development but if you want to tie it to the water table...

PRESIDENT: One minute, Senator Kahle.

SENATOR KAHLE: ...you're going to be twenty years late when you get to it. We did pass 375. I think we should give it a chance. There is another thing that I don't know how many of you know when you get to fooling around with the underground water table and the subirrigation. You're not going to get agreement among ranchers and farmers to what should be done. We at times have trouble. We kill our alfalfa because the water table comes up, kills the roots. At other times we think it is just great when the roots are in the water and we raise a big crop. It depends a little bit on where you live and how you handle it. But I think that right now those very people that are asking for this bill are the ones that are going to suffer the most if a water table goes down. Thank you.

PRESIDENT: The Chair recognizes Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I believe Senator Kahle has made most of the points that I would have made. I think you need to recognize that you are entering into an area that is of extreme interest to a few people and is of absolutely no interest whatsoever to a number of persons who are voting in support of the most recent amendment. As I said before and Senator Haberman said the good old boy syndrome works and I want it to and maybe it does but there is a vastly different situation than what we are talking about here. What we are talking about here is an issue which is not understood by very few people on this floor. I believe that the statement was made and maybe I misunderstood, Senator Kremer had withdrawn his amendment which was one that we just adopted. Senator Kremer passed over the amendment. I'll let Senator Kremer speak for himself but the point I want to make is this, that this bill is not a good bill for the State of Nebraska at this time. It is not a good bill because it deals in an area where we are not knowledgeable. He speaks in terms of reference of 75% of the landowner being able to impose certain controls. I would like to have someone explain...would Senator Haberman please explain to me this question, please. Senator Haberman.

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PRESIDENT: Senator Haberman, would you respond.

SENATOR SCHMIT: While you are returning to your seat, Senator Haberman, suppose that ... will you explain exactly how the controls will be imposed upon an area by a 75% vote of the people? Will you explain that to me and what those controls are?

SENATOR HABERMAN: It is in our local NRD district. They are going to be imposed. How are they going to be imposed?

SENATOR SCHMIT: Describe to me the provision you just explained about allowing controls to be imposed by 75% of the voters of an area. Explain to me how it works.

SENATOR HABERMAN: 75% of the landowners in a township state that they wish to have a water control area. Then this will dictate to the local NRD to draw up the rules and regulations to have that be a control area and to set the rules and regulations for that area, just exactly the way it is done now in the control area that I live in.

SENATOR SCHMIT: How do you define the area, Senator Haberman? How is the area defined?

SENATOR HABERMAN: I beg your pardon? (Mike not working.)

PRESIDENT: Senator Haberman is going to get on that mike.

SENATOR HABERMAN: How far did I get?

SENATOR SCHMIT: Not very far, Senator.

SENATOR HABERMAN: Well maybe not in talking but it did in votes but go ahead, Senator Schmit.

SENATOR SCHMIT: Would you explain, Senator Haberman, how the area is to be defined?

SENATOR HABERMAN: Township areas.

SENATOR SCHMIT: Who determines that?

SENATOR HABERMAN: By the 75% of the people that live in the township. Townships are designed by, you pick up a map and there are thirty-six sections in a square mile and in each square mile there are so many townships.

SENATOR SCHMIT: Very well, then in that area, if 27, 28 townships decide to enforce controls in an that is being developed they would have the ability to do so. Is that right?

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SENATOR HABERMAN: That is right.

SENATOR SCHMIT: In other words, you are going to deny to those individuals in those six or seven or nine townships or eight townships the right to have any voice about how they want to develop their area.

SENATOR HABERMAN: That is exactly the way it is in the control area when they deny drilling a well (interruption.)

SENATOR SCHMIT: No, it is not that way, Senator. Thank you, Senator Haberman.

SENATOR HABERMAN: Well thank you, Senator Schmit.

SENATOR SCHMIT: The point I want to make is this, Mr. President, there are areas of development in the sandhills. We know that. And Senator Kahle has pointed out and as most of us can tell you, that these areas are local. They are not spread clear over the areas but what you are doing here is you are allowing an area that is predominantly one type of agriculture...

PRESIDENT: One minute, Senator Schmit.

SENATOR SCHMIT: ...to impose its type of agriculture upon another area which may lend itself to a different type of utilization. That is fine until the time comes when that rancher may want to utilize it himself as Senator Kahle has pointed out. When that time comes, Senator Haberman, he will find that he has shot himself in the toe of his \$500 boot and then he will come screaming back to you and if you are here, you will rush forward and say we've got to correct this problem once again which I inadvertently caused a couple of years ago. Thank you, Mr. President.

PRESIDENT: The Chair recognizes Senator Hoagland.

SENATOR HOAGLAND: Mr. President and colleagues, I would like to rise in support of this bill and try to straighten out some misconceptions I think that the opponents of this bill have been stating in their floor speeches. Now let me emphasize from the beginning what this bill does. This bill simply gives more power to the locally elected Natural Resource Districts to attempt to carry out their responsibilities for managing water. We're not making any policy decisions here on the floor of the Legislature about stopping irrigation development in the sandhills or anything else. All we're doing is delegating a little bit more of our constitutional authority down to the locally elected Natural Resource Districts. This bill stands for local control. Now in the area of county government, the Nebraska Legislature through the years has had no reservations about

giving the locally elected county boards the kind of authorities they need to fulfill their responsibilities, whether it's road building or whatever other sort of responsibilities they have. In the area of city government we have not had any problems in delegating to the locally elected officials the authorities to carry out their responsibilities but for some reason when it comes to water we want to hang onto all the power. When it comes to water we are not willing to give the locally elected Natural Resource Districts that we've given the responsibility for managing and conserving our water resources the kind of statutory tools they effectively need to do the job. Now one opponent to this bill has talked about how people that are in favor of this bill want to stop irrigation in the sandhills. Well that is nonsense. The people that are in favor of this bill simply want to give the Natural Resource Districts, the locally elected, locally controlled Natural Resource Districts, the power and the authority to do their job. That is all this bill does. We're not making any policy decisions about how water is to be managed on the floor of the Legislature. We're not making any policy decisions here about irrigation development in the Sandhills. All we're saying is, let's let the Natural Resource Districts have enough tools so they can begin to make some policy decisions themselves. Now I know that some of you have argued that this is unnecessary because we just passed LB 375 but the problem with that argument is that it's going to take LB 375 four to five years to work, four to five years for the Natural Resource Districts to begin to implement the management plans before they can even set up a management area in order to begin to do any allocating or any other effective management of the water. There is nothing at all inconsistent about this bill and LB 375. LB 375 is one kind of grant of authority of the NRDs. LB 726 is another kind of grant of authority of the NRDs. If you believe in local control of our water problems, if you believe in delegating power down to the local level, that is what LB 326 (sic.) does and I would urge you to vote in favor of it. Thank you, Mr. President.

PRESIDENT: The Chair recognizes Senator Howard Peterson.

SENATOR H. PETERSON: Mr. Chairman and members of the Legislature, it appears to me there is an entire area that we have overlooked this afternoon. We said in an urban area we control development by planning commissions either on a city planning commission or a city-county planning commission. That same authority exists in the Sandhills. I submit to you that the problem in the Sandhills is not water control but land use control. If the county boards in the Sandhills wish to operate as planning commissions, they can do that under the statutes or they can appoint a planning commission and under that planning commission they could control the use of the Sandhills. If you're concerned about what is

happening in the Sandhills, that is where the power ought to be. That is on a local basis. That authority is already there and it seems to me that this Legislature ought to ask those county boards to take that authority and use that authority but water is an entirely different issue. It seems to me that we have addressed that issue in LB 375 on this floor this year. We ought to give that legislation an opportunity to work and to monitor it and if it needs changing we can change it. For us to put onto the floor two different water issues that are actually related in this session it seems to me would be a huge mistake. So I would urge this body to turn this bill down.

PRESIDENT: The Chair recognizes Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker and members of the body, I have not spoken very often on the issues involving water or on soil and land management mostly because I do come from Omaha. I do not have an agricultural background nor am I so knowledgeable about water issues and the workings of the Natural Resource Districts and the like that I can say definitively that this is an extremely fine bill or not such a fine bill. What I do recognize this measure for what it is addressing and what it is addressing very simply are some very fragile lands in the Sandhills. This weekend my father, Wilbur Johnson, came to Omaha to visit me. He grew up in Clearwater, Nebraska, Senator DeCamp, and he owns a portion of a farm now outside of Clearwater. My father and I, when I was a young boy, spent much time in the Sandhills. We would go to Goose Lake and we would go to Swan Lake and we would fish. We would be in these very pristine, beautiful parts of our state and every time that I as a young boy with my father would go up to the Sandhills, I would really rejoice. I would really rejoice in that environment because for some reason to me that bespoke the true rural flavor of Nebraska, blue skies and the green lands and the water and the animals. It was a marvelous time. My father was with me this weekend and we got to talking for just a few minutes about what the Legislature has done in the area of water and the like and my father said that he has a hard time going home anymore. He said, "I have a hard time going back to Neligh, going back to Clearwater and going into the Sandhills because I have really seen the destruction of the land." He said the old areas that used to be the rolling grassy hills are now lined with center pivots and the corn is coming in and coming in and of course the farmers can't get even a reasonable price for the corn so we have great surpluses for which there is not adequate buyers. And he said it's a shame, an absolute shame to see an area that you knew and you loved and it is part of your heart, literally destroyed by the cupidity of people and

I agree with that. Now Senator Vickers and Senator Beutler have given us a measure which is their reasonable conception of a way of dealing with these fragile lands. Senator Peterson points out that counties have zoning authority and they have land use authority and they have planning authority and they could address it but it doesn't seem to get done because the devastation goes on. Natural Resource Districts have some authority and Senator Beutler and Senator Vickers would give it some more and I say more power to them, more power to them because you and I just can't stand here, in my opinion, as legislators and watch our beautiful environment, really our sacred soil laid low. I ask myself from time to time how must the legislators have been like in West Virginia when the coal mines first began down there when the great economic prosperity began in West Virginia but the land was torn down. What were the legislators doing at that time as the land was being torn down for economic development purposes and now it is just a wasteland? It is the heart of Appalachia with considerable poverty. It has always struck me that we have wanted to put economic interests ahead of environmental concerns and we pay the price eventually. Eventually we pay the price. So I think this is one of those occasions, we'll have many more but this is one of those occasions when we can say, if you want to do what is a reasonable measure, at least as we see it to be a reasonable measure, to try to protect lands that are very valuable to all of us in an aesthetic sense and in our own sense for well being. So I do support this measure.

PRESIDENT: The Chair recognizes Senator Cope.

SENATOR COPE: Mr. President, members, a question of Senator Vickers. Senator Vickers, would you give me your definition of subirrigation?

SENATOR VICKERS: Of subirrigation? Well I guess the definition we try to define it in the bill, Senator Cope. The definition and language concerning subirrigation is on page 5 and we use, as amended by the Haberman amendment of a little bit ago, "subirrigation shall mean the irrigation of any type of plant or vegetation used for agricultural purposes through the natural and not artificially induced currents of the groundwater table within the root zone of such plants or vegetation."

SENATOR COPE: Right. Now is there any difference between subirrigation in the Sandhills and subirrigation, say in the Platte Valley?

SENATOR VICKERS: It depends on where you are at in the Platte Valley. I assume if you are on down next to the river on perhaps the North side of the river down in the

Kearney area, I would say there is very little difference. If, on the other hand, you are in the Platte Valley under the TriCounty System some place between Maxwell and Lexington, then I would say there is quite a bit of difference because that is obviously artificially induced.

SENATOR COPE: And the same of course in the Sandhills depending on what area of the Sandhills that you have sub-irrigation.

SENATOR VICKERS: If you've got a place to put in more surface water, yes, I suppose.

SENATOR COPE: The reason I'm asking these questions, the part that bothers me most with, when we pass a law it should be for the State of Nebraska and I'm not sure. That is the reason I'm asking. This is special legislation, correct?

SENATOR VICKERS: No. You're right, it is for the State of Nebraska but...

SENATOR COPE: But is it for a special area?

SENATOR VICKERS: As an exNRD board member yourself you know that it is administered by the local people at the local level.

SENATOR COPE: I know but it is the only place then in Nebraska that it can be practiced.

SENATOR VICKERS: It is the only place in Nebraska...well for all practical purposes it is the only place that it would be practiced, yes.

SENATOR COPE: That's what I'm thinking. I guess another part that bothers is the limited area, a township. You're cutting down the NRD area considerably.

SENATOR VICKERS: No, no. If you'll read that language...

SENATOR COPE: I thought I did.

SENATOR VICKERS: Perhaps Senator Haberman was a little bit misunderstanding and I would appreciate the opportunity to explain that but what that section refers to is an area that already has a control area established and if there are a precinct or precincts within a control area already established with regulations already in place, that want more stringent regulations than what the control area regulations have been established by the NRD board, then the procedure as outlined here....

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SENATOR COPE: With one township.

SENATOR VICKERS: ...would for a township at a time, would allow for more stringent controls and the reason for that, Senator Cope, is that in the Imperial area there were some people in a township that asked for more stringent controls but because of the language in the statutes right now in the Water Management Act, that indicate the only changes, the only differences in regulations within a control area have to be based on hydrologic, geologic or climates within the area and if there is no change why then they couldn't do it.

SENATOR COPE: Yes. The reason I'm asking that too is that in area of the Sandhills one ranch, it is possible, could take a whole township. Probably not, but two or three or four but that is, it could almost guarantee three or four or five families of having permanent water longer than anyone else where other areas would not....

SENATOR VICKERS: If they want to live, if a number of people however many people it was in a township within a control area with regulations already established, if they want to live under more stringent regulations, that you're exactly right. That is what it would do. I guess you have to go back to local control. Do they want that or don't they?

SENATOR COPE: Where anywhere else, then compare that say with the Platte Valley or some other area where there has been subirrigation and we don't have it much anymore. I remember the Platte Valley of many years ago most alfalfa was all subirrigated and now there is some but not too much. It would be impossible to do that in an area (interruption.)

PRESIDENT: Half a minute, Senator Cope.

SENATOR COPE: ...because there is a lot of people in a township and I'm just trying to get, whether it is special legislation is what I have to decide in my mind.

SENATOR VICKERS: No.

SENATOR COPE: It seems like it is.

SENATOR VICKERS: No, the 75% section is certainly not special legislation. It is to allow people within a control area whether or not there is a thousand people in that precinct of whether there is fifteen. If 75% of those people want more stringent controls then those same 75% own 75% of the land. The only reason for that as I indicated earlier is because they cannot do it right now.

PRESIDENT: Time is up, gentlemen.

SENATOR COPE: ...continue it.

PRESIDENT: Senator DeCamp, I recognize you.

SENATOR DeCAMP: Mr. President and members of the Legislature, I was just going to kind of wait for the vote on this and quietly vote but some things have been said that I think need to be answered. Senator Hoagland maybe made the best argument against the bill. Senator Hoagland said it does nothing, a little local control and gives some of our constitutional responsibility away so on and so forth and he said two important things. He said this isn't designed to interfere with LB 375 and we all know 375 was the bill that developed the concept that this Legislature said okay, we're going to recognize water as a resource that we need to manage, that we need to supervise, that we need to take care of. He said it is not going to interfere with that. Why were we doing 375 so that we could avoid having to go into forced control areas? That was the purpose of 375, manage our resource now to avoid the forced control and then Senator Hoagland said, if you listened, he said it's going to take three, four, five years to get that put together so this would allow us to go to control areas immediately. In other words, a complete repudiation of the whole concept of 375 which was to manage to avoid controls, we're now going to come in the back door and slip in a system that immediately puts in controls or a control area. Methinks the bill was intended, now that I hear the arguments of Senator Hoagland, for the very purpose of eliminating or destroying 375. I do agree that we have to legislatively deal with the interrelationship of ground and surface water. I guess I think this is not the right approach. I think there are legal relationships that have to be developed but it is obvious that the intent of the proponents is not, as I had anticipated, it is completely different and it is to bypass or go around our groundwater management legislation. Now Senator Johnson in some of the most stirring words, and they were stirring, they were impressive, talked about the pristine beauty of the land, the rolling hills and then he phrased the changes that have occurred there, in my area by the way, as destruction, devastation caused by cupidity, which is greed, avarice, and so on and so forth. I watched destruction occur in Lincoln every day since I have been here. I watched them blow up and destroy the Cornhusker Hotel so they could build something new so they could make the city better so they could develop a resource they had there, their land, and yes, indeed, in just the years I have been down here the land has changed dramatically. Land that used to produce a thousand dollars on a quarter of land from hay now is producing twenty or thirty or fifty thousand dollars

in produce and productivity in some cases. We have made dramatic changes and some of those changes are destroying the last major dramatic changes we made, the trees. That's right. And the trees, Senator Vard Johnson, the trees destroyed the rolling beauty that was there fifty and sixty years ago. We put most of those shelterbelts in during the depression. We put them in when we didn't have irrigation. We put them for another purpose and there were complaints at that time that they were destroying the beauty of the rolling landscape. It is a fact of life that any time...

PRESIDENT: One minute, Senator DeCamp.

SENATOR DeCAMP: ...that any time you want to attempt something new to make progress, that it is laden with risks because the whole word "progress" implies making a change. The idea is that you do it in such a fashion that the risk is worth taking because the benefits are so great. Well I think we have seen the benefits and we've seen some errors and we're correcting them, but please, as you would on the death penalty, look at the real facts rather than an emotion on it, try to walk a mile in our shoes up there and realize that we have gone from an area that used to be poverty ridge to an area that is now prosperity ridge in most cases. I would urge you to reject advancement of the bill and try 375 on for a couple of years.

PRESIDENT: I recognize Senator Koch. All right, Senator Koch, thank you. Senator Lamb.

SENATOR LAMB: Mr. President, members of the Legislature, as you probably know I represent most of the sandhill area, a lot of subirrigated meadows and I have a deep feeling for that area of the state. It will be very easy for me to vote for this bill, why nobody in my district would complain if I voted for this bill. Over the last twenty years I have probably attended more water meetings than anyone in this body except Senator Kremer. I'm vitally interested in that great resource. I could vote for this bill and nobody in my district would complain one bit and some people would really praise me today. Today they would do that but I have to look down the road to what this bill really does. You know up there in the Sandhills area you have some of the most independent people in the world. Those are the people that do not want government regulation. Those are the people that do not want government telling them what they should do whether it's how many cattle they are putting on their land, where they are going to put their fences, how they are going to take care of their land. They feel very strongly about that and now we have a few people up in that area who are

supporting this bill and you've had letters from them and from some NRDs up there but I cannot vote for the bill because I do not believe they understand the ramifications of this bill. These subirrigated meadows are a great resource up there, admittedly and no doubt that they are threatened in some places but this bill is an oversimplification of the problem and the NRD through the mechanism set up in this bill is not going to be able to deal with it. You're going to have all kinds of ranchers who are going to turn against those NRDs as soon as the effects of this bill come into play. You are going to have the NRDs in an impossible situation and you can do that if you like but I can't do it. Twenty years from this day if I vote for this bill, those ranchers, and I may not be around then at that time. I feel confident that they are going to tell me that I was right in opposing the bill because it won't do what they want to do and it will lead to some regulation that they will not like. You know there are many kinds of subirrigated or a couple at least, of subirrigated meadows. You have subirrigated meadows where the water goes all the way down to the main aquifer, the Ogallala aquifer. It is a deep one. Then you have other subirrigated meadows which are on a perched, a so-called perched aquifer where there is a strata down there that holds the surface water up so it is really surface water. So if you have an irrigation well in that area, instead of drying up that wet meadow, you're likely to flood it because you are pumping water from way deep. You are bringing it up on the surface...

PRESIDENT: One minute, Senator.

SENATOR LAMB: ...and then it stays in that area and so you have a reversed problem and I don't think the NRDs can handle that problem. I think once they have tried to handle that problem the ranchers are going to rebel. They are not going to want to see what happens. One more item. We have what is called conjunctive use. This one rancher has a subirrigated meadow where the water is within one foot or so of the surface. He has it made. It is great. He has his neighbor over here where his land is just a little bit higher and so it is ten feet or twenty or thirty feet to water. What you are really telling that second rancher is, although you have a lot of water down under your meadow, you are not going to be able to use it because if you use it, you are going to be taking it away from the fellow that has the subirrigated meadow. Now this is a difficult problem. I recognized it, that the people with the subirrigated meadows in some cases are going to suffer loss but on the other hand doesn't the other fellow have a right to do some irrigating? Oversimplification, this bill is oversimplification. It will not do what

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it is designed to do. I cannot vote for the bill because down the road the people in that area would say I made a mistake.

PRESIDENT: The Chair recognizes Senator Haberman.

SENATOR HABERMAN: A question of Senator Lamb, please.

PRESIDENT: Senator Lamb, would you respond.

SENATOR LAMB: Yes, sir.

SENATOR HABERMAN: Senator Lamb, did you indicate to a Chris Vinton that if the surface water part of the bill was removed that you would be inclined to support the bill?

SENATOR LAMB: I'm not sure what I did and I don't know if I have to answer that question.

SENATOR HABERMAN: Well it is kind of important to me because I asked...(interruption.)

SENATOR LAMB: I've not said I'd support the bill under any circumstances.

SENATOR HABERMAN: You say you cannot?

SENATOR LAMB: I said I did not say that I would support the bill to anybody.

SENATOR HABERMAN: Well then maybe I misunderstood but I had understood that if surface water...

SENATOR LAMB: I'll say this, Senator Haberman, the part of the bill that was removed is even more dangerous than what is left in the bill if that will be of any help to you.

SENATOR HABERMAN: Alright, thank you, Senator Lamb. I can't get out of my mind the meetings that they've had up in these counties and the letters that I have received from these people that this is what they want. I understand that thirty ranchers showed up at one meeting and they voted 27 to 3 that this is what they wanted. There was a lady that talked to me in my office for over two hours last night. Her name was Chris Vinton and she told me about the people and I have letters here from my new district, Grant County, that want this bill. And she said basically the same thing that I am saying to you, let us be the judge, let us set these regulations on ourselves and then if they don't work we can change them. And coming from a control area we have just that. We elect the people to the NRD, they come up with the rules and

regulations, we have a public hearing. Some of the people in this body have been to those public hearings. The NRD adopts the rules and regulations and we live by them. If you don't like them, you go to court like it happened in my control area and you fight them. They fought putting on meters. One man said, I don't have to do it so he took it to court and they argued and they fought and the judge said, yes, you will put on meters. So I say, let's pass the bill. If it causes as many problems as people says it is causing, if those ranchers up there as Senator Lamb says are going to get up in arms and not like what is going on and if they have meetings and they take votes, if they don't want it, they can come to me and I'll help undo what we did but I think they are entitled to their day in court. They are entitled to try to do it their way so I would say, let's pass LB 726. Let's give it a chance. Let's give it a try and go on from there. Thank you, Mr. President.

PRESIDENT: The Chair recognizes Senator Cullan. We're going around the horn the second time. Senator Cullan.

SENATOR CULLAN: Mr. President, first of all, Senator Haberman, Senator Haberman.

PRESIDENT: Senator Haberman.

SENATOR CULLAN: I would just point out to Senator Haberman that I know he likes Grant County but it is still in my legislative district and he can have it next year but don't start claiming it too early. I want to represent it as long as I can. This is a serious bill, LB 726 is, I think, a very important measure and one which does have considerable support in the Sandhill community and among the farmers and ranchers that I have visited with in the past, particularly since the start of this legislative session and I hope that we will enact LB 726. You know it's been interesting to listen to those who have got up to oppose this bill. Senator Schmit said that it was not a good bill and he said primarily because we're dealing in an area where we are not knowledgeable. Senator DeCamp got up and talked about the bill and said it conflicted with LB 375 but he didn't give us a single example of how it conflicted with LB 375. It is interesting when you look at the opposition to this bill and you look at the history of Senator Kremer's Groundwater Management Act. After my first year in law school I spent the summer reading the history of the Groundwater Management Act and I put together a paper which I just dug out of my file and I turned in at that time. I read the transcripts of the hearings. I read the floor debate on LB 375 and looked at the votes and one of the interesting things I noted at that point in time is that there was only one negative vote on Senator Kremer's

Groundwater Management Act when it was enacted in 1975 and that only negative vote was Senator DeCamp's. There were 40 votes for the bill and according to the reports that I received Senator Schmit didn't vote for the bill so he has never really supported the philosophy that is contained in the Groundwater Management Act and I think if you looked at the amendments that we've tried to make to the Groundwater Management Act since it was enacted you can see all those bills being opposed at every step of the way by...their philosophy has certainly been consistent but I think Senator Kremer in the way he designed the Groundwater Management Act and the people that worked with him, and there were several, but Senator Kremer's concept of local control over groundwater was genius. It is unique in the history of the United States. We are the only state in the nation that has this complicated and this type of a local control over resources. It is a brilliant bill and it is going to work. It is going to work if we carry through and if we are consistent with the philosophy that Senator Kremer started with and that philosophy is basically this. That philosophy is that the State of Nebraska is a tremendously diverse state and I'm almost paraphrasing Senator Kremer's floor debate when he said that the state differs so much from one region to the other that it is wise to allow the Natural Resource Districts to design their controls, not to have the controls designed on the state level. That is basically what Senator Kremer told us in 1975 when his Groundwater Management Act passed and I think Senator Kremer was right then and that is why I am supporting LB 726 because that same philosophy should continue. We should give the Natural Resource Districts the tools to design control for their local areas. Now this clause which allows the existence of a control area for subirrigation will not...

PRESIDENT: One minute, Senator Cullan.

SENATOR CULLAN: ...will not work in some parts of the state. It will not work in Box Butte County. There is really no need for it in Box Butte County but just thirty miles east there is a tremendous need for it. That is the genius of the local control system which Senator Kremer forged through three or four years of torturous work, through three or four years of fighting reference fights with the Ag Committee over where these bills should go or moves at the last minute to bracket that bill. That's what Senator Kremer fought long and hard and he finally got it and now the Sandhills is asking, people in the Sandhills are asking for the same thing. They are saying, "Senator Kremer," they are saying, "Nebraska legislators, extend that philosophy. Let us share

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in that local control concept. Recognize our rights as subirrigators. Let us protect ourselves." I think, Senator Kremer, you should reflect on this and I think you should support LB 726 because it is oh, so consistent with what you did in 1975.

PRESIDENT: Time, Senator.

SENATOR CULLAN: Thank you.

PRESIDENT: Before we go to Senator Burrows, the next speaker I would like to introduce a guest of Senator Harry Chronister, Mrs. Eldred Coufal from Schuyler, Nebraska, under the South balcony. Mrs. Coufal, would you stand up and be recognized. Welcome to your Legislature. The Chair recognizes Senator Burrows.

SENATOR BURROWS: Mr. Chairman, members of the Legislature, I really think the real debate behind this and the concerns have not come out on the floor. I think it boils down to the Prudential buys as the rationale for most of those that have come in support of LB 726. I do not feel this measure is the answer. The Farmers Union currently is carrying a petition drive to stop large outside corporations, nonfamily farm corporations from buying farmland in this state. I believe that that is the answer and that that petition drive will succeed this fall. I think if LB 726 is carried that complicated rules that are unworkable are going to be worked out by local NRDs and they are going to find that outfits like Prudential will have the best attorneys to work ahead and go through with what they want to do whether this bill is passed or not. I think that ranchers that might go in support of this will find that they want to dig a single well that may be well planned on that ranch and that they will be the people that with a well planned law, find themselves caught in regulations that they never thought would happen when they proceed with the local subdivision and local township regulation. I don't think it is workable. We're going by township and I think you will find situations within a single square mile in the Sandhills that will show they justify the dropping of a water table and within a mile of that situation I think you will find situations that contradict it. I think the intents of the introducers of this legislation are most honorable but I do not believe that in a practical fashion that this piece of legislation is workable to the best interests to the farmers in the state. Thank you.

PRESIDENT: The Chair recognizes Senator Clark.

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

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

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

PRESIDENT: The motion carries. Debate ceases and now who is going to close? Senator Vickers, are you going to close or Senator Beutler? Senator Vickers.

SENATOR VICKERS: Mr. President, members, I don't remember when I've heard so many words in the English language used and so little said as I have this afternoon. I want to set one thing perfectly clear. It makes me a little bit unhappy. No, I'll take it back. It makes me damn mad when people stand up on this floor and indicate that I don't have any sympathy at all or don't understand anything about irrigation. Well I'll tell you one thing. I didn't introduce this legislation for my own personal good because it is 300 foot to water at my place. I sure as the hell don't have any sub-irrigation, I can tell you that. But I do know the purpose of irrigation and I understand the need for more development in the State of Nebraska. If it hadn't been for irrigation in my area I probably wouldn't be here. It is just that simple. Maybe that would be a good idea to a lot of people but we've got to have enough income out there to generate enough money to keep some of these young people that are here from my area in the University of Nebraska. I can assure you of that. So I don't want anybody to stand on this floor and even indicate that I'm trying to do something to shut off irrigation development because I know that everybody in this body knows that's not true and so do those people out back of the glass doors and this bill will not do that. And again I think we all know it. We've got people under the balconies that have been working this bill for several days that are ranchers that have come from 400 miles away because they believed in it. They believed in it, not so that they wouldn't be able to have a well someday, not so that it would shut off Prudential, Senator Burrows, but so that they could have development take place in an orderly fashion so they would have that resource there for, not only their children, but their children's children. That is what the issue is about. The issue is also about local control. You know several people mentioned 375 and how we shouldn't be passing this bill because of 375. Well I had this drafted. As a matter of fact almost the exact language of this bill was introduced last year as an amendment on another bill so it's been around for a couple of years too. But actually what this is, if you stop and think

about it, is an amendment to 577 of 1975 and I echo Senator Cullan's comments in regard to the genius of Senator Kremer in putting LB 577 together back there in 1975. This is not a new concept in spite of what a lot of people have said. This is nothing new. It is simply an amendment, a fine tuning of a bill that has been here in existence, the Groundwater Management Act, since 1975. Now if it hasn't worked, then tell the people out there in the Upper Republican it isn't working. Tell people in Senator Haberman's district it isn't working. That is what this bill is all about and it is also about local control and the fact that if you believe that it is possible for us to put things in the statutes to cause local people to overcontrol themselves, then vote against the bill. But if you think the local people are smart enough to not overcontrol their own self, then I suggest you vote for the bill. If you really believe in local control, then let's give the tools to those local people that they think they need to address that situation. Now it was also mentioned that this is special interest legislation and I think that is rather funny. We dealt with a bill in here yesterday and I fought it for tooth and toenail dealing for one city, originally introduced for one city. Special interest legislation? That is something new in this body? For crying out loud, we all know that is silly. Senator Beutler, would you like to have the rest of the time in closing?

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I'd just like to make a couple brief remarks.

PRESIDENT: About a minute, Senator, go ahead.

SENATOR BEUTLER: The lakes in the Sandhills, the wet meadows, they do occasionally dry up by acts of God. Unfortunately the acts of God are not all benevolent from time to time but that's also true and everybody on the Public Works Committee is very aware of the fact that they also dry up because the groundwater level drops because irrigators are using the groundwater. Common sense tells you that. You have to have two glass eyes not to see what is happening. If you don't give the sodbuster and the cattleman a tool for reconciling their differences, I suggest to you that we in the Legislature will not be doing our job. It was suggested that we shouldn't give the NRDs this power because all the NRDs don't need the power. Well I ask you to turn that around. Doesn't it make more sense to give the power because some need it than to deny it to all because all do not need it? It was also suggested that a control area is some kind of concept frozen in time, that we put it in place, there it is, for better or worse, forever. A control area is in the hands of the creator and can be molded and remolded by the creator and the creator is local control of the local

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LB 69, 359, 435, 628,
722, 726, 782, 827

people and if the instrumentalities that they use to control the water situation do not please them ten years down the line they can adjust it. Finally it was suggested that this is a tool for land use control. It is not land use control. It is water use control. Now we all recognize that it has an effect on land use just as limiting withdrawal of water has effects on land use but at the same time not to act, not to act at all, is equally land use control because you will simply dictate that the use of the land will be for the developer who is putting the land into grain crops. That is the land use control that you will dictate by not acting. If you act, then you don't dictate anything. You say to the people in the local community, decide the issues yourself, resolve the differences, determine where your benefits are and where your detriments are and make the best of it in your own local community. In conclusion, I was distressed to hear that many of us who would be voting on this issue have no interest whatsoever in the issue. Time and time again in this Legislature the agricultural interests have pointed out to us and rightfully so, that the cities of this state and the city folk of this state depend in the end on agriculture. To suggest to us today that we should take no interest in agriculture is a contradiction of the grossest type and I don't think anybody believes in that. As the old beer commercial goes, "We're all in this together."

PRESIDENT: The question before the House is the motion to advance LB 726 to E & R initial. All those in favor vote aye, opposed nay. Have you all voted? All right, record vote. Record the vote and a record vote is requested.

CLERK: (Read record vote as found on page 1262 of the Legislative Journal.) 27 ayes, 16 nays, 5 excused and not voting and 1 present and not voting, Mr. President.

PRESIDENT: The motion carries and LB 726 advances to E & R initial. Next, do you have some matters to read in? Go right ahead.

CLERK: Mr. President, a few items to read in. New resolution, LR 255 offered by Senator Schmit. It calls for a study committee of the Legislature to conduct an interim study of the problem of theft of electricity, gas and water. That will be referred to the Executive Board for reference, Mr. President. (See pages 1262-1263 of the Legislative Journal.)

Your Enrolling Clerk has presented to the Governor for his consideration the bills that were read this morning on Final Reading. (Re: LB 628, 722, 782, 827, 69, 359, 435. See page 1263 of the Legislative Journal.)

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LB 69, 359, 435, 628,
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LR 242, 245, 246, 247,
251, 252, 254
LB 127, 726, 816, 816A

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by Reverend Vernon F. Jacobs, Holy Cross Lutheran Church in Omaha.

REVEREND JACOBS: Prayer offered.

PRESIDENT: Roll call. Record the presence, Mr. Clerk.

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

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

CLERK: Mr. President, two little ones. On page 1356 on line 33, after the word "last" insert "few". On page 1362 instead of "(5)" insert "(6)".

PRESIDENT: I'm glad they are just little ones.

CLERK: They're just little ones.

PRESIDENT: The Journal stands corrected. Are there any other messages, reports or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 726 and recommend that same be placed on Select File with E & R amendments attached; 816 Select File with E & R amendments; and 816A, E & R amendments attached. Those are all signed by Senator Kilgarin. (See pages 1364 through 1367 of the Legislative Journal.)

Mr. President, LRs 254, 252, 251, 247, 246, 245 and 242 are all ready for your signature.

PRESIDENT: While the Legislature is in session and capable of transacting business, I propose to sign and I do sign LR 254, LR 252, LR 251, LR 247, LR 246, LR 245, and LR 242.

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

PRESIDENT: All right. Senator Burrows, were you starting to vote on Final Reading, or did you wish...I was just....thank you. Okay, I just had to say that. I looked over there and saw Big Red and I thought, I wonder if he is starting to vote on Final Reading, but we are going to get started on Final Reading right now. So if the Sergeant at Arms would secure the Chamber and all members

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LB 726, 568

CLERK: Right before that, if I may, Senator Chambers would like to print amendments to LB 568.

Mr. President, on LB 726, there are E & R amendments. I do have an amendment to the E & R amendments offered by Senator Kilgarin, Mr. President. That amendment to the E & R amendments is on page 1798 of the Journal.

SENATOR NICHOL: Senator Kilgarin.

SENATOR KILGARIN: Thank you. I would move adoption of my amendment to the E & R amendments. Essentially, what we had here was some new language, some of Senator Vickers' language which to make things run more smoothly we would have had to strike in E & R, and Emory didn't feel he had the authority to do that, but as the E & R Chairman I went over it and so I am just asking that we amend the E & R amendment so that technically the bill will be correct.

SENATOR NICHOL: We have an amendment to the E & R amendment and I think we will take a machine vote on this. All those in favor signify by voting aye. Opposed nay.

CLERK: Senator Nichol voting yes.

SENATOR NICHOL: Please vote. Please vote. Record.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of the amendment to the E & R amendments.

SENATOR NICHOL: Okay, the amendment to the amendment is adopted. Senator Kilgarin.

SENATOR KILGARIN: I move we adopt the E & R amendment to LB 726 as amended.

SENATOR NICHOL: All those in favor of adopting the E & R amendments please indicate by saying aye. Opposed nay. The E & R amendments are adopted.

CLERK: Mr. President, the next amendment I have to the bill is offered by Senators Beutler and Vickers.

SENATOR NICHOL: Senator Beutler, are you going to begin?

SENATOR BEUTLER: Yes, sir. Mr. Speaker and members of the Legislature, just to refresh your memory this is the bill that has to do with the wet meadows and with giving the local NRDS local authority if they so choose to deal with conflicts between the different kinds of users of water,

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groundwater, including those who use it for subirrigation. That is the basic concept of the bill. You may recall that back on page 12 of the bill we had another provision that caused some controversy. It was a provision that said that the district may adopt more restrictive controls in one township or another if the people in that township, a certain number of them owning a certain amount of property petitioned that they could have stricter controls within the township area. My amendment would delete that entire provision. It would delete the entire provision so that if you establish a control area, it is the same kind of control area for everybody. We want to get that out of the bill if it is going to cause controversy. It is not that important to us. What is important is the one basic concept of the bill. So, again, the amendment deletes a portion of the bill having to do with adopting more restrictive controls in particular townships. Thank you.

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Any further discussion on the Beutler-Vickers amendment to LB 726? Senator Beutler, I guess that is your opening and your closing. The question then is the adoption of the Beutler-Vickers amendment. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of the Beutler-Vickers amendment.

PRESIDENT: The motion carries, the amendment is adopted. The next motion on the desk, Mr. Clerk.

CLERK: Mr. President, Senator Howard Peterson will move to indefinitely postpone the bill. That would lay it over unless the introducer agrees to take it up at this time.

PRESIDENT: Okay, what about Senator Vickers and Beutler, what....do you wish to take it up at this time? All right, they will take it up at this time so the Chair recognizes Senator Howard Peterson.

SENATOR H. PETERSON: Mr. Chairman and members of the Legislature, I have looked rather carefully at this legislation, visited with a number of people, and the more people I visit with the more concerned I am that we are doing something here that could very well damage a good share of the State of Nebraska. Had we had this legislation in place the State of Nebraska would not have at least 2 million acres under irrigation today that we have under irrigation in the Platte Valley. We start talking about wet meadows,

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we are not just talking about the Nebraska Sandhills. Wet meadows exist all the way up and down the Platte River, and I just feel that it is a sad mistake for us to pass legislation that will affect areas of the state where we really need to develop irrigation, and who are we to say whether or not there is need for development of irrigation even in the Sandhills in some locations. So, Mr. Chairman, it just seems to me that from the evidence that I have seen from visiting with a number of people that this kind of legislation is just as bad...just as bad as some of the legislation that is taking place in Washington D.C. in regard to dams and the kind of control that that legislation would have over the building of dams in this state. For that reason, Mr. Chairman, I would move that we indefinitely postpone LB 726.

PRESIDENT: The Chair recognizes Senator Kahle.

SENATOR KAHLE: Mr. President and members, I didn't know what turn this LB 726 would take, and it has been a difficult one to work with. We have had a lot of people writing and calling us from the Sandhill areas and I guess I thought at first it only affected the Sandhill areas and their wetlands, but after reading the bill and getting some other information I find out that probably the area that I live in will be the most affected of any part of the State of Nebraska because we certainly have subirrigation and we also have a series of drainage canals which any one farmer in that area that doesn't particularly like the water level that we happen to leave after we have those drainage canals in, could cause us problems. So I think we are in way deeper with LB 726 than any of us ever thought we were when we first heard about it, and we thought it was just a bill that affected the wetlands and the Sandhills. This is not true. This affects all subirrigated land in one way or another. And I am not even sure it doesn't affect some of it that isn't subirrigated. I don't know what else to say about it, but all up and down the Platte Valley we have subirrigated land. Senator Bill Barrett's District has some of the best alfalfa land in the world and the most dehydrating plants you will find anywhere. They wouldn't be there is it wasn't for the subirrigation of that part of the State of Nebraska. Now I am sure that this bill is not going to affect that and it is not going to put those plants out of business or change that...anything. But I guess I hadn't thought of it in that respect. The Platte River does vary up and down in the amount of subirrigation or it affects the subirrigation in my part of the State of Nebraska. When the river is high, the water table is up. When the river is low, the water table goes down, and we have had problems with, for instance, our

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alfalfa when the water table comes up it kills the roots of the alfalfa and ruins it. Senator Howard Peterson is familiar with that area and used to sell us fertilizer to make the stuff grow. But with that kind of a bill, I just don't believe we know what we are doing. So for the present time I would certainly urge you to put this issue off till next year and we would have a lot better chance to see what it would really do, and I also think that LB 375 should have a chance to operate a year to see how that is going to affect the area. I still do not believe that the people in the Sandhills really know what is in this bill either and how it would affect them. Thank you.

PRESIDENT: The Chair recognizes Senator Hoagland. Senator Hoagland. Okay, the Chair recognizes Senator Cullan.

SENATOR CULLAN: Mr. President and members of the Legislature, I rise to oppose the motion to indefinitely postpone LB 726. Senator Peterson and Senator Kahle, I think it is important to remember what the Groundwater Management Act is and what it does. I can't remember which one of the gentlemen, I think it was Senator Peterson said, one...maybe it was Senator Kahle, one of the gentlemen said that one of your neighbors could start causing you problems with LB 726 if they didn't like what was going on. I don't believe that is true. I don't think that is the way the Groundwater Management Act works and that certainly is not the way that LB 726 works. What the bill does is provides additional criteria for the establishment of a control area. Control areas don't just occur or fall out of the sky like manna from Heaven. Control areas are created and they are created through a complicated...not a complicated but a long procedure, a carefully drawn procedure. The Natural Resource Districts initially decide whether a control area is necessary and then that decision is presented to the state and the controls that are drawn are drawn by the local natural resource board, and so there are protections built into the system to ensure that the water rights of all individuals are protected. So I see absolutely no fear and I have no fear that one individual landowner is going to create problems under this bill. It just isn't in the bill. It is just not possible. That statement ignores the reality of the Groundwater Management Act which was so carefully put together many years ago. So I think that is a very unfounded statement to present to the Legislature and not a solid argument against LB 726. Quite simply what the bill does is allow for a class of water users and an important use of water to be recognized in state law and to have a legitimate water right under the Groundwater Management Act. And I think that is important. I think

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LB 726 is a very important piece of water legislation. There is no reason to oppose it. It gives local control, local decision making in this area. And I think it is hard for me to believe that the Natural Resource Districts in Senator Kahle's area or the Natural Resource Districts in Senator Peterson's area would institute controls based on LB 726 which would stifle existing or potential groundwater development unless that groundwater development had very serious adverse economic and hydrological consequences. So I really believe there is no fear to be associated with this bill particularly in the areas that Senator Peterson and Kahle represent. There are a great number of misconceptions about LB 726. I am not sure why those misconceptions exist. I think the concepts are not that complicated. I think there are some who like to paint LB 726 as a complicated issue because they really do not want to see individuals who rely on subirrigation to have water rights. They want those...some people I think would like to see those meadows dry up and would like to see irrigation development forced into certain regions of the Sandhills. Well, I am not a member of that group of people and I think LB 726 is important, and I think it would be very unwise of us....

PRESIDENT: One minute, Senator Cullan.

SENATOR CULLAN:to delay the implementation of this bill. The final point I would make is I would like to refer you to the memorandum which I distributed to you this morning when we were discussing Final Reading. I gave it to you this morning so you would have time to read it. It is a memorandum from the legal counsel of the Public Works Committee, and I would just quote this brief quotation: "It appears to me that being the legal counsel for the Public Works Committee that the adoption of these amendments, the two bills are not in conflict and can coexist as alternative means of dealing with various water problems." And so the argument that we should let LB 375 work I see as having no validity because the two issues are not necessarily tied together. LB 375 and LB 726 coexist. They complement one another. They certainly do not conflict. There is absolutely no reason that I can see to delay this bill. It certainly has no connection to LB 375 other than perhaps a pride of authorship issue which is not a valid one.

PRESIDENT: Time, Senator.

SENATOR CULLAN: I think it is time to enact LB 726, delay is unwarranted.

PRESIDENT: The Chair recognizes Senator Landis.

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SENATOR LANDIS: I call the question, Mr. Speaker.

PRESIDENT: Do I see five hands? Yes, I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. Motion is, shall debate cease? I will wait for some of you to get down here but we....okay, let it go. Record the vote.

CLERK: 12 ayes, 14 nays, Mr. President, to cease debate.

PRESIDENT: We will continue....motion fails, we will continue. Senator Kremer. The Chair recognizes Senator Kremer.

SENATOR KREMER: Thank you, Mr. Chairman and members, of course, I have spoken to this before and I have set forth the reasons why I was opposing LB 726. At this time I would like to reiterate what I said before plus adding a few other things that I think are important that we ought to recognize as we vote either against or for this bill later on. I again repeat, it is always dangerous to move too fast and I think we are doing that here. I am well aware of the fact there is a great deal of concern in some of the areas of our state. We have a split community, therefore, again it becomes improper at this time unless everyone understands what is going on. One of the best authorities in the State of Nebraska, one that has the facts, that has the data and the background is quite concerned about this bill. I will not identify him at this point. If you want to come to me, I will. But I respect him greatly and he is feeling strongly that if this bill passes, it could generate a rash of lawsuits, rancher against rancher, farmer against farmer, or either one of these against the NRD should they refuse to impose certain rules and regulations that would save his wet meadow, for example. Now let's be aware of that. A number of ranchers have called me and said, we want you to support this bill. When I point out to them what could happen, they begin to back off and say, hey, wait a minute, maybe we better have a second look at this. And that we should do, that I am willing to do in the few months I have got left in this Legislature. I think we need to address the problems in some of these areas, but I think we are moving too fast. I said that the other day and I feel strongly about this. Therefore, I am going to vote to support Senator Peterson's motion to indefinitely postpone. Should it fail, I will vote against the bill at this time. Thank you.

PRESIDENT: The Chair recognizes Senator Vickers.

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SENATOR VICKERS: Mr. President and members, obviously I arise to oppose the Peterson amendment or the Peterson motion. Senator Kahle and Senator Peterson both indicated that this would probably close down a lot of irrigation or preclude a lot of irrigation development in the Platte Valley. You know, it might come as a surprise to both of those gentlemen to know that I grew up in the Platte Valley. It might come as a surprise to them to know that I carried irrigation tubes over my back. I carried a canvas dam over my back and tromped out there over the middle of a cornfield in the middle of the night. I know a little bit about irrigation. I know a little bit about farming in the Platte Valley. And I can tell you that I also know the people in the Platte Valley. I have got a lot of relation that live down there yet. And I trust local control, and it is pretty obvious where some of these hand-outs that came out with various people's initials on them... it is pretty obvious to me where they came from, and they certainly didn't come from perhaps just their offices. There was also a couple of letters sent out from a couple of NRDS that indicated to Senator Lamb that they were opposed to the bill. I think that is rather strange since I have letters from the same NRDS telling me that they were in favor of it. So, obviously, there must be some people out there that perhaps talk out of different sides of the mouth depending on who they are talking to perhaps, or something, I don't know, I don't quite understand that. The bottom line is if you will care to look at the memo that I sent around, the bottom line is local control. If you want to look at item 2...any impact on subirrigation will not trigger a control area. There must be first of all local support for a control area. Now, obviously, in the Platte Valley the local support wouldn't be there. Secondly, there has to be hydrological evidence that subirrigation is being destroyed by the groundwater users, and Senator Kahle, the Platte River going up or down wouldn't be other groundwater users. That wouldn't have a thing to do and certainly wouldn't allow a control area to be established even if they wanted one. And, thirdly, local consensus has to be there that there will be a greater economic hardship to the area as a whole if development is not regulated than if it is. I believe that is important. You know, the fact of the matter is....the fact of the matter is this Legislature likes to espouse local control, but we are scared to death of it. We like to say that we want the local people to control their destinies, but then we in turn are afraid that they might. Sometimes I think we are afraid that they might, not because we individually are afraid that they might, but because we collectively are lobbied by certain interests to protect their interest and we wind up protecting perhaps interest other than the local peoples.

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There has been the accusation made that this will cause the majority to be at an economic hardship because of the wishes of the minority. You know, this is a democratic system and if we allow local control to work, the majority wins. And, again, I submit to you that that is probably what some people are afraid of is that maybe the majority might win. Actually all LB 726 does is complement the bill that we passed earlier this session. LB 375 indicated that no landowner could be deprived of the right to the beneficial use of groundwater under his or her property.

PRESIDENT: One minute, Senator Vickers.

SENATOR VICKERS: All we are doing is adding that also to the control area section of the statute, that criteria that recognizes that subirrigation is, in fact, a use of groundwater, not a preference. It is not a preference over any other use of groundwater but it just recognizes that it is a use. The bottom line and I think we all know it is that it gives the local people the ability to control their resources before there is a tremendous loss of the resource. That is the issue, and that is the only issue, and I think we should keep that in mind. Thank you, Mr. President.

PRESIDENT: The Chair recognizes Senator Lamb.

SENATOR LAMB: Mr. President and members of the Legislature, I rise to support the kill motion, and as I mentioned the other day, it would be very easy for me to vote for this bill because it has a lot of people excited up in the Sandhills and I would not be criticized for voting for the bill. However, the reason I don't vote for it is because I don't believe it is in the long term interest of the area, and I would just call to your attention the letters which I had placed on your desk a few minutes ago, one of them from Vince Dreeszen of the Conservation and Survey Division of the University who I consider a very knowledgeable person in regard to irrigation and water supplies in this state. He...I would direct your attention down toward near the bottom of the first page where he says, "In effect a literal interpretation would mean that water levels cannot be lowered by man's activity around any existing subirrigated lands". This, I think, means there would be no irrigation at all. Senator Vickers mentioned that there are letters here from a couple of NRDs which I circulated opposing the bill, a couple of managers of NRDs, I should say, one from Valentine and one from Thedford. And I would only....and he has some letters here which indicate they have some support up there. However, you will notice that the date on the

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letters I have is a later date. They have had more time to have more consideration of actually how the bill would affect the area and I believe that the fact that the later letter is more in opposition to the bill is indicative of the fact that as more and more is learned about how the bill would operate in the area, would lead to less and less support.

PRESIDENT: The Chair recognizes Senator Hefner.

SENATOR HEFNER: Mr. President and members of the Unicameral, we are debating a very complex issue. It just isn't a yes or no, or a true or false problem. I don't know as much about groundwater or surfacewater as I should know, and so the last time we voted I followed Senator Kremer's advice and vote. But I would like to ask several questions here this afternoon before I make my decision on whether we should kill this bill. I would like to ask Senator Vickers a question if I may. Senator Vickers, what would happen under this bill if I had both groundwater irrigation and subirrigated land, and if a control area was established under the provisions of LB 726 as it now stands? Wouldn't my groundwater irrigation be the first to be controlled or shut off?

SENATOR VICKERS: Under a control area, Senator Hefner, if a control area was established, then obviously the irrigation that was groundwater derived would be the irrigation that would be controlled, yes. As to whether or not your well actually would be controlled as to the amount of water you would pump, I don't know. I don't know what kind of regulations the local people would want to put in. Chances are real good, I would suggest, that probably what they would instigate are some method of perhaps well spacing, something of that nature so that your well could continue to pump, you could continue to irrigate right along side of your wet hay meadow. I would remind you that in the control area that we have had established right now there has been no irrigation wells shut off or shut down. They might have been shut down somewhat but 22 inches per year is not really down very much.

SENATOR HEFNER: Okay. One more question, Senator Vickers. Under 726 who would establish the control area? Would that be the local NRD?

SENATOR VICKERS: The local NRD would apply for the hearing as in any other control area. The Director of the Department of Water Resources would examine the data. The data would

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have to prove that the use of underground water had, in fact, caused an impact or would cause an impact on the subirrigation if that is what they were applying it for or on. In other words, if it had been because of dry weather or because of surfacewater being down or anything of that nature, a control area would be established, or if it was a perched aquifer, then the Director of the Department of Water Resources through the hydrological data that he has been presented draws the boundaries of the control area.

SENATOR HEFNER: Okay, one more question, Senator Vickers. Don't you feel that when we passed 375 and gave the local NRDs an opportunity to have a management control area, don't you think that we would take care of a lot of these problems this way?

SENATOR VICKERS: The passage of LB 375 gave the option to the Natural Resources Districts any place in the state to have a management area, you are correct. In a management area LB 375 also told them exactly how they allocated the water. They do not have the broad abilities that they do in a control area to allocate it on different methods if they would care to, or different regulations if they would care to, as I was indicating to you earlier. So in response to your first question....

PRESIDENT: Senator Hefner, one minute.

SENATOR VICKERS:so the main difference then would be that if they would choose to allocate it on a different formula or a different method than what LB 375 allows in a management area, then they would have to go to the control area route and try to allocate it in that fashion.

SENATOR HEFNER: Okay, thank you, Senator Vickers. I feel that we passed LB 375 a month ago. We debated it many hours and I think we certainly perhaps should give that a chance to work before we pass too many other water bills.

PRESIDENT: The Chair recognizes Senator Beutler. 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. Have you all voted? Record the vote. Senator Beutler.

SENATOR BEUTLER: Can we have a Call of the House and a roll call vote?

PRESIDENT: Oh, I suppose we can if you want it. All right.

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The motion is, shall the House go under Call? All those in favor vote aye, opposed nay. Record the vote.

CLERK: 16 ayes, 8 nays to go under Call, Mr. President.

PRESIDENT: All right, we are under Call. Would the Sergeant at Arms see that all members return to their desks, all other persons leave the floor. All members register your presence, the House is under Call. And...well, we will wait until they get here, Senator Beutler, and then we will explain what the motion is. Senator Beutler. Senator Beutler, do you want to take in call ins on the...let them know that this is for ceasing debate, and you will take in call ins. All right, the Clerk is entitled to take...all right.

CLERK: Senator Nichol voting yes. Senator Haberman continues to vote no. Senator Pirsch voting yes. Senator Wagner voting no. Senator Chronister voting no. Senator Kahle voting no. Senator Wiitala voting yes. Senator Koch voting yes. Senator Burrows voting no. Senator Fowler voting yes. Senator Kilgarin voting yes. Senator Duda voting no. Senator Vard Johnson voting yes. Senator Nichol changing from yes to no. Senator Burrows changing from no to yes. Senator Rumery changing from yes to no. Senator Higgins changing from yes to no. Senator Goodrich changing from yes to no. Senator VonMinden voting no. Senator Goodrich changing from no to yes.

PRESIDENT: Okay. Who isn't here, Mr. Clerk? We have got Senator Chambers, Senator....Senators Chambers and Barrett are the....Senator Barrett is excused, all right. Labedz is here. Senator Labedz, will you...yes, thank you. Okay, now Senator Chambers, right? And that is it. There are three excused, right?

CLERK: Yes.

PRESIDENT: What do you want to do, Senator....Senator Beutler, what do you want to do? We have got everyone here except Senator Chambers. Do you want to wait for him to get here?

CLERK: Senator Rumery changing from no to yes.

PRESIDENT: Okay. Record the vote.

CLERK: 25 ayes, 18 nays, Mr. President.

PRESIDENT: Wait until I announce the vote. The motion carries. Debate ceases and I guess, Senator Peterson, you

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are ready to close on your motion to indefinitely postpone 726. And wouldn't it be a good idea for everybody to just stay in place until we have a vote on this, I think, for once let's just all sit down and be comfortable for a few minutes, for five minutes or whatever it takes Senator Peterson to close so we don't have to have another Call of the House.

SENATOR H. PETERSON: Mr. Chairman, in fairness to those who did not get to speak, I would like to give three minutes of my time to John DeCamp, three minutes to Senator Schmit, two minutes to my friend from Kearney, Martin Kahle, and then I will take whatever time is left to close.

PRESIDENT: Are you all through? That's it? All right, okay, who is talking? Schmit gets three. It has to add up to five. Who gets what? Two apiece you have to have... minutes have already gone by, just thought I would tell you that.

SENATOR DeCAMP: Mr. President and members of the Legislature, I will try to get done here in three minutes. It wasn't but a few years ago in this Legislature that Senator Bereuter very sincerely offered us a package of land use laws and he said the intent was to do certain things just as we are hearing the intent is to do certain things today. And we....a number of us issued warnings and caution flags. We said, wait, it says this, this could happen, and he said, but that's not what I intend. Well, Doug left and we had the land use laws and we spent about two years undoing them, repealing them, correcting them. Now the intent of this legislation is noble, good, wonderful and I have got a number of people in my district and I think my district is probably the most affected in the state. The intent is wonderful but I think the potential that will occur is considerably different than maybe what you think. Now let me just try to pick off one of the points because that is all I have time for. Thirty-five million acres of land about we have, about seven million irrigated and about 1.2 million subirrigated. That is according to the best statistics I can get. We are creating a whole new right. We are creating a whole new right on a limited 1.2 million acres and I think we are giving it a specific preference over the 7 million and the 35 million that are already there.

PRESIDENT: Half a minute, Senator DeCamp.

SENATOR DeCAMP: As I say, this is just one of the points. I think we are disturbing the whole correlative rights theory and I don't think that is their intention, but I believe that

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is what they are doing, and you are going to generate an incredible quantity of litigation. Now, no matter what happens on this bill, I hope sometime I can discuss how it does conflict with LB 375 despite statements to the contrary.

PRESIDENT: Time. Senator Schmit, do you want to finish?

SENATOR SCHMIT: Mr. President and members of the Legislature, I would just like to say very briefly that whether you like it or not subirrigation is a form of irrigation. Surface irrigation is another form. Under 375 we said that all irrigators were to be treated equally. Under 726 those with subirrigation would be given a preferential treatment. Subirrigation, whether you like it or not, is the least efficient of any kind of irrigation. Under 726 a rancher is prevented from draining his land with a ditch, yet one of the ranchers who is a foremost proponent of this legislation has ditched thousands of acres of his land and he would be prevented from doing it under this bill. Let me say to Senator Cullan and to Senator Vickers that the wet lands are not confined to the Sandhills. There are thousands and hundreds of thousands of acres of wet land in eastern and central Nebraska. I do not have the expertise that Senator Cullan has nor the experience that Senator Vickers has but I have done a few of the things that they described, and I can tell you very frankly...you have heard from Senator Kremer, you have heard from Senator Kahle, you have heard from Senator Lamb, Senator Hefner, they say the law conflicts with 375. Now if you want to listen to the people who present a very narrow point of view and say, we want the bill because it will do these things and so forth, then you listen to them. You don't need to listen to me. You haven't done that on a number of occasions and you probably were wise to do so, but you ought to listen to those who have had a lot of experience in this type of an area and this type of a subject. I support the kill motion on LB 726 and Senator DeCamp gave you the best reason in the world because you will all be charging back here in a dead run when those ranchers come after you and explain, we didn't want that to happen, we wanted to be able to utilize our land and our water the way we thought we should, and now you say we can't do it. I suggest to you that the bill will do those things which you least want it to do if it is enforceable....

PRESIDENT: Time. Time is up.

SENATOR SCHMIT:which I doubt very much that it is.

PRESIDENT: Okay. Do you want to say the last word, Senator?

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SENATOR H. PETERSON: By calling your attention to the letter from Vince Dreeszen and ask you to read the last paragraph, he says, "I may be overstepping my expertise as a technician, but it is possible that existing statutes including language in LB 375 may already provide the foundation for addressing problems of water use and local best management of groundwater management." That is the reason, my friends, I think it is time for us to kill the bill.

PRESIDENT: All right, the question before the House then is the motion to indefinitely postpone LB 726. All those in favor vote aye, opposed nay. The House is under Call so there will be no....everybody should be at your desks and voting and so there will be no need to have a Call of the House at least. Have you all voted? Senator Peterson, I don't know what you want to do.

SENATOR H. PETERSON: How many are excused?

PRESIDENT: Three excused, three.

SENATOR H. PETERSON: Well, Mr. Chairman, I would suggest that we all check and see if everyone is here and then I will ask for a roll call vote.

PRESIDENT: Well, why don't you just go to....because I don't think anybody is....Sergeant at Arms, has anybody left the room that you see? I don't see anybody up here. All right, to save time let's....Senator Chambers is here. I think he was the only one that wasn't here. Do you want to check in? Do you want to take time to check in? Do you want to do that? You have a right to do it if you want to. All right, take it off the board and let's all show that you are here real quickly. Let's see if we can break all records showing that you are here. That is pretty good, we are getting down to eleven. Senator Labeledz. Senator DeCamp, you could help break the record. There we go.

SENATOR H. PETERSON: Mr. Chairman, as far as I am concerned I would be satisfied with a board vote providing everybody votes. If they don't, then I would ask for a roll call.

PRESIDENT: All right, you can have a roll call vote. We will proceed with a roll call vote. The question is, shall... for those of you who have all been here, the same question is the indefinite postponement of LB 726. Roll call vote, Mr. Clerk, proceed.

CLERK: (Read the roll call vote as found on pages 1838 and 1839 of the Legislative Journal.) 20 ayes, 25 nays, Mr. President.

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PRESIDENT: Motion fails. Anything further on the bill?

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

PRESIDENT: Senator Vickers, or who wants to move the bill on? Senator Vickers.

SENATOR VICKERS: I move the bill be advanced to....

PRESIDENT: No, he is just making the motion to advance.

SENATOR VICKERS:E & R for Engrossing.

PRESIDENT: Senator Vickers is now moving that LB 726 be advanced to E & R for Engrossment. Now, Senator Cullan is next. Senator Cullan.

SENATOR CULLAN: Mr. President and members of the Legislature, I rise to support the advancement of LB 726. I would like those of you who listened particularly to the closing to think a little bit about what was said. Senator DeCamp said that we are creating a new system of water rights and so on and so forth, and he spent most of his two minutes in his closing talking about land use control and Senator Bereuter, our Congressman Bereuter at this time. I guess I am not sure what that has to do with LB 726, but I don't see that he gave us a concrete reason why 726 should not be part of the statutes....

PRESIDENT: The Call is raised for your information.

SENATOR CULLAN:of the State of Nebraska and why it shouldn't be a tool in groundwater management and groundwater control in this state. Senator Schmit said something I don't quite understand in his concluding remarks that I would like to ask him about. Senator Schmit, would you yield to a question? Senator Schmit, you said something to the effect that there was a large rancher that used a lot of ditches and now wouldn't be allowed to use a ditch under LB 726. Could you please explain to us what you were talking about?

SENATOR SCHMIT: I will be glad to, Senator Cullan. I hope you will listen carefully. Under the bill as proposed it is possible to deny any kind of activity that would impact upon so-called subirrigation. Now there are two separate issues here, one is surface water, that is the water, Senator Cullan, that splashes in your boots as you walk across the field. The other is subirrigation, that is the water that is

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below the surface of the soil. Now many ranchers have chosen for reasons of their own, most of them because they want to improve the drainage of their so-called wetland and increase their accessibility to haylands, have dug ditches and drained some of their ranchland, some of their wet meadows. Under LB 726 if you do those things which impact upon the surfacewater that drains the subirrigated wetlands you are going to drain those lands and under 726 you can be denied that opportunity. Now you can stand here today, Senator Cullan, and say it won't work that way, but that is what the law says, the way you drafted the bill.

SENATOR CULLAN: Where does it say that, Senator Schmit?

SENATOR SCHMIT: Senator Cullan, you read the bill. I read it and it says it very plainly and if you pass it into the statute, you will find attorney after attorney, and that is what you want to become, explaining that to rancher after rancher as he proposes to drain his wetlands.

SENATOR CULLAN: Mr. President and members of the Legislature, I guess I can't find what Senator Schmit is talking about. There has never been a statement by anyone on the floor of the Legislature, I have never seen anything in the bill that would indicate that wetlands could not be drained, that surfacewater couldn't be drained off to improve irrigation. In fact, it is a very necessary thing at certain times of the year, and I don't know what Senator Schmit is reading and I don't know where his information comes from, but I don't see it in the bill. I don't think Senator Beutler sees it in the bill. I don't think Senator Vickers sees it in the bill, and I don't know who sees it in the bill, but I don't believe it, and I don't think that that is part of LB 726. The issue is the issue of local control, and if Senator Schmit or anyone else in this room believes that a board of directors of a Natural Resource District in the Sandhills is going to prevent people from draining subirrigation on their land when that is necessary, well I think they don't know too many of the people in the Sandhills. I don't believe that local control is going to be exercised in that fashion. I don't even believe that...

PRESIDENT: One minute, Senator Cullan.

SENATOR CULLAN:has anything to do with LB 726. The other thing I would say is that, Senator, I have not yet heard a reason to vote against LB 726 from someone who can point to the language of the bill and indicate a problem. I heard Senator Kremer say it is not the right time and people don't all agree. I don't think the people are ever going to all

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agree on bills like 726. So I think that the bill ought to be advanced and we ought to get about other business today.

PRESIDENT: The Chair recognizes Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, we have spent a lot of time in this Legislature in the last year, the last two years, the last four years, last ten years, talking about efficient use of water, efficient use of groundwater, what we should do with surface water, how best to utilize the stream flows, who is entitled to use the water, what should be the highest and best use. We talked a lot about the first in time first in right theory that pertains to the use of surface water. Senator Cullan may be an expert in the Sandhills. He proposes to be so. I would disagree with him. In my office in the last ten days for another purpose there have been dozens of ranchers, not a one of them have asked me to vote for 726. Quite the contrary, they have asked me to vote against it. I'll tell you very frankly why. Under LB 726 if I as an individual in the Sandhills decide to install an irrigation well and it should under this proposal if my neighbors thinks...if my neighbor thinks that the installation of that well could cause his wetlands, so to speak, or his subirrigation to be depleted, he can stop the installation of that well. It is as simple as that. Number two, if you are providing for efficient use, if you are providing for the rights of correlative use, and we have talked a lot about that on this floor...we have said that if there is not enough water to go around then we are going to share and share alike. Well, I would like to know, Senator Cullan and Senator Vickers, how when one man is talking about a subirrigated meadow extending over a section of land, for example, how you are going to share and share alike that kind of a system with another man who has got four irrigation wells on an adjoining section. You gentlemen were the ones who were the foremost advocates of meters. You tell me how in the name of good common sense you are going to put a meter on a subirrigated meadow. How do I know, Senator Cullan, that you are not extracting many, many times the amount of water that I am? We have talked about the losses of water from evaporation, and I hope that some of you who come from the eastern part of the state, who live in water short areas, and recognize the necessity for water conservation ask yourself, by what right, by what token of reasonableness do we allow millions of gallons of water to escape through evaporation that does no one any good just so that perhaps maybe somewhere, somehow, someone might have a subirrigated meadow? If you are going to define irrigation

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in separate categories, and that is what you are doing under this bill, you are saying that subirrigation has a preferential use over irrigation, and I guess I am a little bit amazed at my urban friends who have pleaded with me and begged and argued for us to understand the problems of the urban areas, are as indifferent as they are in this area. I know that Senator Goodrich is an expert on the Omaha problems, sewage and other such things. I can't understand him being such an expert in the area of sub-irrigated wetlands in the Sandhills. I know that there are those of us who are working on the problem. Senator Cullan says that Senator Kremer is wrong when he says it is too fast or too early. Well, I would suggest that if you check the statutes of Nebraska that Nebraska has more good water law on the books than most states, and Senator Cullan has written some comments rather derisive about some of the... some of my efforts in those areas, but I could go back and refresh his memory a bit about some of the statements that he has made and some of the....

PRESIDENT: One minute, Senator Schmit.

SENATOR SCHMIT:accusations that have been made in this body that would be a little bit embarrassing at this time. I could go back to Lake Oliver and I don't want to bring that up. But I just suggest to you that if we are going to adopt 726, ladies and gentlemen, you are opting for the least efficient, most wasteful, less effective, least productive method of irrigation that exists in industry today. And for those of you that are connected to labor, it requires no pivot systems, it requires no engines, it requires no pipes, it requires none of the mechanical means which many of your constituents produce and upon which they rely for their income. And I would suggest that it produces the least amount of return to the state, to the individual, to the nation and the rest of the world. I suggest that you listen to Senator Kremer....

PRESIDENT: Time is up, Senator Schmit.

SENATOR SCHMIT:and that you do not vote to advance LB 726.

PRESIDENT: The Chair recognizes Senator Kahle.

SENATOR KAHLE: Mr. President and members, I think it is rather unusual that no one is listening to the so-called experts in this field. I shouldn't say so-called, I think they are the experts. These are the people that have the

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greatest share of the Sandhill territory, Senator Lamb, Senator DeCamp, Senator Wagner. Senator Cullan, I think has advocated his residence from western Nebraska to Omaha and has never witnessed a real water dispute such as we have and have had in the area that I represent and where I live. We have...you talk about, oh, there is not going to be any trouble, the district is going to vote on it and you are going to settle everything and it will just be fine. You betcha. We have a drainage district in my area and I served on that district for some 25 years or so, and the only thing that ever split that neighborhood up was over water and drainage, and according to the way the bill reads and the way it is interpreted, anything you do to interfere with subirrigation is under suspect of being controlled. That is what it says. But why don't you listen to Senator Kremer, Senator Schmit, who has worked hard on this, Senator Lamb, Senator Peterson, who represents the north side of the Platte Valley in Hall County and all through that area and is very familiar with it, myself who have been at it for nearly 50 years now, and try out 375 and forget trying to push something that the Sandhill people that you have been talking to, many do not have any idea what they are getting into and I am sure that those people who represent those areas aren't about to take a chance of offending all those people that are their constituents. Why don't you look at the experts instead of those who do a lot of talking and don't know much about it?

PRESIDENT: The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, every session Omaha has some problems, Lincoln has some problems, and usually the rurals listen pretty careful to you and do just about what you want. We will listen to both sides if you have a dispute and we usually try to work it out. Now most of the legislation that has been...I am going to use the word "imposed" upon the rural areas, has been by a group of Omaha and Lincoln Senators. And that is good in one sense because it shows you are concerned about us out there and concerned about some of the issues, particularly the water and the land. At the same time, I am not sure you always do it with all the information or all the understanding. It is awful easy to read a book, but it is something else to live out there. Now let me tell you one of the first things that occurs in the development of the Sandhills region. It is the least likely thing you are going to think of. The first thing is there is too much water and you drain the land in almost every case because there are all kinds of ponds, sloughs, whatever, and the first act is to drain land which already starts affecting the area

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in some way or other. I am not sure but how this would affect that fundamental process. Now we are developing a new system of drainage up there and it is being used pretty extensively. We are doing the same thing that they do in Iowa. We are tiling. We are putting underground tile in to drain the water off the land before you ever talk about putting water on the land. So your very act of even preparing the land before you put that well down is a form of changing "the wet meadow" or "some of the underground subirrigation", etcetera. Now I do believe you are giving a specific higher preference, much higher preference through this legislation to the 1.2 million of wet meadows, if you would, over all the other land, and I do believe you will find out it screws up royally the correlative rights theory that we have had. Now Chris, and Peter, I am sure they are convinced this needs to be done, that this is the proper way. Now, I voted to advance this bill to the floor, and let me tell you why, because there was something awfully important in this bill originally. In fact, I think it is the most important water issue in the state right now and it is the one we all decided, or I should say you decided to strip out of the bill, and that is establishing legally the interrelationship between surfacewater and groundwater. If you would deal with that, this will be handled automatically, your subirrigation, your wet meadows, you will get all that taken care of. But in order to get the bill moved apparently you took out, as I say, what I consider the real fundamental decision that has to be reached which is the interrelationship between surface and groundwater, developing your rights, your damages if necessary that apply, your legal liability when you cause somebody damage, you took that all out, and what you have left, I think, is a disturbance of our existing law that we are just getting into place and just getting into function. I urge you not to advance the bill. I commend Senator Vickers.

PRESIDENT: One minute, Senator DeCamp.

SENATOR DeCAMP: I commend Senator Vickers for coming in with the essence of the bill originally which was dealing with interrelationship between surface and groundwater and I am most disappointed that that purpose which was the essence of this bill is gone now and you have got a completely different animal.

PRESIDENT: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, it is sad that we have allowed ourselves to stray so often so far from the truth. Let me clear up several

misconceptions. This bill doesn't prevent drainage in any way, period. Secondly, this bill does not allow a neighbor to stop the installation of an irrigation well in his nextdoor neighbor's yard, period. Thirdly, it does not set up subirrigation as a preferential use, period. Now let's talk a little bit about how the process works. First of all it is the NRD who acts, no individual, no group of individuals except the elected NRD officials, and the first thing they have to do is to decide among themselves and on behalf of their people whether they want to enter a conflict situation, whether they want to get involved. They can choose not to get involved. They can choose to let all the subirrigation in their district disappear overnight if that is what they want to do. But if that is not what they want to do, if they want to enter into the negotiating process and try to balance the interest of the parties involved, then they ask the Director of Water Resources to establish a control area and when they do that, the Director of Water Resources just doesn't establish one just like that, they have to prove some things. First of all they are going to have to prove...they are going to have to prove the burden is on them to prove that the irrigation well is hurting the subirrigation. Now you have heard a lot of talk about we don't have enough data, we can't prove this, well, fine, if we can't prove it, then the NRD directors can't prove it, then there will never be a control area and you will never have to worry about a thing. But those of us who have sat in on Public Works Committee hearings, we know different. We know that in some cases they will be able to prove it. Secondly, they not only have to prove the causation, what is causing the loss of the subirrigation but they have to prove that overall there is an economic hardship to the people in the area, and that is the second decision they have to make and a second burden of proof that they have. And not only do they have the assurance that they have to prove this...not only do they have to prove it to the Director of Water Resources but if somebody wants to take it to the courts, it can go straight to the courts. Now what has the history of Nebraska been on control areas? Have NRDs acted irresponsibly? Do they tend to jump into situations and instigate this kind of regulation and that kind of installation? This kind of regulation? The emphatic answer is, no. We only have three control areas in this whole state and in each one of those control areas we waited so long to establish the control area that we have a bad, badly...a bad managed decline situation in all three. We are running out of water rapidly in all three and despite that in the Big Blue area where they have some of the severest problems they have not even instigated, as I understand it, Senator Kremer, water allocations or water metering. It is a control

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area without controls. The point I am trying to make is you don't have to worry about the NRDs acting too fast. If you have to worry about anything, it is about the fact that they may not act at all. What you are doing, if you don't allow the NRDs to enter the situation, is creating a game without a referee. It is as simple as that. What is the present situation? What if I lose my subirrigation meadows now? What happens to me? Effectively nothing, I just lose them. The game the way it is played right now is in favor of those using the groundwater for irrigation. So if you don't put any referee in the game, then you have effectively decided the game totally in favor of grain development...grain crop development. Now if that is what you want to do, fine. But if you want to give the NRDs some power to balance the situation, if you want to take a traditional conservative point of view and pay some attention to those people that have been there for hundreds of years using subirrigation....

PRESIDENT: One minute, Senator Beutler.

SENATOR BEUTLER:if you are concerned about their way of life and their economy, if you think they deserve some means of reconciling their differences with the new incoming development, then 726 is the bill for you.

PRESIDENT: The Chair recognizes Senator Labedz. 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. The question is, shall debate cease? Have you all voted? Have you all voted? Record the vote.

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

PRESIDENT: Motion carries, debate ceases. Who is going to close? Senator Vickers. Senator Vickers will close.

SENATOR VICKERS: Mr. President and members, there has been a number of statements about...made about the intention of this bill about where the support is coming from that I take quite a bit of issue to. First of all, when we talk about what the intent of the bill is, there is only one group that has been printing any handouts talking about what the intent is that I know of, and their intent is to make the bill look as bad as possible, obviously. They are saying that if this bill passes there will be no further irrigation development any place you put a control area in, period, and it is going to shut down the wells that are there and there is not going to be any irrigation. That is very strange when you consider that the irrigation...or the

areas of the state that do have control areas right now still have irrigation. I don't know of one irrigation well that has been cemented shut out in Senator Haberman's District. They are still irrigating and they will if they put a control area anyplace as a result of this also. We fail to recognize or we fail to give any consideration at all to the fact that local people might have a few brains. They might be able to figure out what they really want to do. We all fail to recognize that. It has been mentioned that drainage would be a reason for a control area. Well, if you read the bill, that is not true. Development and utilization of the groundwater supply, that is part of the existing language. That doesn't say anything about drainage. That is a bunch of poppycock and they all know it. Somebody mentioned that the Natural Resource Districts weren't supporting it. That is strange since many NRD lobbyist has been out here supporting it the last week or so. Somebody also mentioned about the experts, how we should listen to the experts. Somebody mentioned also that we were moving too fast. Well, that is strange. For two years in a row now I have been involved with hearings and I can name off the towns, Ogallala, Mullen, Bassett, Mullen again and Ord. Now that is not exactly suburban Omaha, I would suggest to you, and that is not exactly moving real quick when that has been over a three-year period. So I think there is a little bit of a misunderstanding there also. Senator Barrett shared with me copies of some phone calls that he was getting yesterday and Senator Rumery just showed me some letters, and not a one of those is from Omaha, Lincoln or any other urban area. And it makes me a little upset when people say, well, this is being promoted by urban people, why don't you let us agricultural people do it ourselves? Hell, what do you think I come....do you think farms have a population of 960,000? Not quite. I have to own my own tomcat. I don't exactly call that an urban area. These people out here that have been supporting this and all these letters and phone calls have to own their own tomcats too. All they want is a chance. All they want is us to give them the opportunity to protect their resource in their area as they see fit. And all that some people here want to do is say, no, no, no, no, you people in the urban areas should remember that this requires equipment if we sell more irrigation facilities and that equipment is made and manufactured in urban areas so you urban people should vote against this bill. Well, I guess that tells where the side is coming from that doesn't want this bill to pass. It seems to me that people are not recognizing the fact that subirrigation and irrigated cornfields could survive and can survive side by side, and I think we all know they can. They can't, however,

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if you have 50,000 acres of irrigated cornfields pivot to pivot to pivot. No, you can't do it that way, obviously not. The development will continue to take place in the Nebraska Sandhills. I will make the statement, I believe in probably another 25 or 30 years the technology is going to change, we are going to see a lot more irrigation development. I would bet you that we are going to have a third to a half....

PRESIDENT: One minute, Senator Vickers.

SENATOR VICKERS:of Nebraska's Sandhills developed. And at the same those wet hay meadows are still going to be out if there if we let those people develop it in an orderly fashion. That is the issue. Do we want to give those people locally the tools to develop their own area in a logical fashion? Or do we want to take that away from them and let it be developed illogically? That is the question, and it is either yes or no. I move the advancement of LB 726.

PRESIDENT: The question is, shall LB 726 be advanced to E & R for Engrossment? Someone had requested...what was it, you, Senator Peterson, had requested that we go to the board on this vote? I think somebody had requested, so we will. All those in favor vote aye, opposed nay. There are four excused, Senator Vickers, so....have you all voted? Motion to advance. Well, Senator Vickers, do you want to....

SENATOR VICKERS: Well, I hate to take the time but I hate to stand here and wait on it too, so unless there are some people that want to push a green button right quick, why...

PRESIDENT: If they won't vote, why....

SENATOR VICKERS:I will have to ask for a Call of the House and a roll call vote.

PRESIDENT: Motion is to have the House go under Call. All those in favor of a Call of the House vote aye, opposed nay. Record the vote.

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

PRESIDENT: The motion carries, the House is under Call. The Sergeant at Arms will see that all members are returned to the Chamber, all other persons will leave the floor. Everybody register your presence and, Senator Vickers, do you want to take call ins or authorize call ins as they come back? Mr. Clerk, you will be authorized to take call ins then. Senator Cullan, do you want to put your light on?

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Senator Kilgarin, Senator Wesely, are you here? Yes. Senator Lowell Johnson, Senator Peterson. Senator Landis, I see him, he is here. Senator Pirsch, I know I see her. And Senator Schmit, I see him too. Senator Schmit, do you want to push that light and we are ready, I think that is it. All right, we have them all here now. Call in votes will be accepted or do you want to just go ahead and save time and have a roll call vote?

SENATOR VICKERS: Go ahead.

PRESIDENT: All right, we will have a roll call vote on the advance of LB 726 to E & R for Engrossment. Everybody is at their desk. Proceed, Mr. Clerk, with a roll call vote to advance.

CLERK: (Read the roll call vote as found on pages 1839 and 1840 of the Legislative Journal.) 22 ayes, 18 nays, Mr. President.

PRESIDENT: The motion fails. The bill does not advance. Okay, do you want to...the Clerk has some matters to read in at this time.

CLERK: Mr. President, just one item. Your Enrolling Clerk respectfully reports that she presented to the Governor at 4:30 LB 942.

PRESIDENT: Senator Lamb, what do you wish to do? Do you want to get started on 816? You know it will take...it could take the rest of the day I guess.

SENATOR LAMB: Mr. President, I will move we adjourn until nine o'clock Tuesday morning.

PRESIDENT: 9:30 or....

SENATOR LAMB: Nine o'clock.

PRESIDENT: Nine o'clock Tuesday morning. Motion to adjourn. What? (Microphone not on).....hear that. We are not....we are still under Call, are we not? So just check in, just everybody check in at this point. We will have everybody check in before we do anything.

CLERK: Mr. President, Senator Fowler would like to print amendments to LB 488 in the Journal. (See pages 1841 and 1842 of the Journal.)

PRESIDENT: The House is still under Call so let's all check in. Senator Cullan, do you want to put on your light.