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Floor Debate
April 11, 2007

[LB8 LB43 LB107 LB295 LB314 LB321 LB322 LB343 LB368 LB382 LB458 LB508
LB537 LB636 LB677 LB701 LB701A LR64 LR65 LR66 LR68 LR70 LR71 LR72]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good morning, ladies and gentlemen, and welcome to the George Norris Legislative Chamber for this the sixty-fifth day of the One Hundredth Legislature, First Session. Our chaplain of the day is Pastor Charlene Wozny from Zion United Church of Christ, Talmage, Nebraska, Senator Heidemann. Please rise. []

PASTOR WOZNY: (Prayer offered.) []

SENATOR LANGEMEIER: Thank you. I call to order the sixty-first day of the One Hundredth Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record. []

CLERK: I have a quorum present, Mr. President. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Do you have any items for the record? []

CLERK: Just one, Mr. President. Engrossed LB537, LB636, and LB677 were received in the Governor's Office on April 5, 2007; he signed those bills and delivered them to the Secretary of State on April 11, 2007; letter signed by Dave Heineman as Governor. And that's the only item I have, Mr. President. (Legislative Journal page 1145.) [LB537 LB636 LB677]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Are there any corrections for the Journal? []

CLERK: No corrections, Mr. President. []

SENATOR LANGEMEIER: Are there any messages, reports, or announcements? []

CLERK: None...nothing additional. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the next item on the agenda, confirmation reports. [CONFIRMATION]

CLERK: Mr. President, the first report this morning is by Health and Human Services Committee and involves a series of appointments to the Rural Health Advisory Commission. (Legislative Journal page 926.) [CONFIRMATION]

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SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Johnson, as Chairman of the Health and Human Services Committee, you're recognized to open on your confirmation reports. [CONFIRMATION]

SENATOR JOHNSON: Thank you, Mr. President. Members of the Legislature, this morning we have a series of appointments to different commissions. First of all, the Health and Human Services Committee desires to report favorably upon the following four appointments. These are to the Rural Health Advisory Commission. The committee suggests the appointments be confirmed by the Legislature and suggests a record vote. All of these appointees appeared in person before the committee and answered questions posed by our committee. These candidates are: Crystal Johnson, a new appointment for a three-year term. Ms. Johnson lives in Greeley, Nebraska. She is an administrator for a nursing home in St. Paul, Nebraska, and has a financial background as a corporate accountant. She is currently an EMT on her local rescue squad. Dr. Rebecca Schroeder is a reappointment for a three-year term. She is a licensed clinical psychologist in Curtis, Nebraska, and former clinical director of the Sandhills Psychiatric Unit at Great Plains Regional Center in North Platte. Third is Dr. Michael Sitorius, again, a reappointment to a three-year term. Dr. Sitorius is the physician on the faculty and indeed is the chairman of the Family Practice Department at the University of Nebraska Medical Center. He has been on the Rural Health Advisory Commission for the past 12 years. He grew up in Cozad, Nebraska, and attended Hastings College. I personally have known Dr. Sitorius since his high school days. Roger Wells is a reappointment for a three-year term. He is a physician assistant who lives in St. Paul, Nebraska. He is current chair of the commission; graduate of Elba High School and a graduate degree from Eastern Illinois University. He received his physician assistant degree from the University of Nebraska Medical Center. Again, I've known Roger Wells for many, many years. All of these candidates were thought to be excellent appointments and we would, Mr. Speaker, recommend them to you...Mr. President, excuse me. [CONFIRMATION]

SENATOR FRIEND PRESIDING [CONFIRMATION]

SENATOR FRIEND: Thank you, Senator Johnson. Is there any discussion, members of the Legislature, on the report? Senator McDonald, you're next and you're recognized. [CONFIRMATION]

SENATOR McDONALD: Thank you, Mr. President and members of the body. I know two of the confirmation reports. One of them is Dr. Sitorius. I've worked with him on the AHEC board, and also Dr. Wells from St. Paul. Both come highly recommended and an asset to my community, especially Dr. Wells in St. Paul. I don't know what we'd do without our rural doctors there. Being in rural communities, it's difficult sometimes to maintain high quality doctors, and because of Dr. Wells and others like him, we're able to offer the medical services that some of the larger communities have. So I hope you support both of these doctors for their confirmation report, and I thank Dr. Johnson for

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bringing them forward. Thank you. [CONFIRMATION]

SENATOR FRIEND: Thank you, Senator McDonald. Any others wishing to speak on the report? Seeing no one...seeing no members wishing to speak, Senator Johnson, you are recognized to close on the report. [CONFIRMATION]

SENATOR JOHNSON: Well, I believe that these are four outstanding candidates and the state of Nebraska is fortunate to have volunteers like this step forward. Therefore, I would ask for their confirmation and I do suggest, Mr. President, that this be a record vote. Thank you. [CONFIRMATION]

SENATOR FRIEND: Thank you, Senator Johnson. Members of the Legislature, you have heard the closing on the adoption of the report offered by the Health and Human Services Committee. All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [CONFIRMATION]

CLERK: (Record vote, Legislative Journal page 1146.) 35 ayes, 0 nays, Mr. President, on the adoption of the confirmation report. [CONFIRMATION]

SENATOR FRIEND: The report is adopted. (Visitors and doctor of the day introduced.) Mr. Clerk, next confirmation report, please. [CONFIRMATION]

CLERK: Mr. President, the second report is by Health and Human Services Committee, involves a series of appointments to the Board of Emergency Medical Services. (Legislative Journal page 926.) [CONFIRMATION]

SENATOR FRIEND: Senator Johnson, as Chair of the Health and Human Services Committee, you are recognized to open on the confirmation report. [CONFIRMATION]

SENATOR JOHNSON: Thank you, Mr. President. Members, this is five appointments to the Board of Emergency Medical Services. Again, the committee suggests these appointments be confirmed by the Legislature and we do suggest a record vote. All of these appointees did appear in person and answered questions posed by our committee. First, Joel Cerny, a reappointment to a three-year term, Mr. Cerny is a member of the Linwood Fire Department for 20 years where he is currently the fire chief. He is a member of Butler County 911 Committee, past-president of Butler County Mutual Aid Association, and current president of the Northeast Nebraska Mutual Aid Association. Next is Robert Olson, a reappointment to a three-year term, is a State Farm agent in Papillion and current chair of the EMS board. He has served for 17 years on the Nebraska Board of Advanced Emergency Medical Care, and 7 years on the Board of Ambulance Advisors. Mr. Olson is an active volunteer in various EMS capacities. Next is Dr. James Smith, a new appointment for a three-year term. Dr. Smith is an emergency physician at Great Plains Regional Medical Center in North Platte. He

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has been there since 2004, previously having practiced in Lincoln, Nebraska. He is a graduate of Northwest Missouri State University and the University of Nebraska College of Medicine. He is past-president of the Nebraska Chapter of the American College of Emergency Medicine. Jeffrey Strawn, a new appointment, again for a three-year term, Mr. Strawn is fire captain, city of Papillion. He is a former volunteer firefighter in Papillion, and a former 911 dispatcher for Sarpy County. He's a graduate of Creighton Prep and received his EMT certification at Creighton University. Scott Wiebe, a new appointment for a three-year term; he is fire captain and paramedic with the Lincoln Fire Department. Mr. Wiebe is a graduate of Seward High School, received his EMT certification at Creighton University. Before coming to Lincoln he was employed with the Grand Island Fire Department. Mr. President, I would strongly recommend the appointment of all five of these to the Board of Emergency Medical Services. [CONFIRMATION]

SENATOR FRIEND: Thank you, Senator Johnson. Any members wishing to discuss the report? Senator Johnson, there are no members wishing to discuss the report. You are recognized to close on the confirmation report. [CONFIRMATION]

SENATOR JOHNSON: Thank you. Again, I think we have five outstanding appointments to the Board of Emergency Medical Services and again I would ask or suggest a record vote. Thank you. [CONFIRMATION]

SENATOR FRIEND: Thank you, Senator Johnson. Members of the Legislature, you've heard the closing on the adoption of the report offered by the Health and Human Services Committee. All those in favor please vote aye; all those opposed vote nay. Members, have you all voted who wish to? Record please, Mr. Clerk. [CONFIRMATION]

CLERK: (Record vote, Legislative Journal page 1147.) 34 ayes, 1 nay, Mr. President, on the adoption of the report. [CONFIRMATION]

SENATOR FRIEND: The report is adopted. Mr. Clerk, next item. [CONFIRMATION]

CLERK: Mr. President, Senator Johnson, as Chair of Health and Human Services, reports on two appointments to the Board of Emergency Medical Services: Linda L. Jensen, Leon Sykes. (Legislative Journal page 937.) [CONFIRMATION]

SENATOR FRIEND: Senator Johnson, you are recognized to open on the confirmation report, as the Chair of the Health and Human Services Committee. [CONFIRMATION]

SENATOR JOHNSON: Thank you, Mr. President. Yes, there are two appointments to the Board of Emergency Medical Services. These appointees again all appeared before our committee and answered questions posed to them. These candidates are Linda

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Jensen, a new appointment to a three-year term. Ms. Jensen is an emergency room nurse at Immanuel Medical Center in Omaha with more than 30 years experience. She also provides continuing education for EMS personnel. She does live in the community of Herman, Nebraska. In addition, Dr. Leon Sykes is a new appointment, three-year term. Dr. Sykes is a trauma surgeon and assistant professor of surgery at Creighton University Medical Center. He is also director of the trauma services at the Creighton Medical Center. These are two outstanding candidates and I would recommend them to the Legislature for confirmation. Thank you. [CONFIRMATION]

SENATOR FRIEND: Thank you, Senator Johnson. Members of the Legislature, you've heard the opening on the report. Anyone wishing to discuss the report? Senator Johnson, there are no lights on. You are recognized to close on the confirmation report. [CONFIRMATION]

SENATOR JOHNSON: Thank you, Mr. President. Would strongly recommend the appointments of Linda Jensen and Leon Sykes to the Board of Emergency Medical Services. Thank you. [CONFIRMATION]

SENATOR FRIEND: Thank you, Senator Johnson. Members of the Legislature, you've heard the closing on the adoption of the report offered by the Health and Human Services Committee. All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [CONFIRMATION]

CLERK: (Record vote, Legislative Journal pages 1147-1148.) 34 ayes, 0 nays, Mr. President, on the adoption of the report. [CONFIRMATION]

SENATOR FRIEND: The report is adopted. Members of the Legislature, before we proceed with the confirmation reports, just wanted to announce that the rolls being handed out are to celebrate Senator Christensen's 12th wedding anniversary, April 15, and they were baked by his wife Kathy. If you...let's please recognize that. Thank you, Kathy. I think we'd starve. Mr. Clerk, next confirmation report. [CONFIRMATION]

CLERK: Mr. President, the next report is by the Health and Human Services Committee. It involves two appointments to the Rural Health Advisory Commission. (Legislative Journal page 938.) [CONFIRMATION]

SENATOR FRIEND: Senator Johnson, once again, as the Chairman of the Health and Human Services Committee, you're recognized to open. [CONFIRMATION]

SENATOR JOHNSON: Thank you, Mr. President. Again, we have two outstanding appointments to the Rural Health Advisory Commission and, again, both of these candidates did appear before the committee. I don't know if it's a record or not, but every person that was to be seen by our committee for an appointment did appear in

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person this year, every single one of them. These two candidates are Dr. Donald Frey, a reappointment, three-year term. He is a physician and professor at Creighton University School of Medicine; received his medical education from the University of Missouri. He lives in Gretna, Nebraska. Dr. Kate Hesser is a new appointment for a three-year term. Dr. Hesser is a family practice resident and a recent graduate of the University of Nebraska Medical Center. Of also interest regarding Dr. Hesser, she is a participant in the Rural Health Opportunities Program, and indeed plans to practice in rural Nebraska upon completion of her family practice residencies. Again, I think, as been true of all of our appointees that we've talked about this morning, all outstanding individuals and the state of Nebraska should be very thankful for their participation and help. I'd recommend Dr. Donald Frey and Dr. Kate Hesser for appointment to the Rural Health Advisory Commission. [CONFIRMATION]

SENATOR FRIEND: Thank you, Senator Johnson. Members, you've heard the opening of the confirmation report. Is there anyone wishing to discuss the item? Senator Johnson, I see no lights. And Senator Johnson waives his closing. Members, the question is, shall the confirmation report be adopted from the Health and Human Services Committee? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [CONFIRMATION]

CLERK: (Record vote, Legislative Journal page 1148.) 38 ayes, 0 nays, Mr. President, on the adoption of the confirmation report. [CONFIRMATION]

SENATOR FRIEND: The report is adopted. Next confirmation report, Mr. Clerk. [CONFIRMATION]

CLERK: Mr. President, Natural Resources reports on three appointments to the Environmental Trust Board. (Legislative Journal page 1099.) [CONFIRMATION]

SENATOR FRIEND: Senator Louden, as Chairman of the Natural Resources Committee, you are recognized to open on the first confirmation. [CONFIRMATION]

SENATOR LOUDEN: Thank you, Mr. President and members. The Natural Resources Committee conducted a confirmation hearing on April 5, 2007, for three appointees to the Environmental Trust Board. All three candidates appeared before the committee. John Campbell is from Omaha and is a reappointee to the board, representing District 2. John received his bachelor's degree in animal science from the University of Nebraska-Lincoln, and a postgraduate degree in agriculture economics from the University of Sidney, Australia. He works for Ag Processing Incorporated as corporate vice president for industrial products and government affairs. Previously, John worked in several capacities in Washington, D.C., including on the staff of Congressman (sic) Virginia Smith; on the Senate Agriculture Committee, under the leadership of Senators Jesse Helms and Richard Lugar, where he was responsible for all commodity programs

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and commercial export programs; and on the personal staff of Senator Rudy Boschwitz where he coauthored decoupling legislation. He also was deputy under secretary for international affairs in commodity programs in the United States Department of Agriculture. His major responsibilities at USDA were to develop and coordinate the 1990 farm bill strategy for the administration, and to supervise implementation of the legislation. John is a member of the Commission on Twenty-First Century Agriculture, on the board of directors of the National Oil Seed Processors Association, the Clean Fuels Development Coalition, and the board of directors of Children's Respite Care Center. He was a Rotary International fellow and received the outstanding service to the Nebraska soybean industry award. The next appointee was Vincent Kramper. He's from Dakota City and is a reappointee to the board, representing District 1. Vincent attended the University of Nebraska-Lincoln and served in the United States Army. He is a retired lifelong farmer and owned Kramper Industries, where he manufactures driveway alarms nationally. Vince is a founding member of the Environmental Trust Board, serving since 1985. He served as chair in 1994 and 2003. He also serves on the board of trustees of the Sioux Gateway Airport and on the St. Michael's Church Cemetery Committee. Vincent and his family are the recipients of a Pioneer Family Award. Sherry Vinton, the third appointee, is from Whitman and is a new appointee to the board, representing District 3. Sherry attended the University of Nebraska-Lincoln. She and her husband own and operate a fifth generation cow-calf ranch in the Sandhills. She serves as a marketplace advisor for Farm Credit Services of America, is on the advisory committee for UNL's Gudmundsen Sandhills Lab, and she and her husband are mentors for the grazing and ranch management program sponsored by the Grazing Lands Coalition and University of Nebraska-Lincoln. The committee recommended unanimous approval of John Campbell, Vincent Kramper, and Sherry Vinton to the Environmental Trust Board, and I would encourage you to advance the appointments of these fine people. Thank you. [CONFIRMATION]

SENATOR FRIEND: Thank you, Senator Louden. Members of the Legislature, you've heard the opening on the confirmation report. Any discussion? Senator Louden, there's no one wishing to speak. Senator Louden waives closing on the report. Members of the Legislature, the question is, shall the confirmation report from the Natural Resources Committee be adopted? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [CONFIRMATION]

CLERK: (Record vote, Legislative Journal page 1149.) 32 ayes, 0 nays, Mr. President, on the adoption of the confirmation report. [CONFIRMATION]

SENATOR FRIEND: The confirmation report is adopted. Mr. Clerk, I believe we're to proceed to General File. [CONFIRMATION]

CLERK: Mr. President, LB701, it was a bill originally introduced by Senator Christensen. (Read title.) Bill was discussed yesterday, Mr. President. Senator Christensen

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presented his bill; committee amendments by the Natural Resources Committee were offered by Senator Louden. A division was requested with respect to the committee amendments. The division resulted in four components of the committee amendments. The first was adopted. When the Legislature left the issue yesterday afternoon pending was the second component of the committee amendments, specifically AM963. I do have motions and amendments pending to that component, Mr. President. (AM963, Legislative Journal page 1129.) [LB701]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Christensen, the members of the Legislature would appreciate a briefing from your standpoint on LB701, if you will, and we can move on to briefings on the amendments after you're completed. [LB701]

SENATOR CHRISTENSEN: Okay. Thank you, Mr. President. LB701 is an attempt to set up a structure using a high level of local funds to come into compliance on the Republican River with the interstate compact that will allow us, as a basin, to buy out surface water projects on a year-to-year or permanent basis, and to bring in the ability to do augmentation projects, vegetation, or quick response buyouts that will allow us to bring the basin into compliance so that we're not sitting here each year wondering if we're going to be in compliance with Kansas. It gives local control. It is a function that is very needed for the district. It's a scary one, as I have said, because taxes that would be allowed are very high and be very difficult on the area, but the consequences of doing nothing is probably following the example of the Arkansas River. The irrigators would be shut off and that would have a disastrous effect upon our economy and on to our schools and our businesses. So what we're looking at here in this bill is a way to allow the district to take control of its own destiny and to be able to come into compliance so we're not fighting with Kansas, we're actually delivering our water. Because right now if we reduce pumping, put more streamflow, it goes into the lakes, it can be delivered to the surface people. So just an allocation cut doesn't do us any good because that still gets consumed. So it's a very complicated process, but a process allowing the district to come into compliance. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Christensen. Is Senator Heidemann on the floor for a recap of the second division of the committee amendment? Senator Heidemann, if you will do the Legislature a favor by briefly recapping, if you will, the second division of the Natural Resources Committee amendments. [LB701]

SENATOR HEIDEMANN: Briefly, Section 23, which was the beginning of my part, as amended by the Natural Resources Committee, this section creates the Water Resources Cash Fund in the Department of Natural Resources. This fund would be used by the department to aid management actions taken to reduce consumptive use of water in basins deemed to be fully or overappropriated and/or bound by interstate compact or decree. It also would be used to conduct a statewide assessment of short- and long-term water management activities and funding needs. The fund would not be

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used to pay administrative expenses or salaries for department, political subdivisions. Natural Resources Committee...the natural resource districts receiving funding from the Water Resources Cash Fund will be required to provide a 40 percent match to state funding and would be required to report to the Legislature. Districts would be required to repay funding if they fail to comply with the integrated management plans. Section 23 establishes the legislative intent that \$2.7 million of General Funds be transferred to the fund annually through the fiscal year 2018 to 2019. Section 24 eliminates obsolete language in Section 66-1345. Section 25 authorizes the unexpended balance of the Ethanol Production Incentive Cash Funds, including all investment interest, to be transferred to the Water Resources Cash Fund on December 31, 2012. Section 26 establishes a one-half cent checkoff on corn and grain sorghum sold on or after October 2012 and before October 1, 2019. Section 27 specifies that the excise tax on corn and grain sorghum that is assessed on or after October 1, 2012, be remitted within 30 days after the end of every quarter and deposited in the Water Resources Cash Fund. The Department of Agriculture would collect the excise tax and would be authorized to recover administrative cost. Section 28 and 29 authorizes \$2.7 million of General Fund in fiscal year 2007-2008, 2008-2009. And Section 30, and the last section, establishes legislative intent that the Department of Natural Resources may undertake measures in the fiscal years 2006 and 2007 to further facilitate compliance with interstate compact or decree stipulation. Pretty much this would allow the department to negotiate with the Bostwick Irrigation District for the purchase of surface water rights. That's pretty much a quick summary of my part of it. Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Heidemann. Mr. Clerk, I believe you have a motion on your desk. [LB701]

CLERK: Mr. President, I do. The first I have is by Senator Chambers. Senator Chambers had offered a motion to reconsider a vote with respect to FA65 to this component of the committee amendments. Senator Chambers would ask unanimous consent to withdraw that motion to reconsider at this time, Mr. President. [LB701]

SENATOR FRIEND: No objections, so ordered. [LB701]

CLERK: Mr. President, the next amendment I have to this component of the committee amendments, Senator Dubas. Senator, I have a note that at this time you wish to withdraw AM975. Mr. President, the next motion I have is an amendment to the committee amendment, AM976. That's offered by Senator Louden. (Legislative Journal page 1149.) [LB701]

SENATOR FRIEND: Senator Louden, you are recognized to open on AM976. [LB701]

SENATOR LOUDEN: Thank you, Mr. President and members. As we finished up the discussion yesterday we were talking about the amount of checkoff on corn and grain

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sorghum and it was, I guess, extensive discussion on where it should be. Different figures were put out. And what we've done in the meantime is come across with a lot of work and some compromise, and we've come up with, in the amendment, I think it would be on...division amendment on page 8, lines 21 and 22, would change it from one-half to three-fifths. In other words, it'd be a half a cent to six-tenths of a cent, is what the division has been. And with that, we feel we can move forwards with this bill. This is something that this bill has to be brought...keep moving along. We're probably on somewhat of a time frame because this needs to be done so that we know whether or not there will be water available to purchase, and if we don't get the water purchased, why, there could be other dire consequences. So with that, I would ask that you approve this amendment; ask for a vote of approval on this amendment, and go with six-tenths of a cent checkoff on the grain, on the bushel for corn, and a half a cent per hundred weight for grain sorghum. With that, thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Louden. Members of the Legislature, you've heard the opening on AM976, the amendment to the second division of the Natural Resources Committee amendments. There are members wishing to speak. Senator Synowiecki, you are recognized. [LB701]

SENATOR SYNOWIECKI: Thank you, Senator Friend, members of the Legislature. If Senator Heidemann would yield, I actually have some questions not relative to the amendment we're taking now but the underlying amendment. [LB701]

SENATOR FRIEND: Senator Heidemann, are you available to yield to a question? Senator Synowiecki, he is available. [LB701]

SENATOR HEIDEMANN: Yes. [LB701]

SENATOR SYNOWIECKI: Mr. Chairman, the underlying...the first amendment that was adopted under the division, Senator Heidemann, AM962, as I understand it, provided for mechanisms for local NRDs to impose additional...an additional array of taxes and bonding authority and enhanced levies. Is that a fair assumption of what the already adopted first division did? It gave certain authorities and the language within it was permissive in that they may adopt these strategies for enhancing their budgets to deal with this problem. [LB701]

SENATOR HEIDEMANN: That's the way I understand it, yes. [LB701]

SENATOR SYNOWIECKI: And then under the amendment that's under consideration, AM963, the...indicates under subsection (5) expenditures from the Water Resources Cash Fund may be made to natural resources districts under subsection (3) of this section for activities to either achieve a sustainable balance of consumptive water uses or to assure compliance with interstate compact or decree, or formal state contract or

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agreement, shall require...shall require a match of local funding in amount equal to or greater than 40 percent of the total cost. So before a local NRD can access any General Fund appropriation via the Water Cash Fund, there must be a 40 percent local match. Is that what this is essentially saying? [LB701]

SENATOR HEIDEMANN: That's the way I understand it, yes. [LB701]

SENATOR SYNOWIECKI: Senator Heidemann, the array of taxing authorities that is now being allowed under the first amendment, AM962, does not necessarily need to be engaged by an NRD to access the funds in the Water Cash Fund. Is that correct? [LB701]

SENATOR HEIDEMANN: Yes. Yes. [LB701]

SENATOR SYNOWIECKI: I mean they...a local NRD could conceivably provide the 40 percent match without engaging the additional authorities we gave them under AM962, specifically the occupancy tax, the bonding authority, enhanced levies and so forth. [LB701]

SENATOR HEIDEMANN: I'd have to look, I'd have to look and see exactly how much money they could raise with the amount of taxing authority that they have now, but I believe it could be just a little bit of a stretch for them to take care of the operations that they are under now, and then access enough money within the budget that they have to access that 40 percent match. I think they would be a little bit tight. That's just my opinion. [LB701]

SENATOR SYNOWIECKI: Yeah, I appreciate that. I'm sure they would. Would there be any possibility as we move to, perhaps, Select File that we indicate in the bill that accessing the General Funds that move through the Water Cash Fund mechanism can only be engaged by an NRD if, and only if, they, the NRDs, engage... [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR SYNOWIECKI: ...engage the mechanisms that are allowed or permissible now under the first section or the first division of this amendment, under AM962? [LB701]

SENATOR HEIDEMANN: You'd have to think about engaged at what. You know; fully, partly? [LB701]

SENATOR SYNOWIECKI: Sufficient enough to come up with the...in other words, in other words, would there be any possibility of amending AM963 to indicate that the 40 percent match comes from the activities that are now allowable or permissible under the

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first division of the amendment? [LB701]

SENATOR HEIDEMANN: I didn't get you... [LB701]

SENATOR SYNOWIECKI: And to what degree they engage them. It would be, obviously, a local decision, up to the local NRD. [LB701]

SENATOR HEIDEMANN: I think it's something that we can look at. I would have to look at the language and how it was written before I would say that... [LB701]

SENATOR FRIEND: Time. [LB701]

SENATOR SYNOWIECKI: Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Synowiecki and Senator Heidemann. (Visitors introduced.) Members, we are discussing the AM976, the amendment to the second division of the committee amendments. Senator Mines, you are recognized. [LB701]

SENATOR MINES: Thank you, Mr. President. If Senator Louden would respond to questions, please. [LB701]

SENATOR FRIEND: Senator Louden, will you yield to a question? [LB701]

SENATOR LOUDEN: Yes, go ahead. [LB701]

SENATOR MINES: Thank you, Senator Louden. I'm interested, and I think we all should be interested, if the corn checkoff is increased to three-fifths of a cent as opposed to a half a cent, how much more money does that generate? [LB701]

SENATOR LOUDEN: We're not increasing it. We're increasing up to three-fifths of a cent, so we're increasing it one-tenth of a cent. [LB701]

SENATOR MINES: And my question still stands. How much more money does that generate? [LB701]

SENATOR LOUDEN: I haven't done the math yet on this morning, but I think...how much...it would be \$620,000, because I think it's, what, \$6 million is what it raises now, so another tenth of a cent would raise another \$620,000. [LB701]

SENATOR MINES: Okay. And how would that \$620,000 be used? [LB701]

SENATOR LOUDEN: Well, I suppose in this Water Policy Cash Fund that's in the Governor's package, because this won't go into effect till 2013. [LB701]

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SENATOR MINES: So you don't know what it would be used for? Is that what I hear or...and I'm not trying to be tough here. We're all of a sudden being asked to approve an additional amount on a corn checkoff that will throw off \$600,000 a year, we don't know how it will be used, and we're not real sure exactly how much it's going to generate. Is that a fair statement? [LB701]

SENATOR LOUDEN: Well, by 2013, depends on how much corn is harvested that year. I mean that will vary from year to year. At the present time it's about 600-and-some million is what is generated, so a tenth of a percent of that would...you could do the math as well as I can. [LB701]

SENATOR MINES: Senator, would it also... [LB701]

SENATOR LOUDEN: It goes into this Water... [LB701]

SENATOR MINES: Senator, would it also be fair then to make this a revenue-neutral package, to reduce the General Fund transfer from \$2,700,000 to \$2,100,000? We'd have the same dollars flowing through from 2012 to 2019. Was that discussed? [LB701]

SENATOR LOUDEN: No, that wasn't discussed. This was the Governor's package, this \$2.7 million that he wanted his water transfer. First of all, if you did that, then you would want this to take affect after 2013, which would be five years from now. [LB701]

SENATOR MINES: Yes, that's correct. [LB701]

SENATOR LOUDEN: At the present time the 2,000...from the General Fund, the \$2,700,000 is what they're going to use at the present time for various basin water policies. [LB701]

SENATOR MINES: Yes, Senator, I understand that, \$2.7 million for fiscal years '07 through '12, and let's...and that's fine. The corn checkoff kicks in 2012 and rather than leave the General Fund obligation at \$2.7 million from 2012 into 2019, to make this revenue neutral would it not make sense to you to reduce \$2.7 to \$2.1? [LB701]

SENATOR LOUDEN: It would make more sense to me to go in 2012 or '13 and reduce the three-fifths of a cent back down to a half, if people have a problem with that. Or the way it is now it will sunset. [LB701]

SENATOR MINES: Well, the three-fifths...if, Senator, if you increase the amount to three-fifths now, it does nothing until 2012. That didn't make sense to me, Senator. I'm just asking, we're throwing another \$600,000 at something, we don't know how we're going to spend it, we don't know exactly how much it's going to be, and all of a sudden

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we're coming up with more money and we don't know where it's going. So... [LB701]

SENATOR LOUDEN: Well, I don't think that's exactly correct, Senator. I think we know where it's going. It's going in your Water Cash Fund, and this is what the Governor is setting aside for, more or less, a rainy day fund to start working on water policy. [LB701]

SENATOR MINES: But, Senator, it would be the same amount of total revenue to the cash fund. It would still be \$9.285 million, 2012 and going forward. All I'm saying is we're adding \$600,000... [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR MINES: ...probably, and I'm not hearing...in your opening you didn't state how much it was, and I'm not hearing how it would be used. I'm just curious. Do we just say, here's another \$600,000 a year; go spend it however you want? Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Mines and Senator Louden. Members wishing to speak: Senator Chambers, Senator Flood, Senator Erdman. Senator Chambers, you're next and you're recognized. [LB701]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I think Senator Louden has indicated where this money will go. Senator Mines' questions were right on target. But as Senator Louden pointed out earlier, in the words of Glen Campbell, (singing) there's been a load of compromising on the road to this horizon. And I'm going to leave that alone. But if you all want to be spared anymore, realize that this amendment that's being offered is the result of a lot of discussion, a lot of pushing and pulling, giving and taking. Senator Heidemann pointed out that what was put on the table was a half cent, or five-tenths of a cent, checkoff that would run from 2012 to 2019. I wanted to raise that to a cent and a half. After considerable discussion off the mike and debate on the mike, I conceded that that amount would never have been a practical achievable objective. So most of that was erased and reduced down to an amount which would, instead of being five-tenths as proposed in LB701, would be six-tenths. The money, when you look at the amount, may not be the cardinal motivation for adopting the amendment, but we're continuing to talk about those who are in the area, geographically speaking, where the problem exists, and who contributed to the problem. That statement is not to be one to lay blame, but just to state a fact. In that area there will be a contribution toward the solution of the problem. This bill apparently does not meet anybody's desires and wishes, but in a legislative setting, especially dealing with an issue as complex as the water issue in Nebraska, trying to fashion a bill which LB701 is an attempt to do is going to be fraught with difficulty. This is a minor bump in the road. When I discussed it with Senator Heidemann, the analogy I made was that the bill itself is like the Rock of Gibraltar. This amendment with which I agree is

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like one of those pebbles of very fine sand. In fact, it shouldn't even be called a pebble, more like a grain, a miniscule grain. In exchange for the Rock of Gibraltar, I'd give up a miniscule grain of sand in a heartbeat, or a New York minute or second, whichever is the briefest in duration, the briefer. The amendment is one that I support and it could have been done yesterday, except that the process hiccuped and we were not able to complete the transaction yesterday, but it can be completed this morning. I support the amendment as offered by Senator Loudon. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Chambers. Senator Flood. [LB701]

SPEAKER FLOOD: Thank you, Mr. President and members. I want to respond to a couple of the comments that I think we've been dealing with on the floor and off the floor this morning and say that, for what it's worth, I am going to support AM976 and work toward a resolution on LB701. But there seems to be this idea that you can't trust those "ruralies" down in southwest Nebraska. They've got 10 cents, they've got \$10 per acre, but you can't trust them; they're shifty; they're pulling the wool over their eyes. Well, who has something to lose here? Is it you? Is it your ground? Is it your farming operation? No, it's them. If they don't fix it, they get shut off; not you, them. Their banks fail; not yours, theirs. Their land values go down; not yours, theirs. Let's look at this. This isn't some veiled evil attempt by southwest Nebraska to come to the table and take us all by storm. They've raised...risen their hand and said, I'm willing to do the work; I'm willing to raise the property taxes, to set out an occupation tax. And yet, they come down to Lincoln and the message they get back is, we don't trust you, we want to make sure, we want to see a match, a dollar-for-dollar match. Yeah, we're giving...there's a General Fund appropriation. There was one last year. But \$2.7 million times two for the biennium, plus \$3 million for the Bostwick buyout, and that's some significant state money, I'm not going to deny that, but \$12 million to \$15 million on their side, up to \$12 million to \$15 million on their side is important. And here's the difference between the Legislature and the NRDs that have the bonds. Once you decide to enter into an agreement with Ameritas or whoever on a 15- or 20-year bond, you can't go back on that. You're committed. You got to find the money. The Legislature in three years can say, well, it's rained six inches more than it has any other year for the last three years; we can reduce our funding. We can do that; they can't. And so I guess I just want to step to the plate and say I think that in this situation agriculture is stepping to the plate and I don't think it's the intent to question the truthfulness or honesty of people in the basin. I think you want accountability for your constituents and I respect that, but at the same time let us work on a solution that provides some more accountability between General and Select File. You know, I've thrown out there several times, and I'm going to say it publicly, what about an oversight commission? What about a group of senators and some lay people appointed by a member...appointed by the Legislature to oversee the process, both on the state side with the DNR and to watch what the NRDs are doing, so that we can be better educated and informed? But I think we got to be careful when we start saying, you know, we can't trust them. They're the ones coming to the

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table with a solution. And what will this money do? For Senator Mines' benefit, it will, number one, go toward acquisition and ownership of surface and to ground water rights with the compact river basin; number two, acquisition by purchase or lease of canals and other works within the compact river basin, pursuant to mutual agreement; number three, vegetation management, including the removal of invasive species; and number four, augmentation of streamflow. That's what the money goes for. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Flood. Senator Erdman, you are recognized. [LB701]

SENATOR ERDMAN: Mr. President and members of the Legislature, (laugh) wow. Let's step back a second and talk about where this money goes to, and I think that's a point well taken. There are, and I won't be able to count the number of pages here real quickly, but in 46-715, which is the section of law that is referenced for this funding, outlines very specifically what areas have to be considered in order for this funding to be used. With that comes a 40 percent match. And if you read that, it actually could be greater than 40 percent match under the bill. Now not to give a precursor to a future speech, but if that's the standard we're going to hold "ruralies" to, as Senator Flood has called it, let me read to you what the match is for an amendment that Senator Schimek has filed for one of her proposals: 20 percent. There's no repayment provision if you don't use it for whatever reason. Twenty percent--you've already doubled the local match requirement that is expected under this bill, in LB701, than you are under LB1226, which was passed last session that created the Integrated Storm Water Management Plan. To go back to Senator Mines' point, we are creating the policy of the state regarding taxation and transfer of funds independent of the General Fund and the excise tax, or the checkoff program. That happens in 2013. We can't go into the budget for 2013 and say we're going to reduce the appropriation by \$620,000. That is why there's no corresponding offset in this fiscal year for this amendment. It doesn't make sense, it's not logical, and it's not even applicable or legal, because we can't compel future Legislatures to comply with it, just like, according to what you'll probably hear from Senator Schimek later, we can't force the Legislature to comply with the A bill that was passed on LB1226 last year unless we as a body reaffirm that number, which is, in her opinion, \$2.5 million. And again, you can read LB1226A, and it's there. I have actual questions on this division beyond the amendment before us, and I think I'll wait so that I don't further detract from the discussion. But I think if you don't understand it, let's have an honest understanding of how to move forward because that will be the basis for this discussion and for other discussions on related issues regarding water or how it is treated. But in regards to that comment, here we sit, and I've got the sheet that was passed out by Senator Heidemann, we're proposing approximately \$80 million over 12 years in the Water Resources Cash Fund. That's just the Water Resources Cash Fund. That includes the grain checkoff. It will actually be a little higher than that now if this amendment is adopted, but that includes the grain checkoff. That includes the

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proposed, and again that's not required, we can't compel, it's proposed to be extended for 13 years on General Fund, and then it's also proposed on the Environmental Trust. So those are all some assumptions being built into that total number. You know what has never been stated on this floor during this debate? The cost of regulation. Because in addition to these tools and these authorities that we are giving NRDs to raise money for acquiring land, for doing the things that they need to do as far as management, for the integrated management plan, we're not talking about what it costs the producers in the state in regulation. [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR ERDMAN: The Governor's estimate I think is approximately \$3 million a year. I think that's low. Other estimates put it as high as \$53 million a year, just in the Republican Basin. That's in addition to what is being proposed in LB701. So to stand on the floor and say, well, we're concerned that folks locally aren't going to do their job, the regulatory side of this is going to be a key point in enforcing and ensuring compliance. That cost is substantial. And to stand up here and go, well, we want a dollar-for-dollar match, or we want to make sure that's being done, hey, they are going to far exceed any of your expectations about trying to do everything that they possibly can to ensure that they have an opportunity for success in their rural communities. And if they don't, your state aid will help cover their offsets because they'll see a reduction in land values and those folks that don't stand...that stand on this floor today and don't like what's going on will pick up the tab. [LB701]

SENATOR FRIEND: Time. [LB701]

SENATOR ERDMAN: We're trying to avoid some of those scenarios. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Erdman. (Visitors introduced.) Members, we are discussing AM976, Senator Loudon's amendment to the second division of the committee amendment. Senator Lathrop, you are next and you're recognized. [LB701]

SENATOR LATHROP: Thank you, Mr. President. I have not spoken on LB701 and I have had some concerns. I have, I think, been satisfied that my concerns will be taken care of between General and Select, and so I'm going to stand right now and indicate my support for LB701. Senator Kopplin has told us that we have a real problem in this state. It's not a problem that's unique to or only a problem for those folks in the Republican River Valley. It is a statewide problem. And we owe the people in the Republican River Valley and we owe the people of the state of Nebraska an answer. LB701 probably isn't perfect. I think anything that involves a subject matter this complicated will not be perfect. But LB701 must be read in connection with existing law, and I think LB701 does a couple of things that we should accept. And the first thing it

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does is it provides us with a funding mechanism to solve the water problems of the state. It is not enough for us to sit in the Legislature and say stop irrigating. We need to recognize that the economies of these small towns along the Republican River Valley are dependent upon the...and their livelihood is dependent upon water in that area and irrigation by the producers. LB701 provides a mechanism for funding. It is a mechanism that calls for the state to make a contribution, but it requires a substantial sacrifice from those who live in the area. That 10 cents for property tax increase per \$100 is a significant hit for the people in that area. The occupation tax of \$10, up to \$10, per acre of irrigated ground is likewise a significant hit. I think it's a fair...I think it's a fair balance between state funds and funds from the people who are going to most benefit from this legislation. I had concerns about LB701 and whether or not the NRDs would actually tax up to their authority and would impose occupational taxes up to their authority. And if they didn't, would they be back here to say, we don't have enough money, we need some more money from the state? I have spoken with Senator Langemeier and some others about an amendment, which I will offer between...at Select File which will require that the...in the event the NRDs do not tax up to their authority and they still overallocate the river, that the Department of Natural Resources will be authorized to essentially regulate the amount of water, and be mandated to regulate the amount of water, to bring us into compliance. I think LB701, with that amendment and some of the other provisions in the bill, along with existing law that requires that they have integrated management plans, is the answer to our water problems. We are dealing with the water problems, I think, for the last time, and LB701 deserves our support, as well as Senator Loudon's last amendment. Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Lathrop. Senator White, you are next and you're recognized. [LB701]

SENATOR WHITE: Thank you, Mr. President. I have one concern regarding the purposes of the Governor's water fund. I note that the Speaker has described it as purchasing ground water rights. As a person who is probably overly concerned with the implications of our laws for the future, please understand if we establish that a property owner has the right to compensation for the use of ground water we have crossed a divide that will be enormously expensive for the state, for the counties, for the NRDs going forward. We cannot set a precedent that anyone but the public owns ground water and anybody but the public can be paid for it. Now that precedent may be unintentional, but it is very important. I urge you to think of the loss of value of irrigated land to nonirrigated status if a person owns ground water rights that must be compensated if the state orders them to shut off a pump. You will bankrupt the state if that becomes, in fact, the legal standard across this state. There is a complete mess of legal precedent on this issue right now. Our constitution is clear that only the public owns the water. But there have been recognized in various cases what are called corollary property rights, indicating that, as between you and I, I can grab the water before you. Having studied this issue somewhat, I can tell you none of it makes any

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sense. But I can tell you we are skating on thin ice. So I ask the body to carefully consider whether or not we are moving forward in recognizing property ownership in underground water and, if so, prepare yourself for a sticker shock of gargantuan proportions. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator White. Senator Erdman, you are recognized. [LB701]

SENATOR ERDMAN: Mr. President, members of the Legislature, let me follow up with a little additional information. And to respond to Senator White's point, I think it is a good observation. It's my understanding that we're dealing with surface water rights in LB701. The water funding breakdown that is proposed in the Water Resources Cash Fund is a lot of money. It's a substantial amount of money. But when you look over the 12-year period, and I've mentioned this a little bit at the end of my last speech, the cost of regulation, there is a study out that I believe states that it's \$53 million a year in the Republican Basin alone for the cost of regulation. That's lowering allocations of water. That's ensuring compliance. That is more effective management of the water that's available. That has a cost both economically to the region and to the individual producers. To make those individuals whole, you would have to generate X amount of dollars, and instead of doing that, we're going to simply give the regulatory authority to the areas affected and say, in addition to the funds, do this. As I add up these numbers, the total amount of funding that will be contributed, either regulatory through checkoff dollars or fees, either occupation taxes or other fees, and part of the property tax levy, accounts for over 90 percent of the total cost of managing this water. Over 90 percent of this cost will be borne by agriculture, 90 percent. You're asking for a substantial investment from the state, but at the same time, there is a substantial recognition of the contribution and the responsibility required by those directly affected. Yesterday we had an interesting discussion about whether or not unrelated parties should be paying for certain fees and costs in managing this water. Well, the economic benefit of irrigation, according to a 2003 study, was \$4.5 billion. Thirty-seven percent of that went back to agriculture. Twelve percent of that went to wholesale and retail. In other words, the money that was generated in our economy went to those areas of industry, to benefit them. Sixteen percent went to services and education. Four percent went to public utilities. Five percent went to transportation. Ten percent went to other manufacturing. You start going down this path and understand that when we're talking about solving these problems, we're not doing it for the benefit of agriculture alone. You have a \$9 billion industry, that is the single largest industry in our state, called agriculture. Six billion of that is livestock. You go down this path of recognizing that the impact that we make in the decisions that we enforce through law that have a direct impact on our state's largest industry will have a direct impact on our state's economy. And I'm trying not to be too passionate this morning, but I think there's misconceptions about the totality of the issue. And to be candid with you, if the idea is, is that we need to put even more responsibility on agriculture and others that are directly affected by complying with

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these laws, whether they're state, whether they're agreements or whether they're compacts, I'm probably not going to be a part of that. If those folks directly affected are contributing over 90 percent of the solution now,... [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR ERDMAN: ...and you're going to come back on Select File and go, oh no, no, no, you need to put in more, then I'm going to have a different opinion about some of the other proposals that are brought before this Legislature that are designed to affect other areas of the state, generally urban. I'm not interested in that discussion, to be candid, and I hope that as we proceed with this discussion it will recognize the realities and not the perceptions. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Erdman. Senator Fulton, you're next and you're recognized. [LB701]

SENATOR FULTON: Thank you, Mr. President. Would Senator White yield to a question? [LB701]

SENATOR FRIEND: Senator White, will you yield to a question? [LB701]

SENATOR WHITE: I will. [LB701]

SENATOR FULTON: I want to ask a little bit more, if you could elaborate a little bit more, on what you were talking about with regard to precedent being set to offer...when the state is providing payment for water rights. Could you elaborate a little bit more? I guess I want to... [LB701]

SENATOR WHITE: Okay. Let me display my ignorance, but hopefully it's a Socratic ignorance where I know I'm ignorant, but let me tell you what I do know. We have a very complex water system which we inherited. A lot of the surface water rights arose under a prior appropriation system which we got from the common law. What that means is the first guy that grabbed the water has the first in right. So you get a bunch of people. Imagine a ladder, okay? The first person that grabbed the water is on the top of the ladder, out of a river, we're talking only out of rivers. The guy that grabbed the water last is on the bottom of the rung and people in the middle are in the middle. There's not enough water in the river, so now what we do is we...it's called calling the river. Calling the river means we make all the people on the lower rungs shut off their pumps out of the river until there's enough water for the guy on the top rung to get his water. That's calling the river. We had that system in place before we were even a state. It was part of the common law we inherited when we came in. Ground water, however, has always been treated differently on some levels because, one, we have the aquifer; two, the constitution talks about it in the way we use the water; and historically the courts have

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said, at least as far as ground water goes, nobody owns it. The public owns it. Well, what we're finding is over time ground water is intimately related to stream water, and we have a further complication in this situation because our constitution, once we entered into a compact with the state of Kansas, that became the equivalent of federal law, which supersedes our constitution. Okay, so our obligations under that compact actually legally are superior to our constitution. Now that gives us in some ways some comfort because we can treat ground water in a way, in that compact area, because we're required to, differently than we might in the rest of the state on a technical legal sense, but politically it doesn't make any sense. So here's one of the things that actually is going to happen under this bill. We are going to pay people to shut down pumps near the Republican in what are called quick response areas. Okay, those are areas where the pump gets shut off, it more immediately adds water into the river. All right? Well, if we do that, which we may have to and I mean we're facing...we're between the devil and the dark blue sea, all right, right now. We really are. Well, if we do that, have we set a precedent across the state that when we ask or order or require a ground water irrigator to shut off their pump for other reasons, in the Platte Basin for example, or we do it because we need to comply with the Endangered Species Act to get minimum water there, or we do it because a home needs it, are we now in fact recognizing that they have a right, a legal right, to compensation when we tell them shut your well down? And if I were an attorney for a fellow up in the Platte River who's being told shut your well down, first thing I'd do is stand up and raise Cain about the fact that the guys down on the Republican got paid to shut their wells down and how come I'm not getting paid. And if we are now overall recognizing ownership rights in ground water that must be paid to be compensated to shut them down, have we opened up Pandora's box? And I think probably we have and it worries me. [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR FULTON: Senator White, would you say then if...in your opinion, would we be setting this precedent by way of intention or by way of the object of our activity, or is this something that can be addressed anyway through statutory language? [LB701]

SENATOR WHITE: I don't know. [LB701]

SENATOR FULTON: Okay. [LB701]

SENATOR WHITE: I mean no matter what we do, we're setting a precedent, Senator. I much prefer setting precedents with our eyes open rather than doing it blindly. I fear, and that's why I raise the issue, we are just blundering into an area where we're starting to change fundamentally expectations of property owners who use ground water towards compensation, and I think we should do that with our eyes open, conscious of where we're going, rather than just stumbling into it. [LB701]

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SENATOR FULTON: Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Fulton and Senator White. (Visitors introduced.) Senator Pahls, you are next and you are recognized. [LB701]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Senator Flood sort of confused me this morning when he implied, to some degree, that the rural people and the urban people are at odds on this. The reason why I must not trust myself is because right now I live in Omaha, but as a very, very young boy my dad happened to farm the Republican Valley many years ago. So I'm trying to...the last thing I want to do is ring...to make this an urban-rural issue. That's the reason why I've stayed out of some of the debate because I didn't want to imply that since the area where I lived in right now would indicate my preference. When I first starting taking a look at this issue, I can remember reading articles about how long it takes water to percolate through the surface to that great ocean of water below us. In some parts of the state it takes years, tens of years, for that water to move from the surface to the...that great ocean of water that's below our surface. Also read a little bit about the study of the isotopes in the water to see the history of the water. I said, oh, that's not really information I need to know. And about the...I read a little bit about the Compact of '43. Interesting thing, that was the year I was born. Apparently it wasn't a good year for several of us. And I looked at the compact and we have to live with that. And then yesterday on the floor I heard somebody say, well, the way...the reason why all this irrigation is happening is because the irrigators are following the law, and we established that in this body. And that caused me to reflect on some of the reading that I had done. To be very honest with you, a number of the issues that we're dealing with today is because the senators 20, maybe 30 years ago, they knew that this was a potential problem. Now if you want to make it a rural-urban thing, mostly at that time they were rural senators, but they're not here now so let's get past that. What it is we need to do? I, as I've been listening to the conversations on the floor, it appears to me that the majority of the money is coming from that area that is affected, and I agree with that. I'm also looking at that we need to take a look at the water issue for the total state, so I do support the Governor's concept on that. I do believe that water sustains our life, and just let me...as this water is sustaining my life, I think the water, not being too melodramatic here, but the water sustains the life of the state of Nebraska, not just one area. So as a group we need to take a look at this and I do see and hear by all the conversations that have gone on around on the floor and some of the individual senators I've talked to, that this issue can be resolved. I think there is a fairness. Everyone is trying to find that answer. And to the concept of thinking, I think it's a natural progression to question all kinds of individuals on what is it in for me, what is it for the other person, because we do that on all the bills. So I don't see that as a mistrust. I think it's trying to find that solution. And to me, we need to support this bill. Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Pahls. Senator Loudon, there are no other

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lights on, no other senators wishing to speak. You are recognized to close on AM976. [LB701]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I certainly want to thank everything this morning for the debate and the discussion we've had on this bill, not only over the microphones but on the sideboards and on the floor as we talked to various people on the floor today. This was a compromise that we worked out on the amount of money for the...come from the grain sorghum and corn checkoff program. It doesn't take effect until 2013 and the amount of money that will be derived from that we really don't know because it depends on the size of the corn crop. They talk about in...I think in the nation over there was 11 percent more corn planted this year than last year, so who knows how much corn will be planted five years from now or whether there will be any corn planted five years from now? One thing: if we don't do something, there won't be very much corn planted probably in the Republican River five years from now. So consequently, this is where we worked with this LB701. This was the second division of that...of LB701, and this amendment here works on how we will adjust the corn checkoff and the grain sorghum checkoff program. The water goes into the water...or the funding in 2013 will go into the Water Policy Cash Fund. This was set up by the Governor and this is what he's setting up, money someplace. He said before publicly in his statements that we need to start putting away money for our water problems and to fund water policies in the future. There will be other ones besides the Republican River Valley and this is the beginning of what he was wanting to do. This second division was the Governor's package. And with that, I would ask that you certainly vote to advance AM976 to the division amendment, which is AM963. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Louden. Members of the Legislature, you've heard the closing on AM976. The question is, shall AM976, the amendment to the second division of the committee amendments to LB701, be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB701]

CLERK: 30 ayes, 3 nays, Mr. President, on the adoption of the amendment to the committee amendment. [LB701]

SENATOR FRIEND: The amendment is adopted. [LB701]

CLERK: Mr. President, the next amendment to this component of the committee amendments is by Senator Schimek, FA66. (Legislative Journal page 1150.) [LB701]

SENATOR FRIEND: Senator Schimek, you are recognized to open on FA66. [LB701]

SENATOR SCHIMEK: Thank you, Mr. President and members. The floor amendment

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that I'm offering simply takes this body back to where we were last year when we made a compromise towards the end of the year on LB1226, which said that we would appropriate \$2.5 million per year for the Storm Water Fund so that cities and counties would have a source of funds to use for a variety of purposes. Apparently the Governor put that \$2.5 million in the budget this year but the Appropriations Committee lowered the amount, as I understand it, to around \$750,000, \$725,000, something like that. This particular amendment would restore it to what we did last year. And I hope this won't be controversial, I hope this isn't taken as a sign that it is an urban-rural split on this bill. Because I think Senator Pahls said it very well when he mentioned that those of us who are in here from rural areas certainly understand the problem and are supportive of trying to help this bill move along. But it seemed to me that this also offered the opportunity to say that the rural areas are not the only ones who have water problems. And just to give you a little bit of background on the issue, the following Nebraska communities are actually under the mandate by the federal government to do these storm water projects and they are not only cities like Omaha and Lincoln, but Bellevue, Boys Town, Elkhorn, LaVista, Papillion, Ralston, South Sioux City, Dakota City, Scottsbluff, North Platte, Lexington, Kearney, Grand Island, Hastings, Columbus, Norfolk, Fremont, Beatrice, and then four counties; Douglas, Sarpy, Lancaster, and Dakota. Currently no specific mechanism is available to Nebraska communities to finance this challenge. There are no fees for storm water management or capital improvements. Cities and counties rely on bond issues financed primarily by residential homeowners through their property tax to fund storm water improvements. I would suggest that there have been attempts this year through several different bills to help cities address this issue. And actually I should mention that there was an attempt by the cities and counties to come before the Appropriations Committee and ask for \$5 million rather than the \$2.5 million. So when I offer this amendment today, it's not for any increase. It's taking us back to what our commitment was last year. There is a huge need out there, and I think you'll hear from several other people today about how much this is going to cost. The potential is greater than the Republican Valley Basin issue. It's greater. And I don't know what the time line is on it. But I do know that we're coming up against it in fairly short order. Now the money that was granted last year, I understand, has been used in a variety of ways by Fremont, Hastings, Lexington, Beatrice, North Platte, Norfolk, Columbus, Kearney, Scottsbluff, Grand Island, and Lincoln and Omaha. And there's a multiplicity of purposes for which it might be used; education and outreach, public participation, mapping of the storm sewer system, developing a site inspection and review program, developing wet weather monitoring programs, and I could go on reading from this list. But they...Senator Erdman was entirely correct. There has to be a city match. Senator Erdman, we could probably argue about what that match should be. But the fact of the matter is, we are going to have to address this issue more fully in the years to come. And this is just one little attempt this morning to say, yes, we know there's still a problem and, yes, we need to do something about it. So with that, Mr. President, I thank the body for the consideration of the amendment. I know that there are others wishing to speak. I don't wish to prolong the bill for a lengthy

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period of time. But I would encourage others to speak their peace on this issue. And, and I do intend to ask you to support the amendment to the committee amendment. Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Schimek. There are senators wishing to speak. Senators Erdman, Kopplin, White, and Gay. Senator Erdman, you are recognized. [LB701]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. I'm going to rise in opposition to this amendment and it has nothing to do with whether or not we as a Legislature should keep our word. Because technically this Legislature has not given our word on this issue yet. That was the last Legislature and I believe it's important for us to understand the history. As I would understand Senator Schimek's comment, her beef is with the Appropriations Committee. The Governor put \$2.5 million into his budget. The Appropriations Committee has reduced that to \$785,000. And it's also my understanding that the Appropriations Committee has provided an alternative mechanism of \$2 million to offset that reduction. Practically speaking, if this amendment is adopted it doesn't do anything because it is the intent of the Legislature to appropriate something, but it is not appropriated with this amendment. We still have to go in, either in the A bill or in the budget, and make this authorization. I think that's where this debate should be held. In all honesty and all candor, I think that is a better place for this discussion. As Senator Pahls has stated and as I have said before he did, I am not interested in an urban versus rural battle. I'm also not interested in making this bill a Christmas tree for nonrelated issues. I think the totality and the weight of this proposal is sufficient for us to pause and understand what's in it. I think the budget will be an opportunity for us to have this discussion. I would offer this, that if it is adopted, I would expect to see on Select File an amendment that would revise the match that cities are required to pay. I would also expect to see a requirement that if you fail to comply with the federal regs, even with the state funds, that you are subject to some repayment. I would also point out to the body, under the language here 80 percent or more, and that's a key point, not less than 80 percent of the funds that Senator Schimek and others, including myself who voted for LB1226 last session, that put the \$2.5 million for last fiscal year and fully recognizing that we couldn't bind the Legislature this fiscal year because it's a new budget. I voted for that bill to put that money in there to begin that assistance. Over 80 percent of that fund goes to places like Lincoln and Omaha and Douglas and Sarpy Counties; over 80 percent. So we can look through the proposal. It would be my opinion that if we're going to go ahead and actually address the policy issues, which is what LB701 does, and we're going to make a decision that we're going to add additional funding and Senator Schimek's proposal, that we will also address the policy issues under the plan and the program in which she wants to add additional funding. We are simply not giving more money to water policy in the state of Nebraska without additional requirements. And as I would understand the policy as it stands today, if our problem is with the fact that the Appropriations Committee didn't hold to the

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Governor's number, that's a debate for LB321--that's the budget bill. If it's beyond the policy decision, then I expect to have a policy decision debate. Senator Schimek may point out that she can't get a bill out to do a policy decision. I don't know that there's been a bill introduced to address the policy. I believe the bills have been introduced to address the funding. And I want to make sure that we're consistent because if there is a problem, and as Senator Schimek points out that it is more monumental than water law in the state of Nebraska, then it should be...should have a greater policy description... [LB701 LB321]

SENATOR FRIEND: One minute. [LB701]

SENATOR ERDMAN: ...than simply five paragraphs in state statute. Because LB701 is approximately 60 pages long. So I'm interested in the discussion. I think a more appropriate place for this debate is on the budget. I think Senator Louden and others have shared that with Senator Schimek. I think there is a recognition, as was with LB1226 last session, that we can do things to facilitate. But just as in water, where over 95 percent of the cost is borne by the affected entities, we have to recognize that we simply can't replace all of the funds necessary for federal law or even, at times, state law to hit the mark. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Erdman. We continue with discussion on FA66, floor amendment to the second division of the committee amendments. Senator Kopplin, you are next. [LB701]

SENATOR KOPPLIN: Thank you, Mr. President, colleagues. I stand in support of Senator Schimek's amendment. I take a little bit of issue with Senator Erdman's contention that this isn't a water issue. It most certainly is. Storm water is a big issue. We've been dealing with this in the Natural Resources Committee for three years. Last year there were some agreements and some bargaining and so on and we did get...we started at \$10 million and went to \$5 million, we ended with \$2.5 million that we put into law that would provide grants for cities that have to develop storm water issues. The Governor put it back into his budget. Now it's gone. Yes, we're offered another way to do that; cigarette taxes, has nothing to do with water. That is a health issue, it's a declining source of income. This is a water problem. And we are a state and I've been supportive of LB701 as we went. I didn't like it but I'm supportive of it. Now we're talking about an issue that is urban, but urban areas all over the state. We don't know how much time we have. The EPA could step in tomorrow and say it's done, you fix it now. All we have is this \$2.5 million to say to these communities, here's some money, you can apply for grants to help you with your storm water issues. It's not easy to get this issue out of committee. Everybody that has a large parking lot, from churches to schools to businesses, object to any kind of a fee to pay for it. Well, the homeowners object to having it on their property tax. I don't know which way we'll go. Eventually we're going to have a huge balance of money to pay and I expect it probably will be

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property tax, but I don't know. But in the meantime, we need some planning money. This is a water issue. It's as important to the state as the Republican Valley. Let's take a look at all aspects. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Kopplin. Members wishing to speak are Senators White, Gay, Howard, Schimek, Fischer, Loudon, Wallman, and Erdman. Senator White, you are recognized. [LB701]

SENATOR WHITE: Thank you, Mr. President. I appreciate the indulgence of the body on this issue. Water is a problem for our area and my district, Senator Chambers' district, Senator Kruse's district, in a most profound and expensive manner. One of the things we're looking at dead on is an EPA obligation to separate our sewer systems. Currently in north Omaha in the older areas we have one set of pipes to carry away all water, whether that comes from your toilet or it comes down out of your gutters into the street and then into the sewer system. What that means is when it rains, it overwhelms the sewage treatment facilities. They hit a valve, they shut off the water flow into the sewage treatment center, and they flush all the contents into the Missouri River. The EPA is less than thrilled about this and they have set various deadlines, I'm not sure what they are and they seem to move, for us to solve that problem. That problem alone, though there's been no firm numbers--probably because the numbers are so frightening--have been discussed by various serious people as running between \$1 billion and \$2 billion for Omaha, north Omaha alone, to comply with the EPA. That is a backbreaker, it will bankrupt the city of Omaha, it will just about devastate our budgets at the state level for years to come. That alone is a water problem. Furthermore, we have other expensive problems. If we have a 100-year flood, I think Senator Kopplin could probably speak to this much more intelligently than I, but I suspect large parts of Senator Cornett's district will be underwater, as will parts of Senator Lathrop's district. We will have serious flooding in the lower Papio as it empties into the Platte. We have in that watershed three counties; Washington, Douglas, and Sarpy. We have a multitude of cities and villages and we do not have a coordinated widespread plan on how to deal with surface runoff. We are developing in a way that we're putting in massive parking lots that shed water in a huge method. We do not have uniform zoning across the counties or the cities. We do not have any long-term plan for how we will buy and preserve green space to buffer and absorb water. Yet we are looking at the need for large dams in different areas, which will take land and hugely increase property tax costs. What we desperately need in my district and across that basin is a comprehensive plan which the counties and the cities are required to participate in, come to a common agreement on how we will deal with this problem and how we will fund it. Hopefully this is a start to move towards that process, though I would ask Senator Kopplin if he'd yield to a question regarding whether an interim study may also be pushing such a solution. [LB701]

SENATOR FRIEND: Senator Kopplin, will you yield to a question? [LB701]

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SENATOR KOPPLIN: Yes, I will. [LB701]

SENATOR WHITE: If I will ask a question, you will yield. Senator Kopplin, can you please tell the members of the body what the intentions of your interim study are and whether it will help move towards a basinwide solution for this huge and expensive problem? [LB701]

SENATOR KOPPLIN: Well, a little background, one of the issues that I introduced this year was to give bonding authority to the Papio-Missouri Natural Resources District. That bill did not make it out of committee. So I have to look at an alternate way of doing this and I'm working... [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR KOPPLIN: ...working with people now to set up an interim study where we can look at many of the issues that deal with the Papio, anything from bonding authority to how to deal with that dangerous river. [LB701]

SENATOR WHITE: Thank you, Senator. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator White and Senator Kopplin. (Visitors introduced.) On with discussion of FA66, proposed amendment to the second division of the committee amendment. Senator Gay, you are recognized. [LB701]

SENATOR GAY: Thank you, Mr. President. I'd like to thank Senator Schimek for bringing up this subject because we have discussed it several times and Senator White gave a good segue into what I wanted to cover. This watershed runoff is a huge problem. Just a little example, I'm not so sure...now I'm going to listen to more discussion and maybe somebody from the Appropriations Committee might speak on this funding mechanism. But I guess what I wanted to say is it shouldn't be an urban-rural and I'm not so sure this is maybe the time to address the funding. Maybe that it is on the budget discussion, as Senator Erdman discussed. But just to let you know what this entails, Senator Schimek discussed some of the things we need to look at. Sarpy County, which makes up Papillion, Bellevue, LaVista, Gretna, many of our communities, have joined up with the city of Omaha and the city of Omaha is a lead agency working with the Papio NRD to look at this. Just a small portion of the costs, just in Sarpy County alone in the last two years has had to spend \$225,000 into the study that Senator White discussed. Now they are going to come up with a proposal and the early estimates of compliance with this act is \$300 million. So it is a major problem. Senator Kopplin has been working on this for years. I've had the unfortunate experience of working on the same thing for the last three years on the county level. But this is, of course, a looming problem. We're here today to discuss statewide water policy. This is

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an important portion of that. I'm not so sure that on this bill is where we need to do this. I certainly will support refunding those funds in the budget, possibly during the budget discussion, for sure during the budget discussion, possibly now. But maybe we want to hear, like I say, somebody from the Appropriations Committee on if there is any intent to make up those funds and, if there is, where that would come from. But the fact of the matter is that there are going to be other water issues. You know, this doesn't deal with ground water obviously but it's a statewide problem as well then. And the policy we're setting today, again, is how are we going to pick up cost shares of...if we would get some of the proportionate cost as well, you know, that would probably be fine, too. But as we develop this water policy in general, I think we need to stay to the discussion that, how would I want to do this if it's my area? And like I say, I support LB701, I support the current amendment. I'm not so sure where I'm at on this philosophically. And my heart is behind it, I'm just not so sure that this is the right time to be adding and adding and maybe that is during the budget discussion. But just like I say, we had an opportunity to discuss this and it will be discussed. Senator Kopplin, as he said, has been working on this for three years and we still cannot come to a solution. It's just a complex, a very expensive problem. And until we come to grips with that \$300 million, I think we're going to...we're all going to be playing behind the eight ball a little bit. So either way, as this comes down to it, I'm not so sure where I stand on this amendment, if I will support it right now. But I definitely would support it to add it back to the budget when that comes up, if we decide to do that. So I'm looking forward to more discussion and possibly if anybody from Appropriations would like to discuss how we're at this point or why the funds were removed from the Governor's proposal, I'd be happy to hear that. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Gay. (Visitors introduced.) On with discussion of FA66, Senator Howard, you're next and you're recognized. [LB701]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I thank Senator Schimek for bringing us this amendment. This gives us the opportunity to discuss something which is certainly timely in regard to water issues. And I'd like to make a clarification or possibly weigh in on an issue. I don't see this is a rural-urban concern. I think water is universal across our state. And as a matter of fact, my mother was born in the small town of Bostwick in 1922 and today is her birthday. So I have ties to that community as well. But I'd like to share some information with you. I've listened to many of us speak about the rural concerns and I've certainly learned a great deal. But I think this would be very helpful to those senators who are not as familiar with the urban issues regarding water. Omaha's combined sewer collection system dates back to the 1800s and was originally designed to simply move wastewater and storm water out of the increasingly urbanized areas and allow the Missouri River to disperse and carry pollution away. By the 1960s, it became apparent that this was not the total solution to pollution and that the system of diverse structures, pumping stations, interceptor sewers, and direct dry water flow sanitation sewage to treatment plants

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before discharge was not satisfactory. Now this issue has certainly really come to the forefront and the preliminary estimates for the cost of this I would say would be considered to be staggering. Based on the information available, the price tag could range up to \$500 million to several billion dollars and I'm going to give you some comparisons of cities that have had to face this reality. Atlanta, Georgia, which is 19 square miles, has had to pay \$3 billion to correct the problem in their sewage system. Cleveland, Ohio, \$1.5 billion, and that's 74 square miles. Louisville, Kentucky, \$500 million for 27 square miles. Nashville, Tennessee, \$1.3 billion for 15 square miles. Omaha, Nebraska, the price tag isn't yet known but we have 51 square miles. So you can do the math. This is a serious concern and I think as we share the concerns of those individuals in the rural area and the Republican River Basin, so should we all share the concerns of the rural areas. We are interdependent on one another and water is the lifeblood of our state. I ask for your support for this amendment. I certainly think this benefits us all. Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Howard. Senators wishing to speak, Senators Fischer, Loudon, Wallman, Erdman, and others. Senator Fischer. [LB701]

SENATOR FISCHER: Thank you, Mr. President and members. I haven't yet spoken on this bill and I think I have a good opportunity now. As you know, I represent the largest legislative district in the state of Nebraska and I do represent seven NRD districts within all or part of that legislative district. I do not represent any part of the Republican River Basin. However, I am a state senator and as such, I have a responsibility to address this issue, just as many of you have. The situation in the Republican River Basin is not a local problem. It is a state problem. The state of Nebraska entered into a compact in 1943 with Colorado and Kansas. The local people in the Republican River Basin did not enter into that contract. It was the state of Nebraska. And as such, we as a state are responsible. I have been encouraged by listening to the debate the last two days. I find it very, very encouraging that we have senators from across the state realizing that LB701 is a water management plan for the Republican River Basin to get us into compliance with that compact and that we are responsible for doing it. We as a body in this Legislature are responsible and we need to take that responsibility seriously. I thank many of you for your words. Senator Howard just spoke that we're in this together, and we are in this together. The irrigators in that basin did nothing wrong. They did not break any laws. In fact, they were encouraged to irrigate. I know that you've read the recent news articles. There's been a series of them in the newspaper about the basin and about irrigation. And from those articles, you've learned that the state of Nebraska, and specifically the University of Nebraska, encouraged irrigation. In fact, I can remember in the early 1970s and the mid-1970s in my area we had university county extension agents coming around, wanting us to put up center pivots in the Nebraska Sandhills. This didn't just happen in the Republican River Basin. This happened across the state because irrigation was viewed as, and it has become, an economic engine for this state. You've seen the figures that one in three people in the state of Nebraska, their livelihood

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is dependent upon agriculture. That didn't just happen overnight and it didn't happen with dryland farming. That happened because of irrigation. It doesn't do us any good to start pointing fingers and it doesn't do us any good to say, hey, that's your problem. You guys should have known better down there, you knew you were using the water. Your fault, take care of it. That whole scenario is ludicrous, it's ridiculous that we would even consider something like that. As I said, this is a state compact. We need to move forward from this point. Another reason that the state needs to participate is because of the economic benefit that agriculture has in this state. [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR FISCHER: And I can point out to you, as you read this bill you'll see that, yes, we have state participation--\$2.7 million a year from 2007 to 2019 or a total of \$32 million will come out of the state General Fund. That affects us all, as it should. Also though, on the handout that Senator Heidemann gave you yesterday, you'll see that corn producers will be contributing \$44 million and that's from 2012 to 2019. That goes to the Water Resources Fund. And then let's talk about those local people in southwest Nebraska. They could be affected by higher property taxes. They'll have a tax levy increase probably that their NRDs have. There's an occupation fee, occupation tax that's going to be on wells. Those people will be paying for a state compact. [LB701]

SENATOR FRIEND: Time. [LB701]

SENATOR FISCHER: Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Fischer. Senator Louden, you are next and you are recognized. [LB701]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As a returning senator that was on the Natural Resources Committee last year, this \$2.5 million that Senator Schimek is talking about was put on there. It went through the Natural Resources Committee last year and we brought it out and it was brought forward in a bill, I don't remember the number. But anyway, it was brought forward and passed on the Legislature and put into place for towns to access some of that funding. I think it isn't just Omaha. I think any town now that, as you look at the map, Scottsbluff, Norfolk, I think there's several towns on that map anymore that show that the federal government is indicating that they have a problem with their storm water runoff. And so it is a problem across the state of Nebraska. I think there should be funding there. I supported that last year when we put the \$2.5 million in and I would certainly, as far as I knew it was in there this year until somewhere along the line it got taken out on either Appropriations Committee or what. So I think that probably isn't a problem that we would solve here on this. I would like to see that put into either the...someplace along the line when our funding goes for the general funding or when the bill comes up for the

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budget bill, mainline budget bill here in a few days. I think this is appropriate place for it. Now as I mentioned, the bills that always come up before the Natural Resources Committee on storm water didn't never say how you was going to get money from the state or how the state was going to pay for it. Usually those bills were always a question of who was going to pay within the cities. Were you going to put it on real estate and property tax or were you going to put it on a square footage of your parking lot or put it on square footage of the surfaces that collected rainwater and how was it going to do? And also when they talk about the storm water, it isn't necessarily the quantity of storm water that has to be controlled, it's the quality of the storm water. So when you're talking about storm water that's one thing, when you're talking about storm water and your sewage mixed together, that's two different questions or two different projects. Storm water can be cleaned up by sweeping streets and that sort of thing so that's when the federal government asked that they clean up the storm water, it's mostly that the storm water doesn't carry a lot of material and chemicals that come off of automobiles and everything else, such as your asbestos and your motor oil and whatever else that's laying on the street. If you notice some of the towns sweep the streets more so that has an effect on the quality of the storm water. So the federal government and the EPA, it's the quality of the water, it isn't the quantity so much. Now you get back to Omaha and some of these places that have had their sewer lines and their storm water lines together, I think probably nearly 50 years ago I, like I said, I took the World-Herald when I was 19 years old and that's a long time back. And they had problems with their storm water and their surface water back then. I don't know if the problem has ever been addressed in Omaha in the downtown part. Outside in the newer part of Omaha, yes, they do have their storm water systems that clean that storm water up. So they have made some progress on that. I would like to see something brought forwards on your budget bill later on to address this matter rather than putting it onto this package. This is a package for focusing on the Republican River compact and on ground water irrigation and working for the NRDs. And it's a little bit different animal than to talk about storm water in some of our cities. [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR LOUDEN: I think that needs to be addressed. I certainly think there needs to be an interim study on how you're going to fund that in the cities. Are you going to set it up so that the cities can leverage some money and the state will furnish it up? You talk about the 40 percent match that the NRDs are getting now. Perhaps that has to be a way to go. But I think just to go out here and put \$2.5 million on this bill right out of the starting gate isn't the way to go and I certainly can't support DiAnna Schimek's amendment on this bill. I will support Senator Schimek's \$2.5 million somewhere along the line for the storm water system and I think this is probably one of our next projects, is to get something set up for storm water such as we have a bill here that we worked on for the Republican River Basin compact. Thank you, Mr. President. [LB701]

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SENATOR FRIEND: Thank you, Senator Louden. Senators wishing to speak: Wallman, Erdman, Kopplin, Avery, Schimek, and others. Senator Wallman, you're recognized. [LB701]

SENATOR WALLMAN: Good morning, Mr. President... [LB701]

SENATOR FRIEND: Good morning. [LB701]

SENATOR WALLMAN: ...members of the body, I support this amendment. And we talk about water, water everywhere, in the basin or wherever it's...Blue River, Nemaha Basin. I buy water in a bottle. That's much more, you know, makes a lot more money than a bushel of corn. And so if we would sell water, you know, maybe we're going the wrong way here. But eventually I think we might have to sell water or put appropriation or tax on it. And those that use it, pay it. And I don't know where this is all going. But I support this amendment. Storm water is a tremendous, tremendous problem for major cities. It's even...I dealt with this on the school board. The water was running on a farm and the farmer says, uh oh, you guys are dumping way too much water on my side of the fence. So I talked him into letting us put a catch basin on his land. So storm water is going to be a tremendous problem for major cities. And if we have to make sure, I think we have to make sure that we help cities out on this problem. So I would support this amendment and if Senator Schimek would want some more time, I'd yield time to her. [LB701]

SENATOR FRIEND: Senator Schimek, you are...Senator Wallman is yielding his time to you if you would like it. He has 3 minutes, 30 seconds. [LB701]

SENATOR SCHIMEK: Thank you, Mr. President and members. Thank you, Senator Wallman. I appreciate the time. I appreciate the discussion that we've had here. The purpose of offering this amendment was not only to restore the money, but to have this discussion because we just can't let it get off our agenda. I would like to perhaps withdraw this amendment and have it addressed in the budget. I would like to ask Senator Heidemann if he's a willing party to that. And then I might like to ask Senator Louden a question, too. So if I might, Mr. President. [LB701]

SENATOR FRIEND: Senator Schimek, would you repeat that? You would like Senator Heidemann to yield? [LB701]

SENATOR SCHIMEK: Correct. [LB701]

SENATOR FRIEND: Senator Heidemann, will you yield? [LB701]

SENATOR HEIDEMANN: Yes, I will. [LB701]

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SENATOR SCHIMEK: Thank you. Senator Heidemann, you and I have had some discussions off the mike and it is your feeling, I believe, that the Appropriations Committee would be willing to bring this back up to the old \$2.5 million level. [LB701]

SENATOR HEIDEMANN: I believe that's the feeling that I got right now. I will guarantee you that my support is there. I've talked to some of the other members and I believe there is support there to take it back to the \$2.5 million for the next two years. [LB701]

SENATOR SCHIMEK: Correct. And that's all I'm looking for right now. But beyond that, that is just scratching the surface. So I think what we do need to do is work with the Natural Resources Committee to try to find a more permanent solution. And yes, Senator Heidemann, if you need more of my time. [LB701]

SENATOR HEIDEMANN: I just wanted to say that I actually support you on this because I understand why you would bring this before us now and I appreciate that you're going to pull the amendment. But something does need to be done on storm water. There's no doubt the need is there. We need to address this as a Legislature or we will be in the same type of fix that we are right now in the Republican River Valley. So I support that effort. [LB701]

SENATOR SCHIMEK: And thank you. I'm appreciative of that. And Senator Louden, if I might ask you a question. [LB701]

SENATOR FRIEND: Senator Louden, will you yield to a question? [LB701]

SENATOR LOUDEN: Yes, I would. [LB701]

SENATOR SCHIMEK: Senator Louden, you and I have also had a discussion off the mike. And would you basically tell...for the record would you basically say what you told me a few minutes ago regarding looking at this issue further? [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR LOUDEN: Okay, thank you. My suggestion is, is that I'm willing to support the \$2.5 million now for on the budget bill or something like that. I agree to that. I think something has to be done about storm water. I certainly agree to that. As we've always been before, I stated that it isn't the cost or whether the state was going to put up money. The bill has been brought to the Natural Resources Committee. It's always been a matter of who pays. I would like to see something brought forward, something similar to what we're doing for the Republican River, that money would be set aside from the state, it could be leveraged by the cities to work on this and start some kind of a fund to do this. [LB701]

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SENATOR SCHIMEK: Thank you, I appreciate that. And with that, Mr. President, I would ask to withdraw the amendment. [LB701]

SENATOR FRIEND: So ordered. Thank you, Mr. Clerk. Thank you, Senator Schimek. Members of the Legislature, we are back to the second division of the committee amendments. We are back to discussion on the second division of the committee amendments. Senator Schimek, your light is...you are next to speak if you would like to address that subject matter. [LB701]

SENATOR SCHIMEK: Yes, thank you. Mr. President, I won't take much of my time. I just wanted to say thank you to both of the senators. I didn't have a chance to really say that before my time ran out. I do intend that this issue will be before this body again next year and I know that there are other people in here who are willing to work on it. So thank you for your discussion and for letting us once again highlight this issue. Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Schimek. Members of the Legislature, again we are back to the second division of AM963, the Natural Resources Committee amendments. Senator Engel, you are next and you are recognized. [LB701]

SENATOR ENGEL: Mr. President, members of the body, the storm water issue, of course, it came up from the federal government as we all know and certain cities have to comply. South Sioux City happens to be one of them. And what they've done in South Sioux City, and I think it might help everyone else, is in order to reduce the costs of this, and they got this idea from Minnesota, is setting up these rain gardens. And what these rain gardens are, basically they're ponds filled with rock and so forth. And actually, it's kind of an area for, you know, to have flowers, etcetera, etcetera, around it so it's kind of...it adds to the beauty of the city itself. And what it does, it diverts this storm water from, rather than going into the river, it diverts it to these ponds. And the cost, the cost is, it diverts about approximately, they figure it will divert about 60 percent of the storm water from going into the rivers. And this is much more, it's much more cheaper, it takes care of the problem. And they figure it will be about 70 percent less than any other method proposed as far as controlling this surface storm water. So this is something I think the other cities could be able to use around their city, you know, and next to the big parking lots and so forth. You know, and as far as these shopping malls, etcetera, there could be one set up right next to that for their runoff. And they could have curb cuts, etcetera, etcetera. So there's all kinds of ways that you can cut down on the costs and be able to comply with this situation because right now it affects certain cities--Omaha, Lincoln, I think Grand Island, Fremont, and South Sioux City, and other cities--eventually it will probably affect everyone. So I think this something we should really be looking into before we make any final decisions of how much money we're going to try to put up for this. And they are working on this already in South Sioux because they know they're going to have to do something. So they're not waiting for the

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hammer to come down. They're starting out now. So I do believe this is something that the rest of you might want to consider and I can certainly get you more information on that. With that, I turn the rest of my time back to the Chair. Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Engel. Senators wishing to speak: Fischer, Preister, Synowiecki, and Erdman. Senator Fischer. Is Senator Fischer available to speak? We will...Senator Fischer, are you available to speak? We will bypass Senator Fischer for the moment. Next, Senator Preister. Senator Preister, you are recognized. Senator Fischer, you will be next if that is sufficient. Senator Preister, you are recognized. [LB701]

SENATOR PREISTER: Thank you, Honorable President. Thank you, Senator Fischer, friends all. I originally thought I was going to be one of the first people to speak on this because I had an amendment up and so waited for doing that. Then the Speaker decided to divide the question. So I am hardly one of the first speakers. I recall a provision in the bill that talked about transference or the ability to transfer water into the Republican River. And so perhaps if we could just build the aqueduct from Omaha and Lincoln and put it down into the Republican River--after we clean the water, of course, of more than street sweepings but of oil, petroleum products like the antifreeze and transmission fluids so we don't put those in our water--then the Republican River can have lots of water to send down to Kansas and we wouldn't have the problem in Omaha. But aside from my weak attempt at humor, that's not going to happen and we do need to address both problems. I have supported LB701 but I have appreciated the discussion and some of the side issues regarding that. One in particular, when Senator Kopplin addressed us early on in the discussion yesterday, he essentially lamented the fact that we are dealing with an issue because of an emergency or semiemergency situation and that in the past we've dealt with those situations by putting Band-Aids on them and he likened this to more than a Band-Aid. But still, it was not addressing our whole state water issue. And we do need comprehensive plans for dealing with water on a statewide basis and doing it not when we're in a situation where we have to act. The way of acting in an emergency is not always the best way but it usually is the way that we do it. I appreciated Senator Kopplin's comments and his efforts on the Natural Resources Committee to try to do more with recharge, with managing the water so that it is, as Senator Carlson said, sustainable. Sustainability I agree with completely and we need to create and craft state water policy where we're recharging those aquifers. We've got parts of our aquifer where it has been reduced over 50 feet. And that takes a long time to recharge. Our underground aquifer is owned by the state, is there as a blessing to the people of the state. But it is our responsibility to manage it wisely for the future citizens of Nebraska. We use it, yes, but let's use it all wisely. I hope we can get to crafting good state policy before the fact rather than just crisis management as we have a tendency to do. But I certainly appreciate Senator Kopplin raising that issue and bringing it to our attention. I appreciate Senator Schimek was also looking at trying to address the runoff problems in Omaha. I wasn't going to press my light until we finally

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got to my amendment. But on this issue, I certainly think she raised very valid issues. And if you look at the percentage of match when just in Omaha alone we're looking at probably, easily a billion dollars and up to \$3 billion, \$2.5 million is a small percentage. I would never say that's a drop in the bucket. It's a sizable amount of money. It is a good contribution. But in comparison to what the property owners, the taxpayers in Omaha, many of whom live in my district directly who are feeling the effects... [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR PREISTER: ...of the storm water problems, we are certainly going to pay a big share of that, a very big share on our property taxes. That is an issue that is complex, like all of these water issues, and we need to have the best minds that we have, including our natural resources districts and our natural resources people as well as the legislative body, involved in that process. It is dynamic. Water is the lifeblood of the state. It is important to all of us and we do need to be "foresightful" rather than just crisis management. We also...and as I support doing what we can to help in this financial situation with Kansas, because of the compact that the state did sign and obligated all of us to address that problem. But all of these issues we need to address and a comprehensive plan where we do it statewide... [LB701]

SENATOR FRIEND: Time. [LB701]

SENATOR PREISTER: ...is essential to that. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Preister. Senator Fischer, the Chair thanks you for your indulgence and you are recognized. [LB701]

SENATOR FISCHER: Mr. President, I thank you for your indulgence also. Members of the body, as I was saying the last time I spoke, we received a handout from the Chair of the Appropriations Committee yesterday. And on that handout, you will see that the corn producers across the state--not just in the basin, but across the state--whether they irrigate or they do not irrigate, are going to be contributing. With the amendment that we adopted earlier this morning, the figure of \$44 million is now higher because we went from a .5 to a .6. That money goes into the Water Resources Cash Fund. As I also pointed out, this is a state problem. From the State General Fund, there will be contributions of \$2.7 million a year from 2007 to 2019, for a total of \$32 million into that fund. That fund does not just apply to the Republican River Basin. That fund can be used elsewhere in this state with water problems. Also the local people in the Republican River Basin in those three NRD districts have stepped up to the plate. They have agreed to contribute to this, in finding a solution to what we're facing as a state problem because the state joined this compact. Those property taxpayers are facing levy increases, they're facing a fee, they're facing possible bonding. They have stepped up to the plate to work on this solution for a statewide problem. All segments are

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working together to find a solution to what we are facing in the Republican River Basin and LB701 is providing us with the mechanism, with the tool to reach a solution where everybody is contributing. The state and the local NRD districts and the taxpayers within those districts, corn producers in this state, they need to be recognized for the contributions that they're making in helping to solve this. This is a state problem. We must meet our obligations that are due because of this compact. As I said earlier, I am encouraged by the tenor of the debate. I appreciate that you, my colleagues, recognize that this is a state problem. It's a state concern. I've had the opportunity to visit with many Omaha senators yesterday and today as I'm walking around the floor on this bill. And I've listened to their concerns on the storm water runoff issues and the requirements that they face under EPA in order for Omaha to meet the standards concerning the sewage that is going into the Missouri River. Senator White said that that could be \$1 billion to \$2 billion in order to meet those requirements on what they're going to have to do with their infrastructure in Omaha. That's a situation that's also a state concern. In order to meet these mandated requirements and meet our obligations, we in this Chamber need to continue... [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR FISCHER: ...to realize that we have to face this challenge and we have to face it today and we have to work towards common ground. This is not an urban-rural fight. As I said, I don't have any part of my district in the Republican River Basin. But I have a responsibility as a state senator to address that situation. We are one state. It doesn't matter what district we represent. What we need to do is work together. What we need to do is recognize the problems that we have in our districts. What we need to do is recognize the diversity of this state. And what we need to do is help each other and start working towards solutions that are going to work and that are going to be good for all Nebraskans. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Fischer. Senator Synowiecki, you're next and you're recognized. [LB701]

SENATOR SYNOWIECKI: Thank you, Senator Friend, members of the Legislature. I, first of all, didn't get up during Senator Schimek's amendment, appreciate her bringing that amendment forward and appreciate the discussion. I agree with Senator Fischer that we need to work together. The storm water problem and the cities that are impacted under the federal guidelines and regulations are enormous and it's going to be a long...we're going to have to have a long-term solution to that. I'm appreciative of the Chairman of the Appropriations Committee with his commitment made on the record and I'll endorse that commitment come the executive session with the Appropriations Committee. And speaking of the distinguished Chair of the Appropriations Committee, would Senator Heidemann yield to a question? [LB701]

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SENATOR FRIEND: Senator Heidemann, will you yield to a question from Senator Synowiecki? [LB701]

SENATOR HEIDEMANN: Yes. [LB701]

SENATOR SYNOWIECKI: Senator Heidemann, Senator Fischer spoke, I think, a little bit about appropriate controls and accountability as we move forward in addressing some of these problems. And one of the many documents I've received relative to this bill has been provided to me by an organization called WaterClaim. It's supposedly a nonprofit organization and they are involved on this issue on some level. I don't pretend to know why. And what caught my attention as I was reading this document was the cost of surface water purchases. And me and you had a little discussion about this off the mike. But what caught my eye on this is the rate for surface water irrigation purchases, which has been, according to this document, has been promised to the Frenchman-Cambridge Irrigation District in 2007. This document reports that the average CREP payment, which is a conservation program, the average CREP payment is \$125 an acre. In 2006, the average cash rental rate in that basin was \$130 per acre. And in 2007, the average cash rental rate in that particular basin within that irrigation district, as I understand it, according to this document, was \$140. And the rate paid to surface irrigators with AM938, according to this document again, is \$385 an acre. Is there any mechanism that we have available to us on this end, given that I think a majority of this money is General Fund money, to have some sort of control...if these numbers are true and if these numbers are accurate, what kind of mechanisms perhaps do we have in the bill currently that could not allow what is...what seems to me as a disproportionate payment for these irrigation rights within that basin? And if you can share any insights into how they arrive at this rate per acre and why it's not reflective of the cash rental right and why does it appear to be a disproportionate rate and is there any mechanisms or controls in the current bill that, if this sort of thing can be controlled, audited, and accountable towards? [LB701]

SENATOR HEIDEMANN: First of all, I want to point out that the \$7 million in the Frenchman-Cambridge, that money is actually local money. That is not General Fund money. The local NRDs have bought that from the irrigation districts and it will be up to the irrigation districts... [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR HEIDEMANN: ...how much money they are going to pay to those farmers. We have no say in that. How they come up with the figures, one way that I've been told, you can maybe say that the difference between dryland farming and irrigated acres could possibly be 100 bushels an acre. Corn right now is probably approximately \$3.50 an acre, \$3.50 an acre times 100 bushels an acre difference would be \$350. [LB701]

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SENATOR SYNOWIECKI: Do you know how these rates, Senator Heidemann, because I don't know, how they compare to the Bostwick Irrigation District in terms of amount paid per acre? Do we have that...because I know we appropriated \$2.7 million in 2006 and we're appropriating additional direct funding to the Bostwick Irrigation District. Do we have any data or outcomes what was paid... [LB701]

SENATOR FRIEND: Time. [LB701]

SENATOR SYNOWIECKI: Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Synowiecki and Senator Heidemann. Senator Erdman, you are next and you are recognized. [LB701]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. I was wondering if Senator Heidemann would yield to some questions that are actually on this division. [LB701]

SENATOR FRIEND: Senator Heidemann, will you yield to a question? [LB701]

SENATOR HEIDEMANN: I will try, yes. [LB701]

SENATOR ERDMAN: Senator Heidemann, in fairness, I think I may have two questions, so that you're not yielding to just one. I have the original AM938 in front of me. And I don't know which section this is, I think it might be Section 23. Section 23 (5)(b), my draft here, which is the original amendment, starts on line 21 of page 41. But what it deals with is the recapture provision or the repayment provision. The question that I would have--and as I understand, this came out of the Appropriations Committee and so I hope that this is directed to you--how do we envision that working? And the specific is, if the Legislature finds that the district failed to implement or enforce its controls, rules, and regulations, they're subject to a repayment provision. Has there been any discussion that you're aware of that outlines how that is to be accomplished where we as a legislative body are not an enforcement, don't have an enforcement mechanism directly? [LB701]

SENATOR HEIDEMANN: That language actually, even though the majority of this came out of LB322 and came out of Appropriations, that language was not from the Appropriations Committee and was inserted by the Natural Resources Committee. [LB701 LB322]

SENATOR ERDMAN: Okay. Well, then maybe you can help me. I'll visit with Senator Loudon. Maybe you can help me then, I believe it's Section 30, it deals with the intent of the Legislature, that the Department of Natural Resources may undertake measures in fiscal year '06-07 to further facilitate compliance with interstate compact or decree

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stipulations. Either this language is necessary to follow appropriations or this is a grant of authority that I'm not clear what we're doing. I would err probably on the side that it's a grant that ties to some appropriations in the A bill. But I want to make sure it's clear what we mean by, it's the intent of the Legislature that the department may undertake measures in fiscal year '06-07 to further facilitate compliance with interstate compact or decree stipulations. [LB701]

SENATOR HEIDEMANN: It gives us the authority to buy Bostwick this year, to appropriate funds, and it wouldn't be in the next biennium budget what we're dealing with now but it's a deficit that actually would be spent in the year 2007. [LB701]

SENATOR ERDMAN: Okay. So essentially what we're doing is we're authorizing something in the current fiscal year to occur that wouldn't be appropriate in, say, the budget or in other areas. And that's why this language is here, to follow with the appropriations in LB701A. [LB701 LB701A]

SENATOR HEIDEMANN: It would allow us to appropriate money, yes, to buy Bostwick. [LB701]

SENATOR ERDMAN: Okay. And did I hear you correctly, Senator Heidemann, that Senator Louden would be more appropriate to ask that original question? [LB701]

SENATOR HEIDEMANN: Yes, that's not Appropriations language, that was put in on the other part, what you was asking me. [LB701]

SENATOR ERDMAN: Okay, thank you. Mr. President, I would ask if Senator Louden would yield to a question. [LB701]

SENATOR FRIEND: Senator Louden, will you yield to a question from Senator Erdman? [LB701]

SENATOR LOUDEN: Yes, I would. [LB701]

SENATOR ERDMAN: Senator Louden, the language that I asked Senator Heidemann about deals with the Legislature enforcing the repayment provisions under the Water Resources Cash Fund. Can you kind of discuss the thought of how that would be executed as the Legislature has the authority or is there any discussion about a possible alternative entity for the enforcement provision? [LB701]

SENATOR LOUDEN: Well, as some of the language above that part there, they have to file an explanation of their planned activity and assure that they're complying with the interstate compact and doing what they're supposed to do by the... [LB701]

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SENATOR FRIEND: One minute. [LB701]

SENATOR LOUDEN: ...required statutes in the section of law. That was mostly put in there then, if they didn't comply then the Legislature could go ahead and I guess ask for the money back or something like that or ask for part of it back. And that was the thinking on that, that they have to comply or else we probably would ask for the money back. [LB701]

SENATOR ERDMAN: And I understand that. My question isn't understanding (5)(a) and then what needs to be included in that report, but simply the practical application of it. What mechanism would we as a Legislature have? Obviously we have the budget, we could defund it. But to be able to go back and try to recover, what vehicle would we use to accomplish that and is there a more appropriate vehicle to accomplish that, through the department or somewhere else, that may be more appropriate? And maybe between now and Select we can visit more. But I just wanted to make sure that we've thought through how we actually accomplish it. And I think the time will run out, but we can visit off the mike. [LB701]

SENATOR FRIEND: Time. [LB701]

SENATOR ERDMAN: Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Erdman and Senator Louden. Senator Heidemann, there are no other senators wishing to speak. Since this is your division of the Natural Resources Committee amendments, you are recognized to close. [LB701]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members. I'll touch base just a little bit about AM963 and then maybe a little bit on LB701 as a whole. I appreciate the discussion. We have a lot of people on the floor today listening to this, on my part of the amendment. And also we touched base on storm water, which I believe that is something that we're going to have to address down the road and I believe it's going to cost some money. And I think we're going to have to address that, too. This isn't a cheap proposal for the state. This isn't a cheap proposal for the people in the Republican River Valley. This isn't a cheap proposal for farmers across the state of Nebraska that grow corn and have nothing to do with the Republican River Valley. But I'm asking everybody across the state to come up to the plate and support this. Because we heard on the floor yesterday, it's not an option not to do anything. We have to, as a state, step up to the plate and help with this problem, help fund this problem, and move forward and address this problem. And hopefully down the road, as we can figure out what's happening in the Republican River Valley, come to a more sustainable use with ground water. And then we won't be here, we'll be addressing other issues. But this is, the money coming from various sources right now is a step down the right direction, down the right road, and I ask you support AM963 and also LB701. Thank you. [LB701]

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SENATOR FRIEND: Members of the Legislature, you have heard the closing on the second division of the Natural Resources Committee amendments to LB701. The question is, shall the amendment to the committee amendments be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB701]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of the second component of the committee amendments. [LB701]

SENATOR FRIEND: The second component of the committee amendments is adopted. Mr. Clerk. [LB701]

CLERK: Mr. President, the third component of the committee amendments as offered by the Natural Resources Committee is AM964. (Legislative Journal page 1150.) [LB701]

SENATOR FRIEND: Senator Louden, as Chairman of the Natural Resources Committee, you are recognized to open on the third division of the Natural Resources Committee amendments. [LB701]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. This, I think, is called AM938 to LB701. This portion of the amendment deals with LB295, LB314, and three additional sections. They give additional authority to the natural resources district and the Department of Natural Resources. These sections are 14, 16 through 19, and Section 22 in the major bill. The new sections are 15 and 20 and 21. LB295, as amended with LB314, does the following. LB295 clarifies statutory changes introduced during the last session, specifically LB508 and LB1226. And LB314 closes a loophole in the law regarding irrigation pumping. Because LB295 was the cleanup bill for the Department of Natural Resources and had floor debate on March 1 and was advanced at that time, I will not spend time on that portion of this amendment. LB314 was amended into LB295 at that time. LB314 expands the definition of water well to include those excavations where a pump or other device is installed for the purpose of withdrawing water for irrigation. Some individuals have installed pumps in existing excavations which reach the aquifer, such as sand pits, and use the water to irrigate. Even though the water in these excavations is ground water, these water use systems do not have to be registered as wells under the current law. Since they are not required to register as wells, they do not have to honor spacing requirements or restrictions on new wells. They can evade well metering imposed by a natural resource district, Ground water Management Act restrictions, and generally impair the effectiveness of integrated management plans for water use. Now for the new sections, the first new section is 15 of the amendment. This section would allow the Department of Natural Resources to impose an immediate temporary 180-day stay on the issuance of surface water

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appropriations in basins where the natural resources district has imposed a similar stay on the construction of new wells and/or on the addition of irrigated acres without a prior hearing. However, a hearing must be held within a 180-day period and a determination made within 45 days after the hearing as to whether to continue the stay, make the stay permanent, or to impose conditions on the construction of new wells, the addition of irrigated acres or additional surface water appropriations, or to simply let the stay expire without any additional restrictions. The next new section is Section 20. This section allows a natural resources district to impose a 180-day temporary stay on new well construction, as well as the addition of irrigated acres. The last new section is Section 21. This section would require the Department of Natural Resources to consult with a natural resource district in estimating the amount of water that would be available from stream flow for the beneficial uses each year. The determination must be made by January 1 of each year. In doing this, we hope to obtain better information for planning purposes as we go forwards in managing water supply. This is the end of this division and I thank you for your attention. Thank you, Mr. President. [LB701 LB295 LB314]

SENATOR FRIEND: Thank you, Senator Louden. Members of the Legislature, you've heard the opening on the third division of the Natural Resources Committee amendments. Senator Kopplin, you are recognized to speak. [LB701]

SENATOR KOPPLIN: Thank you, Mr. President and colleagues. This section of the bill, I like. (Laughter) Temporary stays are important. Irrigation in Nebraska doesn't come without a price. And it's a huge price in the long range if we don't take precautions soon. The number of irrigated acres in Nebraska grew from 3,100,000 in 1966 to 8,100,000 in 2002. Since 1993, 14,164 new wells have been dug. The water tables in Nebraska are taking a big hit. In the last six years, parts of Nebraska are experiencing ground water declines of more than 30 feet. Southwest Nebraska, we heard this morning, 50 feet down in parts of the Republican Basin. That will never recover. The largest ground water declines are in portions of Clay, York, Butler, Dundee Counties where, in some cases, declines exceed 30 feet. Counties with declines of more than 15 feet include Chase, Lincoln, Perkins, Buffalo, Dawson, Hall, Hamilton, Merrick, Polk, Seward, York, Platte, and Colfax County. Perhaps this bill we're discussing could be a model for the state, perhaps not. But we need to consider reducing the pace of new well diggings until we're sure we can be in control and not face future problems like we have in southwest Nebraska. Ground water extraction is exceeding recharge. Even when this drought ends, recharge will take years as recharge must meet both declines from the drought, declines from irrigation now, and declines from irrigation in the future. These stays are necessary and needed. I also wish to speak briefly on the control of surface waters in the rivers. I've had some discussions with Senator Fischer about her beautiful and beloved Sandhills this summer where their water isn't an issue. The water is there and it recharges quickly. So why would a guy from eastern Nebraska be concerned about the beautiful Sandhills? Because the Loup River starts there. The Loup River feeds my beautiful and beloved Platte River. I've probably been on the banks of more rivers in this

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state than any of you. I love them. When I spoke about surface runoff water, I wasn't complaining about what the EPA was going to do to us, making us clean up. Why shouldn't we clean up our mess? Why shouldn't we keep our rivers clean? This portion of the bill grants them powers that we haven't used before. They are needed. I would make the stays longer. But it would take a while to get there. This is a small step but it's a giant important step in water policy. Thank you, Mr. Speaker. [LB701]

SENATOR FRIEND: Thank you, Senator Kopplin. Senator Louden, there are no other senators wishing to speak. You are recognized to close on the third division of AM938. [LB701]

SENATOR LOUDEN: Okay, thank you, Mr. President and members. As I've said before, some of this has been discussed before because LB295 has been on Select File and it was the cleanup bill for it, LB314 was mostly the sand pit bill part, and then we had some new provisions in there, as Senator Kopplin said, the part he liked with the temporary stays on issuance of surface water appropriations and well drilling and addition of irrigated acres. With that, I would certainly ask you to advance this portion of the amendment. This is something that is pretty much cut and dried in here. This is legislation that needed to happen and it just went along with the package. And I'm sure there shouldn't be any, very little if any concern over what we have in there. We've tried to bring this forward and certainly ask you to vote yes on this amendment. Thank you, Mr. President. [LB701 LB295 LB314]

SENATOR FRIEND: Thank you, Senator Louden. Members of the Legislature, you have heard the closing on the third division to the Natural Resources Committee amendment. The question is, shall the amendment to the committee amendment to LB701 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB701]

CLERK: 35 ayes, 0 nays, Mr. President, on adoption of the third component of the committee amendments. [LB701]

SENATOR FRIEND: The amendments are adopted. Speaker Flood, it was my understanding you wish to be recognized. [LB701]

SPEAKER FLOOD: Thank you, Mr. President, members. Thank you to everyone in here for your hard work on LB701. We are going to adjourn here in just a moment and return at 1:30. A couple of reminders: consent calendar, letters from committee chairs are due today. So if you are looking to get a bill on a consent calendar in the future and you haven't talked to the committee chair, please do that today so that we can receive those by adjournment, which should be later this afternoon. The other thing I want to mention, and I want to thank Senator Schimek for reminding me of this, but interim studies are always an issue toward the end of the session. If you are contemplating putting together

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or requesting or filing an interim study resolution and need help doing that, please see me so that we can talk about that process. But you should start working on those ideas now so that it's not a rush at the end of the session. If my memory serves me correct, interim studies are introduced between the eightieth and the ninetieth day. And those studies, of course, are filed like you would any resolution with the Clerk. That's all I have. Thank you very much. []

SENATOR FRIEND: Thank you, Speaker Flood. Mr. Clerk, you have items for the record? [LB701]

CLERK: I have one, Mr. President. Your Committee on Retirement Systems, chaired by Senator Synowiecki, reports LB508 to General File with amendments attached. And, Mr. President, I have a priority motion. Senator Fulton would move to recess until 1:30 p.m. (Legislative Journal pages 1150-1152.) [LB508]

SENATOR FRIEND: Members of the Legislature, you have heard the motion to recess until 1:30 p.m. All those in favor please signify by saying aye. All those opposed say nay. The ayes do have it. We are adjourned. []

RECESS []

SENATOR FRIEND PRESIDING []

SENATOR FRIEND: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Please record your presence. Members of the Legislature, the afternoon session is about to reconvene. Please report to the Chamber and check in. Members, the afternoon session is about to reconvene, please check in. Members, once again, please check in. The afternoon session is about to reconvene. (Visitors introduced.) Record please, Mr. Clerk. []

CLERK: I have a quorum present, Mr. President. []

SENATOR FRIEND: Mr. Clerk, first item, General File. []

CLERK: Mr. President, LB701, carryover discussion from this morning. I now have pending, Mr. President, the fourth and final component of the committee amendments, AM965. (Legislative Journal pages 1153-1156.) [LB701]

SENATOR FRIEND: Senator Carlson, it is my understanding that you will open on the fourth division of the Natural Resources Committee amendments, AM938 to AM965. You are recognized to open. [LB701]

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SENATOR CARLSON: Mr. President, members of the Legislature, I am speaking on Sections 1 through 4 of AM965 to LB701. A hearing for vegetation control was held on February 28, 2007. I introduced the language as LB458, to which you may refer. LB458 was also my priority bill. Fourteen parties testified in favor of the bill, including weed control associations, Nebraska Cattlemen, NRDs, South Platte United Chamber of Commerce, Farm Bureau, Nebraska Water Resources Association, the State Irrigation Association, Nebraska Game and Parks Commission, Farmers Union, Bostwick Irrigation District, and the Nebraska Chapter of the Sierra Club. Director Ann Bleed of the Department of Natural Resources testified in the neutral capacity and there were no oppositions to LB458. This portion, AM965 to LB701, deals with the control of native and invasive vegetation in the streambeds of the rivers in basins that have been declared fully or overappropriated. And in layman's terms, if a basin is fully appropriated, it means that the combined supply of ground and surface water is equal to the amount being used by various entities in that basin. If a basin is overappropriated, it means that more water is being used in that basin than is being supplied through surface and ground water sources. I believe that God created the rivers. He didn't mean for vegetation to take over the streambed. We did that through dams for flood control. Senator Hansen referred to that yesterday in his testimony. Now we should fix it. I believe there are at least six good reasons to advance this legislation. Number one, to help repair 60 or more years of damage to a valuable treasure of our state; the rivers. Number two, to help allow our rivers to better handle the flow from future floods; not if, but when they occur. Number three, to help restore river and streambeds to be more favorable to fish and wildlife for improved fishing and hunting. Number four, to restore a more favorable situation for other forms of recreation, such as rafting, canoeing, and camping. Number five, for the consideration of endangered species. If there were no more reasons, the first five, in my opinion, are enough alone to justify the effort to reduce and remove vegetation in and near the rivers. But there is a sixth benefit in doing this, and that's to help save significant amounts of water now used by vegetation in the streambed and by invasive vegetation in the riparian areas. This is a benefit for all Nebraskans. For those of you who that haven't done this, I would invite you to pick up the March and April issues of the NEBRASKAland magazine and read the two excellent articles written by Eric Fowler, which deal with the water challenges for Nebraska. Our rivers are a state treasure. Our rivers are a liquid highway. Many places along the river and parallel to it, we have a state highway and I'd like to refer to that as an example. If we have a state highway and we have the road bed where we drive and there's a problem in that road bed, whether it's vegetation, whether it's needed repair, whether it's some kind of an obstruction, the state is responsible to fix that problem. That's the way we want it, that's the way it should be. And even when we leave the road bed and go down into the ditches and up to the edges of the right-of-way, it's still area that's controlled by the state and the state is responsible for. And you may recall earlier this session, we passed LB43 which requires people to apply for a permit to harvest from the ditches, from the road right-of-way. When we have a problem with our rivers, we want that problem fixed, we want it fixed the correct way. I believe that we as

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Nebraskans all take ownership in our rivers. I grew up a mile and a half south of the Platte River near Highway 183 in south-central Nebraska. I remember as a boy that we used to cross the Platte River and I would look east and I would look west and all I would see is sand and water. I'd love to see that river return to that position. Forty miles south of our farm was the Republican River. That also used to look the same way. I take ownership in the Platte River; I'm a Nebraskan. I take ownership in the Republican River; I'm a Nebraskan. I have visited the Niobrara River, I have visited the Loup Rivers. They're treasures. I take ownership in those rivers because I'm a Nebraskan. LB458, which now is a part of AM965 to LB701, creates a Riparian Vegetation Management Task Force in Section 1. This task force sunsets on June 30, 2009. The task force will be made up of 14 or more citizens from various groups appointed by the Governor. These include representation from the Department of Agriculture, DEQ, DNR, Governor's Office, State Forester, Game and Parks, University of Nebraska, NRDs, Nebraska Weed Control Association, riparian land owners from each congressional district, and any member of this Legislature that would like to be a part of this task force. The task force will develop and prioritize vegetation management goals and objectives and it will develop plans to achieve such goals. The Governor has agreed to appoint the task force within 45 days after the Legislature approves the bill. The task force shall convene within 30 days after these appointments are made. The task force will carry out plans to control and remove vegetation to return the rivers to what they used to be. The task force will determine priorities for action and I believe the Republican River will be a top priority because of the compact with Kansas. We need action taken in 2007 and I believe that will happen. The task force sunsets on June 30, 2009, and the Legislature would have to authorize the continuance of the task force beyond that time. The bill contains the emergency clause to allow action to be taken quickly. Estimates that I've seen indicate that there are 50,000 acres or more of vegetation in and near the Republican River. According to DNR tables, removing vegetation would have a potential significant effect. Estimates from these tables would be if 10 percent of the vegetation, or 5,000 acres were cleared, it could save 10,000 acre-feet of water every year. If 20 percent, or 10,000 acres were cleared, it could save 21,000 acre-feet or more each year. My estimate is that the streambed of the Republican River contains 7,500 to 10,000 acres. Consumptive use of trees and invasive vegetation has significant effect on water use. I'd call your attention to the square foot area in our Chamber floor, and I've stepped this off. [LB701 LB458 LB43]

SENATOR FRIEND: One minute. [LB701]

SENATOR CARLSON: The area of the Chamber floor is about one-ninth of an acre. Now invasive vegetation, such as saltcedar, Russian-olive, phragmites, some others, can take up to 200 gallons a day for one plant. If this is one-ninth of an acre, then nine of these plants on an acre of land could take an acre-foot of water over a 180-day period. That's significant. And if you look around in this room, how many of those plants could be just in this area? If there were four, we're talking about four acre-feet of water,

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five or six, we're talking about a significant amount of water, and that water could be saved. We have herbicides available that are accepted as friendly to fish and wildlife... [LB701]

SENATOR FRIEND: Senator Carlson, you are on your five minutes now. [LB701]

SENATOR CARLSON: Thank you. We want agencies such as the Department of Agriculture, local NRDs, the DNR, the Nebraska Weed Control Association, Game and Parks, the Corps of Engineers, public power and irrigation districts, and other credible groups to be involved in the management and removal of the vegetation. Vegetation control is a worthwhile goal. It's good public policy. It's an important part of the solution to recreation and water challenges in Nebraska. I believe when we know that something to do is good and don't do it, it becomes evil. When the house is on fire, we don't stand around and debate about whether foam is better or water is better, we act. And that's what I'm asking the Legislature to do now on AM965, LB701. Thank you for listening to me. I look forward to our discussion. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Carlson. Members of the Legislature, you've heard the opening and the first series of comments on the fourth division to the Natural Resources Committee amendments. We now move to the floor for discussion. Senators wishing to speak: Senator Christensen, Erdman, Schimek, Janssen, Hansen, and Avery. Senator Christensen, you are recognized. [LB701]

SENATOR CHRISTENSEN: Thank you, Mr. President. I'd like to yield my time to Senator Carlson. [LB701]

SENATOR FRIEND: Senator Carlson, you have 4 minutes and 50 seconds. [LB701]

SENATOR CARLSON: Okay, and I appreciate Senator Christensen yielding my time. I have expressed in this opening what I wish to share and so I'll yield the balance of time. [LB701]

SENATOR FRIEND: Senator Christensen, I'm sorry, who did you yield to? Senator Carlson, thank you, I apologize. (Laughter) Mr. Clerk, item on the desk. [LB701]

ASSISTANT CLERK: Mr. President, Senator Preister would offer AM966 to the fourth component of the committee amendments. (Legislative Journal page 1137.) [LB701]

SENATOR FRIEND: Senator Preister, you are recognized to open on AM966 to the fourth division of the committee amendments. [LB701]

SENATOR PREISTER: Thank you, Honorable President. This amendment is one that I had given in parts and there were two other parts to it. And I wanted to thank the

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Natural Resources Committee and the members who have been working on this in adopting two of the other ones already. And Senator Louden did mention that in his opening yesterday, those components are already in the committee amendment and are a part of this component of it. This component deals with the process that we would go through in whether...not whether, but how we might apply any hazardous chemicals to the vegetative strips, areas. Essentially, I'm not opposed to using chemicals in the area if they can be used safely and if they're the best management tool to use on that particular species or under those particular circumstances. My goal is to say let's look at all best management practices, let's see what the most effective tool is. Certainly cost is a variable. But if we're only going by cost, then we need to look at the long-term cost of any contamination, any damage to the water system, any damage to the species that could occur as a result of the use of those chemicals. In effect, let's have a complete comparison, apples to apples if you would, fish to fish or vegetation to vegetation, so having accurate cost assessments if we're doing cost assessments. The actual language is on the laptop and it says that these vegetative plans would, such plans and policies shall include a prohibition on the use chemicals, and here's the key word, until all other feasible, and again key words, best management practices for vegetation management have been considered and exhausted or ruled out. So although on a cursory reading you might think that this is a prohibition on using chemicals, that is not the case. It's not in the language directly if you read all of the language, and it is not my intent. But I think we need to make sure that we raise the issue of using best management practices for the wisdom and the long-term best practices on the river. What I'm hoping to avoid is going along the river and using an airplane to randomly spray the river and the banks of the river. Certainly that will take care of vegetation but is that the most effective and best way? It might be most effective in killing all of the vegetation, but is that fair to some landowners who might have concerns about what happens on their private property? That's one of the issues. Another issue is, we could be killing some of the vegetation that we have just provided state tax dollars to incent with the vegetative buffer strips that this Legislature has approved. So we're establishing buffer strips in order to keep some of the sediment out of the streams and also to keep some of the runoff from the agricultural production and some of the chemicals used on those production out of the streams. So as we're creating buffer strips and paying tax dollars to incent the creation of those, we shouldn't at the same time be destroying them. My amendment essentially says let's assess the best management practices. It is a further reminder to the task force in how they go about doing this and it further clarifies that when they provide the grant monies to do this, that they take into account these best management practices. Essentially chemicals can be used in some of the plants. That may be the best practice. But prior to doing that, let's be sure that it is the best, most cost-effective, most environmentally friendly way to do it. That's the purpose of the amendment. That's the actual language. And it is the purposes for which I hope to accomplish it. In visiting with folks, I know that there was some concern that, at least initially they thought I was totally opposed to using any chemicals whatsoever in the river bed or on its banks. I would hope that it would be to a

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minimum. And although there are claims that some chemicals may be not damaging or harmful to water or to wildlife, those same claims, or similar, were made to DDT, which we saw the effects of on, including our own bald eagle and other wildlife. We find out the effects of these hazardous materials sometimes after the fact and after a lot of damage is done and after they're already in the environment. I'm saying, before we do that, we want to be sure that this is the best approach. And I think it's helpful and useful to the task force to keep that in mind. This amendment would allow for that to happen. Now procedurally, Mr. President, I have spoken with the Speaker, Senator Flood, I've spoken with Senator Langemeier who's been very helpful in this area, and I've also spoken with Senator Christensen. And the Speaker has assured me that there are a number of issues that have been raised on the floor that will be a part of an amendment that will be drafted between Select and the passage on General File as we move this bill along. And Senator Christensen, I believe, is the keeper of that list. And if Senator Christensen would answer a couple of questions, Mr. President, I would like to do that. [LB701]

SENATOR FRIEND: Senator "Chriffensfin," will you...(Laugh) [LB701]

SENATOR CHRISTENSEN: (Laugh) Yes. [LB701]

SENATOR FRIEND: ...will you yield to a few questions? [LB701]

SENATOR CHRISTENSEN: Yes. [LB701]

SENATOR PREISTER: Thank you, Senator Christensen. What I wanted to check with you on is my assessment of you keeping a list of some of the concerns that have been raised on the various parts of the discussion and components of the committee amendment, I stated. Is that accurate? [LB701]

SENATOR CHRISTENSEN: Yes. [LB701]

SENATOR PREISTER: And Senator, do you have that list handy? And if you do, could you read to us what's on that list currently that we will be looking at to potentially amend as one large amendment on Select File? [LB701]

SENATOR CHRISTENSEN: Yes, I would. What's been brought to us by senators has been your amendment, that we're going to look at all the operating costs and different ways that we could manage vegetation within the river basin before we just choose one. And another one has been that the state look at buying land that has irrigated right on it and then removing the irrigated right and reselling the land back if that is a better approach than just trying to buy the purchase...or the water right off of the land. And then another one was discussed, was if we need to have a penalty set in here so if the entities don't use these bonding authority and these tools to bring us into compliance,

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that they know there are penalties for not getting there. [LB701]

SENATOR PREISTER: Okay. And at this point, that's what's on the list. [LB701]

SENATOR CHRISTENSEN: Correct. [LB701]

SENATOR PREISTER: And is that list complete or can things still be brought to you and added to that list? [LB701]

SENATOR CHRISTENSEN: Things could still be brought to us and added to the list and we'd bring them up and discuss them, yes. [LB701]

SENATOR PREISTER: Okay. Thank you, Senator Christensen. And I appreciate the cooperation that has been a big part of all of these discussions and people working on this. I have not seen the polarization on this bill between any various groups. I think most everybody has said we need to do something, it is a state issue... [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR PREISTER: ...we do want to move forward, we want to move forward together. We just have issues of concern that we would like to see as that happens. And I certainly am a team player and willing to do that. I am willing to take Senator Christensen's word, the Speaker's word, and Senator Langemeier's word. And I will withdraw this amendment and work with them to incorporate it into that other amendment. I would also mention if anyone feels that something that was of concern to them was not on the list that Senator Christensen just read, you might want to contact him now. And it was partially for that purpose that I appreciated him giving that list. With that, Mr. President and Mr. Clerk, I would withdraw that amendment. [LB701]

SENATOR FRIEND: Thank you, Senator Preister. So ordered. Thank you, Senator Christensen. Members of the Legislature, back to the fourth component of the Natural Resources Committee amendments. Order of speakers is Senator Erdman, Schimek, Janssen, Hansen, Avery, and others. Senator Erdman, you are recognized. [LB701]

SENATOR ERDMAN: Thank you, Mr. President. I do have some comments on the fourth division but I would like to yield my time to Senator Carlson so that he may speak at this point. So I would yield my remaining time to Senator Carlson. [LB701]

SENATOR FRIEND: Senator Carlson, you have 4 minutes and 40 seconds. [LB701]

SENATOR CARLSON: Mr. President, members of the Legislature, and thank you, Senator Erdman. I would like to respond a little bit and I appreciate Senator Preister withdrawing that amendment. He and I had a discussion this morning. And so I do want

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to make a couple of comments though about his concerns because I think it's important for everybody. First of all, the reference to flying randomly and applying a chemical I just don't believe would take place. And I have been told and I'd like to say I've been assured, but I'm confident that when the weather is right, that the chemical can be put on by helicopter. It can be done in a very precise manner. In fact, it can take out invasive species and leave the native tree that's right next to it untouched. And I'm very confident because of the makeup of the task force, that they certainly will move forward in a proper manner, taking into account all those things that ought to be considered in this entire process. I would like to refer, not by name because I don't want to give a commercial to something, to a chemical, one of them that's been EPA approved and used for circumstances like we're talking about. This particular one inhibits a plant's specific enzyme and this enzyme is not found in animals or humans. It is considered to be practically nontoxic, as determined by results from EPA-required testing. It's labeled for use in and around standing and flowing water, including lakes, rivers, and streams. There are guarantees on product performance when it's applied by certified applicators, and that's the only kind of people that would be applying this chemical or a similar chemical. There are no restrictions on livestock consumption of water from an area treated with this chemical. There are no restrictions on the recreational use of water in the treatment area, including swimming and fishing. And it's been used on large saltcedar control projects along the Pecos and Colorado River systems in Texas and New Mexico with excellent success. So that's an example of the uses of one of the chemicals and it would be that type that would be considered and used. And I thank Senator Erdman for this time. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Carlson. Senator Schimek, you are next and you're recognized. [LB701]

SENATOR SCHIMEK: Thank you, Mr. President and members. I grew up knowing what Arbor Day was, from the time I was a little child because my grandfather's birthday was on Arbor Day; April 22, which we don't necessarily celebrate it on April 22 anymore. But I grew up believing that we needed to plant more trees in Nebraska and for a whole variety of reasons; aesthetics, controlling runoff, shade, a whole list of reasons for planting trees. And now in this amendment we're contemplating, at least, the destruction of a number of...a lot of vegetation. And Senator Carlson, I'm not trying to do anything here except understand exactly how this will work. And if I could, I'd like to ask you a question or two about this. [LB701]

SENATOR FRIEND: Senator Carlson, will you yield to a few questions? [LB701]

SENATOR CARLSON: Yes, I will. [LB701]

SENATOR SCHIMEK: And Senator Carlson, I just heard the explanation you gave about how some of these chemicals could work and I appreciated that because that was

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one of the things I wanted to ask you about. Will this application or could this application eliminate some trees and not others? You mentioned invasive species and I'm not sure if you're talking about trees when you say invasive species. I assume you are. [LB701]

SENATOR CARLSON: Okay. You bring a good question. It's going to take me a little bit of time to answer it. I've got my light on and I intend to go into that. [LB701]

SENATOR SCHIMEK: Okay. [LB701]

SENATOR CARLSON: I will address that and... [LB701]

SENATOR SCHIMEK: That would be fine. [LB701]

SENATOR CARLSON: ...I would rather do it that way than take the balance of your time. [LB701]

SENATOR SCHIMEK: Okay. And I'm not sure I'm going to use the balance of my time because you did answer some of my questions previously. The task force has to meet according to the language and make some preliminary recommendations by, I believe it's 2007. And that would be regarding funding and any other legislation that might be needed. And then has a final report due in June of 2009. Exactly what kind of decisions will this task force be making? And I'm assuming from what you've already said that there's a science on which to base some of these decisions. And will this involve calling in experts, you know, working on researching what other locales have done? Could you just give me some basics here, please? [LB701]

SENATOR CARLSON: Okay, there are a number of examples of areas within Nebraska that you could say pilot projects have been completed on with very good results. We'll be addressing some of that very soon, I believe. And the task force will determine, first of all, what area do we need to work on first? Well, I can just about tell, that's got to be below Harlan County Dam, between there and Kansas line. Because last year when water was released to get to Kansas, it couldn't get there because of the vegetation. And if you look at the makeup of the task force, there are experts there and access to experts that understand how to deal with the removal of vegetation, whether it's by chemical or whether it's by physical means or both. [LB701]

SENATOR SCHIMEK: Okay. One of the things that occurs to me is if we're going... [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR SCHIMEK: ...to try to remove selected types of vegetation, that in some areas of the basin we're going to be removing virtually...well, maybe not virtually all of

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the vegetation, but a lot of it. How do we prevent erosion along these river banks and along streams if we do that? How do we control that part of it? [LB701]

SENATOR CARLSON: Okay. Senator Schimek, my first premise is that the streambed needs to be free of vegetation. [LB701]

SENATOR SCHIMEK: Totally free? [LB701]

SENATOR CARLSON: I know that grass, there will be vegetation there. There's going to be vegetation. But the invasive needs to go. And again, if you'll allow me when my light comes on, that I can answer this in a little more detail, I will. But the streambed is a place for water to flow. [LB701]

SENATOR SCHIMEK: That's... [LB701]

SENATOR FRIEND: Time. [LB701]

SENATOR SCHIMEK: ...good. (Laughter) Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Carlson, Senator Schimek. Senator Janssen, you're next and you're recognized. [LB701]

SENATOR JANSSEN: Thank you, Senator Friend, members of the Legislature. I've been listening to this debate all morning and now into the afternoon. And I believe that Senator Carlson has a very good plan. Now there are a few things that do disturb me, not entirely, but I'm kind of concerned about what we would be doing within the river beds itself. Now I understand that the vegetation control is only going to be within the banks of this river. I remember a few years ago, we were out in the North Platte area and looked at where the Platte River comes together. And you couldn't tell whether there was river bed there or not because of the trees and vegetation that had grown up within that river. We also have to be concerned about flood control also. You start moving some of these strings a little too fast and you're going to have a little bit of a problem with flood control in some of those areas. You know, we haven't seen this for quite a few years because of all the irrigation that has taken place. We don't see those flash floods like we used to. And I am concerned that we don't broaden the elimination of all the vegetation because of...another thing would be bank stabilization on some of these rivers. You know, the trees are there for a reason along the banks. Hopefully this would just be within the stream itself. And who is going to be in charge of doing it? Are the local noxious weed departments within the counties, will they be responsible for that? Will the counties be responsible? Who's going to be in charge? Senator Carlson, I've asked a few questions here. Now would you like to elaborate on that or carry on a little conversation with me on this area? [LB701]

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SENATOR FRIEND: Senator Carlson, will you yield to some questions? [LB701]

SENATOR CARLSON: Yes. [LB701]

SENATOR JANSSEN: Senator Carlson, I understand that the vegetation is only within the banks of these bodies of water. Is that correct, that's what we're worried about? [LB701]

SENATOR CARLSON: That's the first... [LB701]

SENATOR JANSSEN: Or is it banks also? [LB701]

SENATOR CARLSON: Well, it could be a riparian area is nearby but the riparian area, we're focusing on the invasive vegetation. That invasive vegetation is no good for any of us and I think there's unanimous agreement on that. I'm going to elaborate a little bit more for the benefit of Senator Schimek on what invasive vegetation is. We need to get rid of that. And then we have a private property issue as far as removing native vegetation. I'm going to address that also. But we think back and Senator Janssen, you and I go back, we can go back a long way. And before the dams, Mother Nature took care of this problem of vegetation because the river would purge itself every spring. [LB701]

SENATOR JANSSEN: That's correct. [LB701]

SENATOR CARLSON: Doesn't happen anymore. And so we've had 70 years of buildup and it's heading east and it's not going to stop unless we do something about it. And the streambed is meant for water to be able to flow. It's not meant for vegetation that not only takes water, but it prevents flow. [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR JANSSEN: All right, now how about the, who is going to be in charge of this? Is this going to be the county noxious weed program? [LB701]

SENATOR CARLSON: They will be a part of it. And along the rivers we have other entities that own property that are also qualified to deal with the problem. It might be a public power and irrigation district. It might be Game and Parks. It might be Corps of Engineers. And it might be a county weed association. They have the rules that they can follow, a network of regulations that are in place that allow them to deal with this. And they'll do it and they'll do it in the proper manner. [LB701]

SENATOR JANSSEN: Now these wildlife habitats, the chemicals that you'll be using, now is that going to hurt the fish and the animals, turtles and so on and so forth,

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beaver? [LB701]

SENATOR CARLSON: And my answer to that... [LB701]

SENATOR FRIEND: Time. [LB701]

SENATOR JANSSEN: That's the answer, time, okay. (Laughter) [LB701]

SENATOR FRIEND: Thank you, Senator Janssen and Senator Carlson. Senator Hansen, you are next and you're recognized. [LB701]

SENATOR HANSEN: Thank you, Mr. President. I do believe that Senator Carlson is loaded for bear and I yield him the rest of my time. [LB701]

SENATOR FRIEND: Senator Carlson, 4 minutes and 50 seconds. [LB701]

SENATOR CARLSON: Mr. Speaker, members of the Legislature, thank you, Senator Hansen. And Senator Janssen, hopefully as I go on here, there can be some more answers to the questions that you had. Senator Schimek, invasive vegetation is nonnative vegetation that, over the years, because the rivers are no longer purged every spring or nearly every spring with spring floods, for various reasons this invasive vegetation has been able to move in and move along. And that includes red cedar, Russian-olive, saltcedar, phragmites. These are plants that I will say, certainly in the streambed, are of no value to anyone. They take a lot of water. They take up space. They're not good for wildlife. They're not good for fish. They're not good for hunting. They're not good for canoeing. They're not good for rafting. They're not good for camping. All they do is rob water and prevent water from being able to flow when we have something that's close to a flood. Some of these, by the information that I have, can only be, unless it's extremely expensive, can only be killed with chemical. And I'm comfortable that this chemical is a safe chemical. I don't even want to use some of the terms that I've heard people mention trying to compare it to because I think it's unfair. But this invasive vegetation needs to be dealt with. And when it's built up over 60 years, if we do deal with it and we clear it, we've bought some time. It took 60 years to get here and if we don't do anything, it's moving east and it's going to get to you. And we don't want that to happen. Our rivers are too much of a treasure. Now in Nebraska, private property owners or the Corps of Engineers or Fish and Wildlife or other organizations own property to the center of the streambed. So there are regulations in place to allow the removal of invasive plants. But when you talk about native plants that I say don't belong in the streambed anyway; cottonwoods don't belong there, other trees that we like, they don't belong in the streambed. We can't remove those without the permission of the property owner. And I hope the property owners see the value of returning our streambeds to what they used to be. And again, I'd invite you to look in that NEBRASKAland magazine. And it, I believe, is a necessary worthwhile effort that will be

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a benefit to all Nebraskans. Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Carlson. Senator Avery, you are next and you are recognized. [LB701]

SENATOR AVERY: Thank you, Mr. President. All this talk of water inspires me to recall a poem from 18th century literature, "Rime of the Ancient Mariner" by Samuel Taylor Coleridge. Water, water everywhere, and not a drop to drink; water, water everywhere, and all the boards did shrink. If you would permit me, I'd also like to quote a contemporary philosopher that we all know, Homer Simpson, who was actually stuck on a raft with his son, Bart, in which he said: water, water everywhere; so let's all have a drink. If I may be a bit more seriously, I would remind you that water is essential. We must be careful that we do this right. Maslow's hierarchy of needs ranks water number two, right behind air. So we need to make sure that we don't, in trying to solve this problem, create more problems. I'm concerned about this particular division of the amendment and I'm concerned about whether or not we've given proper consideration to the possible unintended consequences. Senator Schimek brought up some of these points. Senator Janssen has brought up some. And I think that Senator Carlson is doing his best to answer these questions. But I think that some of them still need to be addressed. We've discussed the possible consequences of soil erosion from the river banks, what that may do downstream. We talked a bit about the destruction of habitat. What we have not talked about though is the role that vegetation plays in denitrification. By that, I'm speaking of a process whereby roots from trees along the river banks absorb fertilizers and other pollutants. And this is stored in the leaves, the limbs, and the roots of the trees and other vegetation and kept out of the water system. Have we given enough consideration to these consequences? What does that do to the quality of the water that flows downstream? There is also the issue of canopy and shade that are essential to wildlife and other water species. What happens if we take this vegetation out? Then there is the issue of leaf food. Believe it or not, rotting leaves in the water provide food for certain water species. I would like to have Senator Carlson address two questions. One, what assurance can you give us that spraying in the streambeds for this vegetation can be confined to the streambeds and not affect the vegetation along the river banks, which may be essential to maintaining the ecological balance in these streams? That's the first question I'd like you to answer. And secondly, what about mechanical removal? We're putting aside \$2 million for this program. Is it essential that we use herbicides or can we not entertain the possibility of mechanical removal that might allow us to control and confine the destruction of this vegetation and preserve the river bank vegetation? So if Senator Carlson would be willing to answer those questions, I'll yield him the rest of my time. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Avery. Senator Carlson, you have 1 minute left. [LB701]

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SENATOR CARLSON: Mr. President, Senator Avery, my impetus and my concentration has been on the streambed and will continue to be. I have had extensive discussions with people from the Weed Association that have told me how they deal with applying chemical and how that it is very possible to be selective and to stay within the streambed, to not affect native vegetation that the landowner doesn't want affected. And so I'm going by their experience and what they tell me they've been doing and what they tell me they can do. [LB701]

SENATOR FRIEND: Time. [LB701]

SENATOR CARLSON: And I'm confident about that. Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Carlson and Senator Avery. Senator Pirsch, you are next and you are recognized. [LB701]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I don't intend to address here the questions of unintended bad consequences that have been touched upon by a few members of the body here previously today. I guess I'd rather focus on the intended consequences of this bill. I was, you know, I think it's important to remind the body that the purpose of this legislation, that this is targeted towards the specific problem that we find ourselves in the Republican River Valley. And so the idea behind this bill, as I understand it, is to send as many acre-feet of water down into Kansas. With that in mind, I wonder if Senator Carlson might yield to a few questions. [LB701]

SENATOR FRIEND: Senator Carlson, will you yield to a few questions? [LB701]

SENATOR CARLSON: Yes, I will. [LB701]

SENATOR PIRSCH: Okay, thank you very much. With respect to, I guess it's toward that end, the goal being to send as much water as possible through to Kansas. Do you agree with that assessment? [LB701]

SENATOR CARLSON: Well, that is one of the goals, Senator Pirsch, yes. [LB701]

SENATOR PIRSCH: Okay. And would you say that's probably the most important goal of this particular, the overall emphasis of the bill? [LB701]

SENATOR CARLSON: Because of the urgency of the compact with Kansas, if I would say no, I'd hesitate to say no. But I feel so strongly about, on a long-term basis, getting the river back to what it used to be, that that's as important to me as it is getting water to Kansas. But we cannot disregard the importance of water to Kansas. [LB701]

SENATOR PIRSCH: Okay. And I guess my concern is one of comparing apples to

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apples. To me, the importance, the urgency of this bill is to make sure that we're in compliance lest we risk severe repercussions. And so I guess my question is, has this type of action that you would bring forward with this bill, the removal of vegetation on a wide-scale basis, has that been done in a beta test or anywhere, such that we have a pretty good understanding of how it ultimately will play off in saving a specific amount of water from the use of this? [LB701]

SENATOR CARLSON: And the answer to that is yes. And there are several places, but certainly one of those that apparently is rather similar to the Republican River situation is the Pecos and Colorado systems in Texas and New Mexico. [LB701]

SENATOR PIRSCH: Okay. [LB701]

SENATOR CARLSON: That's one example. They've used chemical there extensively with good results. We're going to go have a tour and go see that. [LB701]

SENATOR PIRSCH: Good, and I appreciate that. And I guess what I'm asking you is, based upon these prior experiences that have occurred in other states or in this state, can we estimate? We're using General Funds, taxpayer funds in the amount of \$2 million to engage in this process, correct? [LB701]

SENATOR CARLSON: Correct. [LB701]

SENATOR PIRSCH: Okay. That \$2 million, we know what we can get, have a pretty good idea if we go out into the market today and purchase from entities that have water rights, what the cost...what the amount of water we can purchase with that would be. I guess I'm asking, in apples to apples comparison, do you know how much the removal of the vegetative waste to the tune of \$2 million would free up in terms of acre-feet so that we can have a comparison of what that \$2 million buys us through removal of vegetative waste... [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR PIRSCH: ...on one hand versus going out in the market and purchasing? [LB701]

SENATOR CARLSON: Okay, that's a good question because that relates back to how you do it. And it's my estimate that if we could clear 10,000 acres with \$2 million, we could save over 20,000 acre-feet of water. Twenty-thousand acre-feet of water is worth a lot of money. [LB701]

SENATOR PIRSCH: Could you quantify...I mean, do you have an understanding of how much 20,000 acre-feet in the marketplace today, just outright buying the rights to that

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water, would equivocate to? [LB701]

SENATOR CARLSON: I will figure that out very quickly because I want to be accurate with you, Senator Pirsch. And off the top of my head, I can't give you an answer right now. But I will rather soon. [LB701]

SENATOR PIRSCH: Okay. And do you feel that, you're pretty comfortable with that number, 20,000 acre-feet is a pretty good ballpark estimate of what \$2 million... [LB701]

SENATOR FRIEND: Time. Thank you, Senator Carlson and Senator Pirsch. Senator Stuthman, you are next to speak. You are recognized. [LB701]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I've been listening to the discussion here and listening very closely. One of the concerns that I have and we've discussed the possibility from Senator Carlson, you know, the possibility of chemically taking care of the growth of the vegetation. In my opinion, that's only going to stop the use of water, you know, that that growth is absorbing from the ground. They were talking about the acre-feet that it was possibly utilizing. But I think we have to look at, we need to remove this vegetation and chemically spraying this vegetation does not remove any of the vegetation. It's still there, probably will cause major problems if it's left there as it's rotting. If we're going to go through the expense of removing it, I think it would be something that we maybe shouldn't be even looking at as far as, you know, chemically killing the vegetation if we're going to have to remove it and get it out of the streambed is what our plan really is. And Senator Avery touched on that part of it. I think that it's something that we need to just remove, take care of it, get it out of the crick bed. If we chemically, you know, kill that stuff, the leaves will be falling on the ground, on the crick bed, the dead branches and everything there. That's still going to be there. It's not being removed. If we have a time frame to do it, maybe we should just get in there with the bulldozers and bulldoze that vegetation out, take care of it, clean the crick beds up, and allow the water to travel. But I think that's something we need to consider. You know, if our ultimate goal is to remove the vegetation, I think that's what we really should be looking at. Or if our goal is to just stop the growth of the vegetation, to take care of the overuse of the water, you know, under that vegetation and leave the vegetation there, just not growing or not alive, as dead, then I think we're going to have a bigger problem down the road. Unless the spraying of it would help in the process and then mechanically remove it also. It may be a double cost but there is a possibility of going that route, too. So I wanted to speak on the amendment that was up there by Senator Preister but he removed it, which I am thankful for. I think sometimes there are chemicals, you know, that work perfectly for this. But if we're trying to remove that vegetation, it's just like on any farm in the community. If you have a fence row, sooner or later that's going to grow up into trees and brush. Plum bush, we have a major problem with plum bush. Yes, you can spray it but that still doesn't get it back to the ground that you want to farm. You have to remove the stuff. I would like to engage

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in a little conversation with Senator Carlson, please. [LB701]

SENATOR FRIEND: Senator Carlson, will you yield to some conversation with Senator Stuthman? [LB701]

SENATOR CARLSON: Yes. [LB701]

SENATOR STUTHMAN: Senator Carlson, you've heard my comments. Do you feel that it would better to spray and then wait a while and then remove the vegetation, or should we just go in and remove the vegetation? [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR CARLSON: I think the most thorough method would be to go in and remove it. That's also the most costly. And so that's, I think, where the challenge lies. I believe that this task force, with all the entities that are going to be involved, will have that discussion and then take the best path. And some of that vegetation, I think it's about, it's so difficult to kill by removing that it requires some chemical. That's, I'm not the expert there. But I agree with you, the best solution would be to remove it all. [LB701]

SENATOR STUTHMAN: But Senator Carlson, there are some types of vegetation that, even when you remove them, there's still some root systems there, that within... [LB701]

SENATOR FRIEND: Time. [LB701]

SENATOR STUTHMAN: Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Stuthman, Senator Carlson. Senator Carlson, your light is next. You are recognized. [LB701]

SENATOR CARLSON: Mr. President, members of the Legislature, I appreciate the questions. I appreciate the discussion. And I detect that it is sincere in an effort to try to better understand the circumstances and the possible consequences to tackling this issue of vegetation in our rivers and talking about the spraying versus the removal. Senator Stuthman just hit on it as his time ran out. I'll go back to saltcedar as an example. What I've been told and my understanding is that that is best done by chemical and it dies a slow death, which is about a two-year time period before it's to be removed. So in terms of the different forms of vegetation that are there, some of those forms, and I believe the task force would deal with this, chemical is okay because it will kill it, it will stop the water use, it will lean over, it will allow water to flow over the top. And in the meantime, it gives some cover to the streambed and that's not a bad thing. There is others that should be physically removed. And in the end, I believe that that would be the objective, to remove the vegetation from the streambeds, to try and return

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it to what it historically was. And once it's done, there's going to have to be a maintenance plan. That's part of the challenge of the task force. I appreciate the Appropriations Committee willingness to allocate funds toward this purpose and I put in a two-year sunset on this because that puts some pressure on the task force, puts some pressure on me in proceeding with this legislation, to get something done, evaluate what's been done, and then the Legislature will make a decision on whether we go further or not. But this is a two-year commitment right now and we step up to the plate and we either hit the ball or we strike out. And I believe that we're not going to strike out. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Carlson. Senator Erdman, you are next and you are recognized. [LB701]

SENATOR ERDMAN: Thank you, Mr. President. I've been in lengthy discussions with Senator Avery and some other quotes of Homer Simpson come to mind but I won't use them. I think this is important, again, to understand what we're talking about and I think Senator Carlson is doing an exceptional job of outlining the process. I would like to point out a couple things on the actual division not specific to the application. In other words, where is this program going to be housed? All of the rest of LB701 deals with the Department of Natural Resources or natural resource districts and is specific to those areas. This division deals with the Department of Agriculture. What we are doing is we are expanding the use of the noxious weed program to accomplish this goal. There are references in here as we talk about the director, and I think it's important to point this out as well. When we refer to the director, we're referring to the Director of Agriculture. We're not referring to the Director of the Department of Natural Resources. It will be the Director of Agriculture who will have oversight over these grants. It will be the Department of Ag that will ultimately be responsible for administering this program. And I think that's important to point out, first of all, that Senator Carlson and the committee have chosen to use an existing program that they believe would meet their needs as opposed to creating a new one, which is what was intended in LB458. Further, there are some, I would say, grammatical or technical things that may need to be clarified as we proceed forward and I think those can be included with Senator Carlson's list. But I think it is important to understand the makeup of the committee, why those individuals are on there, what their responsibilities are, and then how that ties in with this reality that this has to be coordinated more than just one agency or one department, but throughout other areas of state government to ensure effectiveness and oversight. Senator Carlson, would you care to have any additional time? I would yield my time to Senator Carlson. [LB701 LB458]

SENATOR FRIEND: Senator Carlson, you have 2 minutes and 55 seconds. [LB701]

SENATOR CARLSON: Mr. President, members of the Legislature, thank you, Senator Erdman, for yielding the balance of your time to me. And this might be important to you,

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there will be an amendment submitted to house the task force, if that's a good term, under the Department of Ag. And I believe that that's a proper thing to do and will lend additional credibility to procedures that are in place to see this project move forward. I'd like to also answer a question Senator Pirsch had but I don't know if he's hearing this or not. Okay, Senator Pirsch. I think some estimates in cost per acre would be from \$200 per acre on the low end to \$500 to \$600 on the top end, and the top end being that that Senator Stuthman referred to and just having complete physical removal of vegetation right off the bat. But if it was \$600 to completely remove vegetation and that frees up twenty-some thousand acre-feet of water every year, it doesn't take very long to recoup that cost and be on the plus side of the ledger. And I didn't have an opportunity yet to put a price tag on an inch of water, which I will do and I'll discuss that with you. [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR CARLSON: But with that, those are the comments I have right now. Again, I appreciate your interest, I appreciate the discussion, I appreciate the fact that we're trying to make decisions to do things that are for the good of all Nebraskans. Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Carlson. Senator Mines, you are next and you are...I'm sorry, Mr. Clerk, you have an announcement. [LB701]

ASSISTANT CLERK: Mr. President, I do. The Health Committee will have an executive session in Room 2022 now; that's Health Committee, now, Room 2022. []

SENATOR FRIEND: I apologize, Mr. Clerk and Senator Mines. [LB701]

SENATOR MINES: Thank you, Mr. President. I've got...I believe I understand administratively how this works but I'd like to just confirm that I believe I'm reading this correctly. And since Senator Carlson is engaged in other activities, I...would you mind responding, Senator Carlson? If he would yield, Mr. Speaker. [LB701]

SENATOR FRIEND: Senator Carlson, will you yield to a question or two? [LB701]

SENATOR CARLSON: Yes, I will. [LB701]

SENATOR MINES: Thank you. Senator Carlson, as I understand administratively how this will work, we're going to authorize a Riparian Vegetation Management Task Force that will define goals and objectives for the Republican River Valley, or is this for all, either overappropriated or what areas will they define as goals and objectives? [LB701]

SENATOR CARLSON: Conceptually, the task force would decide that. It's going to in fully or overappropriated basins. Those two basins presently are the Republican and the

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Platte. I'll be very surprised if it isn't the Republican that's given priority because of our compact with Kansas. [LB701]

SENATOR MINES: Okay. So now they'll define goals and objectives. And will local control authorities, like weed management entities, will they administer those goals and directives? [LB701]

SENATOR CARLSON: Yes. The Weed Association would be one of the entities that would be properly licensed to do it upon instruction from the task force. And there's representation on there from them... [LB701]

SENATOR MINES: Right. [LB701]

SENATOR CARLSON: ...to the task force. [LB701]

SENATOR MINES: So we've got local control of administering the goals and objectives of the task force. Can you tell me, the Department of Ag is then directed to promulgate rules and regulations, I'm unclear of the Department of Ag's role in this process. [LB701]

SENATOR CARLSON: Well, as I...I think, Senator Mines, they're going to oversee it. I think it's unnecessary for rules and regulations because under current law, those are already in place, that wording is in there. So if somehow there would be a need in the future to develop rules and regulations, that would be under the auspices of the Department of Agriculture. I don't think... [LB701]

SENATOR MINES: Right, they're given that authority though... [LB701]

SENATOR CARLSON: ...that's important. [LB701]

SENATOR MINES: ...in this amendment and I'm okay with that. The Game and Parks Commission plays in this, in that they help facilitate the grants to the local entities. Can you help me with that? [LB701]

SENATOR CARLSON: Okay, Game and Parks is involved, first of all, because they have a vested interest in fish and wildlife. They're going to be a good control body to be there in case they think something is being recommended that they're uncomfortable with. [LB701]

SENATOR MINES: But they're, as I read in the amendment, the Game and Parks will assist grant recipients. And the grant recipients would be the local entities, like the weed control people? [LB701]

SENATOR CARLSON: There are a number of possibilities for grant recipients. They

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could be some organizations that could apply for grants to work in a given area. It's very possible that Game and Parks, because they have certified people to be able to administer some of the parts of this program, they could aid in that administration. [LB701]

SENATOR MINES: Okay. [LB701]

SENATOR CARLSON: They could be called upon to help by another group that's really not licensed to do this. [LB701]

SENATOR MINES: Okay. And as I also understand, there will be \$4 million appropriated over the biennium, the '07-08 and '09 biennium? [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR CARLSON: It's really '07-08. [LB701]

SENATOR MINES: '07 and '08, okay. So we've got \$4 million. In your opinion, can we clear 10,000 acres of vegetation for \$4 million? [LB701]

SENATOR CARLSON: Depends on our method. If it's completely physical removal and no chemical, probably not. But I believe that certainly that's enough money to make a good effort so that we will have a good evaluation to bring back to the Legislature at the end of two years, make a determination if this has been a worthwhile expenditure, what we've done, what we would like to do. And the Legislature will then make the decision whether the value received for the money invested is worthwhile to continue or expand. [LB701]

SENATOR MINES: So this is a good start? [LB701]

SENATOR CARLSON: Yes, it would be a good start. And with a commitment from the state, I believe that this opens up some possibilities for other funding... [LB701]

SENATOR FRIEND: Time. [LB701]

SENATOR CARLSON: ...from outside sources. [LB701]

SENATOR MINES: Thank you, Senator Carlson. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Mines and Senator Carlson. Senator Harms, you're next and you are recognized to speak. [LB701]

SENATOR HARMS: Thank you, Mr. President and colleagues. Would Senator Carlson

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yield just for a second? [LB701]

SENATOR FRIEND: Senator Carlson, will you yield to a question? [LB701]

SENATOR CARLSON: Yes. [LB701]

SENATOR HARMS: Senator Carlson, do you know of any pilot projects that have been done in Nebraska that deals with what you're talking about? [LB701]

SENATOR CARLSON: Okay, thank you, Senator Harms. There are several and one that certainly comes to mind that is out in the western part of the state is Nine Mile Creek. Nine Mile Creek was a project and I'm trying to recall the number of miles that were involved of streambed here. But I'm going to say 30 to 40, I think it's in that vicinity. Nine Mile Creek had been a free-flowing creek, spring-fed, that had been good trout fishing. And it got invested...infested, not invested (laugh), infested with Russian-olive. And so in the Nine Mile Creek project, they went in and physically removed the Russian-olive. And the results were terrific. The flow returned to the creek and it sounds like trout fishing is a possibility again. It's been a wonderful project. [LB701]

SENATOR HARMS: Thank you very much, Senator Carlson. The point that I want to make today is I really support what Senator Carlson is doing. We have experienced that in western Nebraska, did most of this on our own with a small grant. And the results have been phenomenal. And if you just look at the Republican River and then take a look at the North Platte River, there's a phenomenal amount of saltcedar and Russian-olives that are there. And when those trees are an adult, they take anywhere from 150 to 250 gallons a day. Can you imagine how much water we're losing all across the state of Nebraska? It doesn't have to be just along a stream or a river. Those trees are all over and they remove a great deal, amount of water. And the issue that we are addressing here is critical to our success. If the drought continues, we're going to have to do everything that we possibly can to resolve this issue. And if it's removing that type of vegetation, we need to do it. The thing that I think that's important for us to remember, that as we start to remove these trees, we need to be looking at a by-product from that. There's a great opportunity for someone who's creative and innovative and an entrepreneur that could actually develop and use those trees for different products, that we could actually sell on the open market that would be good. So there are some good things that will come from this. I would urge you to support this because I think that's very important and critical for us getting a handle on the water issue. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Harms. Senator Wallman, you are next, you are recognized. [LB701]

SENATOR WALLMAN: Thank you, Mr. President. I could probably support AM965 but it

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would have to be totally mechanical. As I've showed pictures here, this stream is just like a slough. You know what a slough is? It's a draw. I can drive my pickup across this river any place about I want to. Why is that? Silt. Senator Avery touched on a very good thing. How are the nitrate levels in this basin? The irrigators tend to bring up the nitrate levels in the basin. Some cities have to drill new wells because of what? Nitrate. A city in our community, a small village had to put a treatment plant in because it was not safe for babies to drink the water because nitrate. Why are these trees growing like the dickens? Nitrate levels. There's chemicals out there to kill everything and we know that. It's probably the cheapest way. We tend to do things the cheapest way. Is it the best way? If we want a true stream, a nice flowing river, it has to be done totally, totally, totally mechanical; backhoes, bulldozers. I've been at the Platte River when we put the interstate bridges in. We use bulldozers to clear that off. And you can clear acres and acres and acres with a hurry with a big bulldozer. If you've ever driven a bulldozer, they're kind of fun. But as far as taking out trees, I got a heck of a time with that. My wife and I planted hundreds and hundreds of trees. And so if this river went through my place, I don't know if I'd let you do it. So are you going to get total land...the river bed itself, the river stream, there's no trees down in this river bed. Are we talking just river bed, 100 foot wide, 200 foot wide? There's lots of issues here. The only way I can support this bill is mechanical control. And then the farmers or the local NRDs or the weed controls, they have to be told to take care of the problem. And which, I've noticed the Bostwick Irrigation Canal. Did I see any trees in that canal? No. Why not? Why do you suppose that is, Senator Kopplin? They took care of the problem. They took care of the stretch they were supposed to take care of and they did a good job. I don't see any trees in that irrigation district because they took care of the problem. All of a sudden we've got a big problem here. They put a great big dam in upstream, so these bottom people get more value for their buck, no floods. But the Corps of Engineers came in upstream, wherever they're going to put the dam. I can remember Tuttle Creek, how much uproar that was. They stole your land. The government came in, we'll give you \$200 an acre. Whoopee, you got to take it. And they did the same thing in Harlan County, I'm sure. So now they're asked to pay for some of this downstream. And I want a good stream, don't get me wrong. But I do not want any chemicals, any chemicals--and there's chemicals out there that kill everything and I'm, like Senator Carlson, I'm not going to mention any name because we're not supposed to advertise here. So I use chemicals. And are they dangerous? Have they told us (inaudible) in the past? Sure, atrazine, safest doggone thing you could buy. All of a sudden, it ended up in my drinking water. So do... [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR WALLMAN: ...I still like atrazine, Senator Wightman? Sure, it's the best doggone product ever made. But it eventually got in my drinking water and in somebody else's, too. Does it hurt? I don't know. You know, can I drink that stuff? I do. But it gets in some cities. Nitrate levels get too high. Now that's a bad thing. Nitrate levels is a bad

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thing. And that concerns me. The dryland farmers probably didn't contribute to this nitrate business. And the trees grow very well with nitrogen, as does corn. And so we have to control this river bed. I'm not arguing with it. But I have a hard time supporting this unless it's 100 percent mechanical and then it would still bother me. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Wallman. Members of the Legislature, we are discussing the fourth division of the Natural Resources Committee amendments. Senator Wightman, you are next and you are recognized. [LB701]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Legislature. Since I've been out some of the time to a committee meeting, I may be repeating something that's already been said. I don't know. I would first like to respond to Senator Wallman's position that any removal of vegetation would have to be done mechanically. I hearken back to what Senator Flood said when we opened the debate on LB701, that we have extraordinary situation that will require extraordinary solutions. For my own purpose, I would hate to see us tie the hands of the weed districts and the NRDs and any entity that may be included in the vegetation task force by saying that there was only one method of removal. I think that if we commit these funds to...through the Department of Agriculture, certainly, the noxious weed boards are probably going to have a better idea of what the risk is than we are. And I think it would be unfortunate if we tied their hands at this time. It...when I speak about an extraordinary solution, I think we really have limited ourselves if we limit the removal of vegetation to only mechanical means. I don't know, and I would like the opportunity to engage Senator Carlson, before I sit down, in conversation, but I'll continue; he's busy at the present time. Well, maybe he's not. So if he would yield? [LB701]

SENATOR FRIEND: Senator Carlson, will you yield to a question or two? [LB701]

SENATOR CARLSON: Yes. [LB701]

SENATOR WIGHTMAN: Senator Carlson, I'm assuming that it would be...that the response to the vegetation problem would be more rapid in the event that we could use chemicals in addition to mechanical removal. Is that correct? [LB701]

SENATOR CARLSON: Yes, I believe that's correct. [LB701]

SENATOR WIGHTMAN: So that if we were going to respond and deliver water that we would be gaining by the destruction of vegetation, probably both would be helpful. Is that right? [LB701]

SENATOR CARLSON: I believe a combination of the two would be the best, yes. [LB701]

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SENATOR WIGHTMAN: And do you feel we would be tying the hands of the various entities, primarily the weed boards, if we did limit them only to mechanical destruction? [LB701]

SENATOR CARLSON: I believe so. I think that we'd be shoving aside some expertise that I believe is important in dealing with this issue. And I know that expense isn't supposed to be everything, but it seems to be a whole lot around this body, and it would add considerable expense. [LB701]

SENATOR WIGHTMAN: I've noticed that on the Appropriations Committee, that expense is a major concern of this body. I guess a few other questions that I would ask. We talk about how wide the stream is in the Republican River Basin. And there are, no doubt, places where it's no more than a draw. But are there other places where there's a substantial width of vegetation? [LB701]

SENATOR CARLSON: Yes. There would be quite a variation along the 300 miles of potential streambed in the Republican, from fairly wide to very narrow. [LB701]

SENATOR WIGHTMAN: Is it also true that sometimes it's a little difficult to define what a streambed is? [LB701]

SENATOR CARLSON: I'm sure that in places, that's probably true. [LB701]

SENATOR WIGHTMAN: I'm more familiar with the Platte River, but sometimes you could either define the Platte River streambed as being where the water is running at the present time, or where it might run during flood stage, and it might vary by a mile. Is that your understanding? [LB701]

SENATOR CARLSON: I think that that's true in the Platte. I don't think that's...it's nearly that widespread in the Republican, but there would be a variation, yes. [LB701]

SENATOR WIGHTMAN: But there would be a big variation? [LB701]

SENATOR CARLSON: Yes. [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR WIGHTMAN: When you're talking about streambed, are you talking about at flood stage, or are you talking about where normal flow would be? [LB701]

SENATOR CARLSON: For purposes of this study, we have called it a flood corridor, which is 100 feet either side of the center line of the streambed as it can be identified.

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And I think that would serve as an average width along the entire Republican River, from the Colorado border, down into Kansas. [LB701]

SENATOR WIGHTMAN: Now, the purpose of your vegetation task force would be to review problems in both the Platte and the Republican, but you said that the Republican would no doubt have high priority? [LB701]

SENATOR CARLSON: I believe that the Republican certainly should have priority, and I think that evaluations are going to begin on that on April 19, to give a good idea of just where...what the width of the streambed is, and really answering more accurately the question you just asked me. [LB701]

SENATOR WIGHTMAN: Thank you, Senator Carlson. I do want to be on record as saying that I am in favor of AM965,... [LB701]

SENATOR FRIEND: Time. [LB701]

SENATOR WIGHTMAN: ...as well as the underlying legislation. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Wightman, Senator Carlson. Mr. Clerk, motion on the desk. [LB701]

CLERK: Senator Avery would move to amend Senator Carlson's amendment...or, the committee amendment, I should say, Mr. President. Excuse me. (FA67, Legislative Journal page 1156.) [LB701]

SENATOR FRIEND: Senator Avery, you are recognized to open on your floor amendment to AM965. [LB701]

SENATOR AVERY: Thank you, Mr. President. This is a very simple amendment. It would add, under Section 1 of AM965, to include one representative from the Environmental Trust Fund on the task force. This is designed to do two things--that is, to allay some of the concerns that many people may have about the environmental impact of this legislation, particularly the collateral damage to vegetation along the riverbanks, the potential threat to wildlife and fish species and things of that sort. And note here, too, on the Water Resources Cash Fund that's affiliated with this legislation, that the Environmental Trust Fund is expected to come up with \$3.6 million in grant money. So it seems to me to be only fair and reasonable that we add a representative of the trust fund to this task force. I urge you to support this amendment. Thank you. [LB701]

SENATOR FRIEND: Thank you, Senator Avery. Members, you have heard the opening on FA67 to AM965. Senators wishing to speak are Senators Hansen, Avery, and Pirsch.

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Senator Hansen. I do not see Senator Hansen available. Senator Avery, I do not see Senator Hansen. There are no other lights on. You are recognized to close on your amendment. [LB701]

SENATOR AVERY: I waive closing, Mr. President. [LB701]

SENATOR FRIEND: Senator Avery waives closing. Members, the question is, shall FA67 be adopted to AM965? All those in favor please signify by voting aye; all those opposed vote nay. Senator Avery, for what purpose do you rise? [LB701]

SENATOR AVERY: I request a call of the house, sir. [LB701]

SENATOR FRIEND: There has been a request to place the house under call. The question is, members, shall the house go under call? All those in favor please vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB701]

CLERK: 14 ayes, 0 nays, Mr. President, to place the house under call. [LB701]

SENATOR FRIEND: Members, the house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Langemeier, Senator Christensen, Senator Pankonin, please check in. Senator Stuthman. Thank you. Senator Nelson. Thank you. Senator Janssen, could you please check in. Thank you. Senator Avery, how would you like to proceed? [LB701]

SENATOR AVERY: A roll call vote, Mr. President. [LB701]

SENATOR FRIEND: There has been a request for a roll call vote. All members are present and accounted for. Mr. Clerk. [LB701]

CLERK: (Roll call vote taken, Legislative Journal pages 1156-1157.) 29 ayes, 8 nays, Mr. President, on the amendment. [LB701]

SENATOR FRIEND: The amendment is adopted. I raise the call. Members of the Legislature, we are now back to the fourth division of the Natural Resources Committee amendments. Senator Carlson, it appears there is no one wishing to address the issue. You are recognized to close on this division. [LB701]

SENATOR CARLSON: Mr. President, members of the Legislature, I want to thank everyone for an active participation in the discussion concerning AM965 to LB701. I believe this is good public policy. I believe this is an important part of the water issue in the Republican and the Platte Basins. I believe it deserves attention, deserves action.

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And I ask for your support on LB701, AM965. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Carlson. Members of the Legislature, you have heard the closing on AM...on the fourth division of AM965. The question before the body is, shall the fourth division to the amendments be adopted? All those in favor please signify by voting aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB701]

CLERK: 39 ayes, 2 nays, Mr. President, on the adoption of the fourth and final component of the committee amendments. [LB701]

SENATOR FRIEND: The fourth component is adopted. [LB701]

CLERK: Mr. President, I now have amendments to the bill. First, Senator Christensen, AM476. Senator, I have a note you'd like to withdraw AM476. Mr. President, the next amendment I have, Senator Louden, AM872. Again, I have a note you want to withdraw, Senator? [LB701]

SENATOR LOUDEN: That's correct. [LB701]

SENATOR FRIEND: It is withdrawn. [LB701]

CLERK: Mr. President, Senator Preister has AM914. I have a note that he would like to withdraw AM914. [LB701]

SENATOR PREISTER: That is correct. [LB701]

CLERK: Mr. President, I have nothing further pending to the bill at this time. [LB701]

SENATOR FRIEND: Members of the Legislature, we are back to discussion now on the entire committee amendment, the Natural Resources Committee amendment. Senator Chambers, you are recognized to speak. [LB701]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'd like to ask Senator Louden a question or two. [LB701]

SENATOR FRIEND: I'm sorry, Senator Chambers. Senator Louden, will you yield? [LB701]

SENATOR LOUDEN: Yes. [LB701]

SENATOR CHAMBERS: Senator Louden, in this bill, is it true that purchases of something will be made, either purchases of water or water rights? Will that happen

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under this bill, one or the other or both of those things? [LB701]

SENATOR LOUDEN: Both of those things, I think, is the way it's set up under this bill,... [LB701]

SENATOR CHAMBERS: From whom...? [LB701]

SENATOR LOUDEN: ...certainly the water, anyway. [LB701]

SENATOR CHAMBERS: From whom will water be purchased? [LB701]

SENATOR LOUDEN: Well, it would be those irrigation districts down there in the Republican River Valley. [LB701]

SENATOR CHAMBERS: The water will be purchased from irrigation districts? [LB701]

SENATOR LOUDEN: Yes. [LB701]

SENATOR CHAMBERS: How did these districts come into the ownership of water? [LB701]

SENATOR LOUDEN: That...I suppose I'll do my best to explain it, if I may. These irrigation districts, this water is collected as it runs down these rivers and comes out of these different creeks and that sort of thing, and stored in those reservoirs, like at Harlan County Reservoir. And those irrigation districts were formed by the federal government years ago. Actually, those people have that water rights to that water. They have a certain amount of that water can be delivered to their land on the farming, on their...to farm with, on irrigation farming, under surface water. [LB701]

SENATOR CHAMBERS: So if Senator Raikes has dams on his property and water backs up, does he own that water behind that dam? [LB701]

SENATOR LOUDEN: I think that...if that isn't a federal project, then I don't know how that would be addressed. Ordinarily, not. If it's of any consequential size, I don't think he can lay claim to it. If it's smaller than a few acres, then I don't know if the state can test the claim to water or not. [LB701]

SENATOR CHAMBERS: So he can't sell the water that would be on his land, if I understand you correctly? [LB701]

SENATOR LOUDEN: It depends on what you would say "sell". If there was an industrial or construction company that wanted to use some of that water for some of their purposes, yes, he could sell that water out of his dam. It's done all the time. [LB701]

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SENATOR CHAMBERS: Would he be able to sell it in the same way that these districts are going to be able to sell water? [LB701]

SENATOR LOUDEN: I...well, you mean for money, I guess? [LB701]

SENATOR CHAMBERS: Uh-huh. [LB701]

SENATOR LOUDEN: Yeah, he could sell it for money. I think the way... [LB701]

SENATOR CHAMBERS: Okay, now, back to the districts. Who is going to give these districts money? [LB701]

SENATOR LOUDEN: For the water? [LB701]

SENATOR CHAMBERS: Yes. Who's going to purchase the water from these districts? [LB701]

SENATOR LOUDEN: I think the state of Nebraska is making the first purchase of water. [LB701]

SENATOR CHAMBERS: And what will be done with the water when Nebraska purchases it? [LB701]

SENATOR LOUDEN: My understanding is, it will be released down the river to come into compliance, to help come into compliance with the Republican River compact. [LB701]

SENATOR CHAMBERS: If that water is available for release, can't the state order those districts to release that water without giving them money for it? If it's in the best interest of the state and the people, which is supposed to be what we're concerned about, could not the Legislature order those districts to release that water and let it run downstream to help with the compliance with that pact? [LB701]

SENATOR LOUDEN: Well, my understanding--and I've been told that they can't--that there is...that that water is set aside for those irrigated acres under that irrigation project. You'd have to talk to a water lawyer of some type on that, to get that complete answer. [LB701]

SENATOR CHAMBERS: Thank you. Senator Flood is going to answer some questions, and I guess his name is appropriate today for the discussion we're having. But rather than have a play on his name by... [LB701]

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SENATOR FRIEND: One minute. [LB701]

SENATOR CHAMBERS: ...using "Flood," I'm going to call him Senator "Waters." Senator "Waters," can the state order those districts to release that water and let it flow downstream without paying them? [LB701]

SPEAKER FLOOD: Okay. Could you repeat your question? [LB701]

SENATOR CHAMBERS: Yes. Can the state order those districts that are going to sell this water to the state, to release that water without the state purchasing it? [LB701]

SPEAKER FLOOD: Yes. [LB701]

SENATOR CHAMBERS: Why does not the state do that? [LB701]

SPEAKER FLOOD: Well, I think we're in a position, for a couple of reasons. Bostwick's irrigation district sits right on the Kansas border, and there's a Bostwick in Kansas, and getting this water to Kansas in the fastest way possible is the goal, and I see the money paid to the irrigation district as money that mitigates the damages that those irrigators will have not being able to access that water. [LB701]

SENATOR FRIEND: Time. Senator Chambers, your light is next. You may continue. [LB701]

SENATOR CHAMBERS: Thank you, Mr. President. And I may have to put up some motions, not to try to hurt the bill, but to engage in discussion of the bill, because I did not offer but one amendment. Senator Flood, I do not understand the rationale behind what you just told me. If the state pays for the water and it's released after being paid for, is the water going to move at a faster clip on its way to Kansas than would be the case if the state just ordered the district to release that water? [LB701]

SPEAKER FLOOD: No, the speed of the water in the river basin on its way to Kansas would remain the same. [LB701]

SENATOR CHAMBERS: So how would it get there quicker if the state pays for it than if the state orders the release without paying for it? [LB701]

SPEAKER FLOOD: Well, I think it's a responsible approach toward mitigating the great harm to the economy of the Republican River Basin if we can make money available to irrigators that aren't getting additional water...or, getting the water out of the stream, and placing additional reductions and allocations on the ground water wells in the basin. [LB701]

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SENATOR CHAMBERS: So this money is going to go into the hands of irrigators who will no longer be irrigating once the state purchases this water. Is that true? [LB701]

SPEAKER FLOOD: They will no longer have that access to the surface water that it's held at the Bostwick Irrigation District. But... [LB701]

SENATOR CHAMBERS: So this money will go into the pockets of these farmers? [LB701]

SPEAKER FLOOD: Yes. [LB701]

SENATOR CHAMBERS: And you think that's a good policy? Or is it a political decision that is made in order to benefit some people who, through their activities involved in irrigating, created the problem that we're here to solve today? [LB701]

SPEAKER FLOOD: Well, I think the economy of southwest Nebraska is as important as any corner of the state, and we're trying to find a solution in compliance where the basin itself is paying 80 percent of the fees, in the big picture, and addressing the problem so that we can keep Main Street open, understanding that agriculture in those counties is the main industry. [LB701]

SENATOR CHAMBERS: But I want to make it crystal-clear, for the record, that the state does not have to pay for this water in order to have that water released. It chooses to do so, through the action of the Legislature on this bill. Is that accurate? [LB701]

SPEAKER FLOOD: Although I have not done a substantial amount of legal research on this, I think you are correct, in that the state could, in its regulatory powers as a sovereign state in the United States, could say to the Bostwick Irrigation District, that water goes to Kansas. You are right. [LB701]

SENATOR CHAMBERS: Okay. Now, when we talk about purchasing water rights, what is a water right? [LB701]

SPEAKER FLOOD: Well, it can... [LB701]

SENATOR CHAMBERS: A well? [LB701]

SPEAKER FLOOD: You have a ground water right to pump water out of the ground, as issued by an NRD. You have a surface water right if the DNR has given you the authority to pump surface water onto your cropland. [LB701]

SENATOR CHAMBERS: Now, what is surface water? [LB701]

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SPEAKER FLOOD: Surface water is the water in streams; ground water is the water under the field. [LB701]

SENATOR CHAMBERS: Is it possible that water was present--talking about surface water--in one location, and it's no longer present there now? [LB701]

SPEAKER FLOOD: In some cases, both in surface and ground water situations, that is true. [LB701]

SENATOR CHAMBERS: But that person who has that land still has those, quote, water rights, unquote, even though no water remains there. Is that true or false? [LB701]

SPEAKER FLOOD: I believe they would have a valid right to have a well there if they're...you know, but it wouldn't pump anything if there's no water left. [LB701]

SENATOR CHAMBERS: But they would still have the water rights? [LB701]

SENATOR FRIEND: One minute. [LB701]

SPEAKER FLOOD: Yes, technically,... [LB701]

SENATOR CHAMBERS: Is the state going to purchase some of these water rights from people where there no longer is water? [LB701]

SPEAKER FLOOD: I would... [LB701]

SENATOR CHAMBERS: Under this bill, is that going to happen? [LB701]

SPEAKER FLOOD: I would think...I can't answer that question, honestly, Senator Chambers. I don't know. [LB701]

SENATOR CHAMBERS: But it could possibly happen, couldn't it? If you're purchasing water rights, there's nothing in this bill that says water must be present, is there? [LB701]

SPEAKER FLOOD: I can't answer that question. I don't have enough information. [LB701]

SENATOR CHAMBERS: Thank you. Members of the Legislature, you all are lucky that I didn't spend time asking the questions that need to be asked on this bill, based on my analysis as somebody who knows less about water than Senator Mines. But I can read, and there are a lot of things not stated in this bill. You are better going to understand my poem, about the water, the river starting as a little trickle, and the farther it goes, the

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wider and deeper it becomes. I don't think people have any concept... [LB701]

SENATOR FRIEND: Time. [LB701]

SENATOR CHAMBERS: Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Chambers. Senator Flood, you are next to speak, if you choose to do...yes. And you are recognized. [LB701]

SPEAKER FLOOD: Thank you, Mr. President, members. This bill has been an education for a lot of us, and I don't think anybody intentionally has attempted to hide the ball. We're trying to find a solution in the Republican River Basin, quite honestly, with a lot of their help, that delivers the water that has to go to Kansas in the river, to comply with the compact, while at the same time not shutting down Main Street in a dozen or more counties in southwest Nebraska. That's the issue. And if that means this state uses some of its precious General Funds dollars to accomplish that goal, I think that's a reasonable direction. Now, there are a number of things that we need to do between now and Select File. We have to talk about oversight and accountability. We have to talk about the price paid for surface water. We need to talk about the irrigation of land from wells after an irrigator's surface rights have been purchased. And finally, we need to call the money paid to irrigation districts what it is. Rightfully so, I think it is an economic aid or a grant from the state that's being made to mitigate the effects of the drought, the lack of water in the river, and the concerns we have about ground water availability. That's what it comes down to. The mission does not change, but I think we need to get those questions identified and answered, and work between now and Select to do that. And in the interest of not having another amendment or motion filed, I would give the balance of my time to Senator Chambers, so that he can use it to describe his efforts. [LB701]

SENATOR FRIEND: Senator Chambers, you have 3 minutes. [LB701]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Flood. And I'm not going to try to hold up the bill on General File. I will have one more opportunity to speak on my own. For a bill that nobody likes, there certainly seems to be unanimity in voting for a bill which nobody likes, and which I will venture to say nobody completely understands. Parts of it were assigned to different senators, so that each could try to get a handle on that and explain it so that we would understand. But I venture to say, based on my having listened when I was under the balcony and when I was in my office doing other work, that the senators handling those components did not completely understand everything about those components. They did not put those components into the bill. And some who brought individual bills did not write the bills themselves. Somebody else wrote the bill, gave it to them, asked them to introduce it. And we are taking a position on this bill, which has far-reaching consequences and ramifications which nobody wants

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to discuss, for fear of saying, there is developing a rural-urban split. That cannot be the shibboleth used to prevent discussion of hard issues that need to be faced head-on and dealt with. If this bill is dealing with water, but there are serious aspects of that issue which are not to be discussed, then the bill is a sham. This is a P.T. Barnum bill, Phineas T. Barnum. It's only a paper moon,... [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR CHAMBERS: ...sailing over a cardboard sea. The reality is not before us. And I know there are people who want this bill, and they want money to flow into their area and into the pockets of their constituents. And I'm not going to let people get away with saying, there should be no blame placed. Oh yes, there should be blame placed. Some of those irrigators rushed to drill wells before a certain cutoff date. They squandered the water. They were not good stewards. And that is known by some of the farming representatives better than even we know it. But it's not to be dealt with. It's nobody's fault, it just happened, so everybody's got to pay, even those who were condemning those practices as they were underway. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Chambers. Senator Stuthman, you are next and you are recognized. [LB701]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I've been listening to Senator Chambers, and I do have some concerns about what he was attempting to mention. But I would like to first ask a couple of questions of Senator Carlson. [LB701]

SENATOR FRIEND: Senator Carlson, will you yield to some questions? [LB701]

SENATOR CARLSON: Yes, I will. [LB701]

SENATOR STUTHMAN: Senator Carlson, when these irrigation districts were formed, and farmers along the way in these irrigation districts, tell me the process. They can get X amount of inches of water from that irrigation district, and they have to pay for that? Is that true? [LB701]

SENATOR CARLSON: Are we talking about surface water? [LB701]

SENATOR STUTHMAN: Surface water. [LB701]

SENATOR CARLSON: Yes, I believe that would be true, and that the amount year by year is determined year by year. [LB701]

SENATOR STUTHMAN: As to how many inches of water that they can irrigate with?

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[LB701]

SENATOR CARLSON: Correct. Correct. [LB701]

SENATOR STUTHMAN: So...and if this goes through, it's just not that this bill is going to give money to that group of farmers just so that they can't irrigate; these individual farmers, you know, are purchasing that water, and they're probably going to still have to purchase water, have the right to purchase water, but they're not going to be able to irrigate, so their production is going to go down, their valuation will probably stay the same. And it's just not going to fill the pockets, from this bill, of those farmers that are going to have to give up their water. They still have some expense, you know, to that, because they have purchased a right to get X amount of water out of that irrigation district. Is that true? [LB701]

SENATOR CARLSON: I would say that's true. They have purchased the right to receive water. If they don't receive water, it's pretty difficult to produce crops. [LB701]

SENATOR STUTHMAN: Yes, that is true. So in other words, this money given to these farmers is more or less a subsidy for them not...for not allowing them to raise the potential that they should have raised in that...in their area? [LB701]

SENATOR CARLSON: I believe it's an attempt to provide some value for value lost. [LB701]

SENATOR STUTHMAN: And then that would help sustain the economic development, or the economy in the community, by giving them some money just so that we can allow that much more water to go into Kansas, so that we can fulfill our commitment there? [LB701]

SENATOR CARLSON: I would agree that that's correct. [LB701]

SENATOR STUTHMAN: So I think it's...I don't think we should feel that we're just going to take this amount of money, and give to, you know, 500 farmers down the road that money just so that they're not irrigating, you know. We're affecting their livelihood, their potential of raising a crop and...by not having them get water, because they have betted on, you know, that water coming to them every year, and their allocation comes to them every year, and they pay so much for the water. We have the same situation in canals by us, and farmers can get six inches of water, two inches of water, or whatever they purchase, for a nominal fee. But if they're cut off, they're a dryland farm again. So I think we should not think that we're just giving a bucketful of money to a group of farmers. I mean, those farmers are depending on that as income. So, thank you. [LB701]

SENATOR CARLSON: I would agree. [LB701]

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SENATOR FRIEND: Thank you, Senator Carlson and Senator Stuthman. Senator Chambers, you are recognized, and this is your third time on this item. [LB701]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, no matter how Senator Stuthman tries to cut it, this is money being given to people for nothing. You think that there are not people in the cities who would not like to have the state give them some money when their job runs out? Why is it that only when we talk about farming interests are people paid for not doing what it is they're supposed to do, paid for not planting, paid for not using water which they have no right to anyway. They don't have a right to take that water now if it's going to result in less water going to Kansas than should go there. They don't have that right. So you are giving them money to not take something which they have no right to in the first place. Who will pay me \$20 for not going and taking money out of Senator Aguilar's pocket? I don't have a right to the money in his pocket. So you're going to pay me not to take money out of his pocket? These farmers, these irrigators don't have the right to steal that water. And that's what it amounts to. There are different layers, or levels at which and on which this issue can be discussed. Some people will use the analogy of an onion, where you peel it off layer by layer. There is the overarching issue of the state's utilization of water, and that can include everything within the geographic boundaries of the state of Nebraska. Then you can talk about the uses made of water--agricultural, residential, and any other. Then you can go to specific areas of the state and talk about the huge amounts of water they consume. And when we were told the other day that a relatively small percentage of the state's populations will be upping the money to deal with this issue, it was not said at the same time how small a percentage of the state's population is using the lion's share of the water. This issue did not just happen, as I was going to elaborate on the last time I spoke. There were people watching, there were people exploiting a situation, and they knew it couldn't go on like that forever. You know what needs to be done? What needs to be done is to take all of the land that was irrigated, 1,100,000 acres, and turn them over to four large corporations. Then you can make them pay their way, and the public, which had no part to play in creating the problem, will have to pay. And how does that happen? Right now, you have to say, you cannot make these individual irrigators pay what they ought to because they'll go out of business. So if you break it down to a lot of little irrigators, no single one of them can pay all that he or she owes. But if you consolidate that land and put it into the hands of one entity,... [LB701]

SENATOR FRIEND: One minute. [LB701]

SENATOR CHAMBERS: ...that entity can pay its way without going broke. The notion of the small- or medium-sized farm is a notion that has to go by the boards. Long ago, the concept of the family farm as a viable economic unit went by the boards. People who had family farms also had outside jobs. They look back to a nostalgic day, when things never were like people today want to convince themselves they used to be. Everything

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has got to change. And this issue, I think, is bringing it to us in a stark fashion, but we're not dealing with it realistically. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Chambers. Senator Langemeier, you are next to speak. Senator Langemeier waives. Senator Christensen, there are no further lights on, and you are recognized to close on LB701. [LB701]

SENATOR CHRISTENSEN: Thank you, Mr. President. You know, I just want to reemphasize the concern in our district. You know, we have this compact that overlays our district that we've had a hard time coming into compliance with. But with this bill, it gives us the tools to take over locally, to be able to bring in a long-term solution, whether that is closing down surface water rights, or whether that is working on vegetation augmentation, closing down quick-response wells, different things that's put in here. But the bonding process and everything was put in here so that we have the ability to do the long-term that you can't pay for in one year. I appreciate everybody's input upon this bill. I appreciate everybody working towards bringing forth a solution for the district that Senator Carlson and I represent. And I'm going to ask you to vote for this and move this forward, and again mention, if you have concerns, bring them to us; we'll gladly try to work on them and address them between General and Select. At this time, I would like to yield some time to the Speaker to finish on this bill. [LB701]

SENATOR FRIEND: Senator Flood, you have 3 minutes and 20 seconds. [LB701]

SPEAKER FLOOD: Thank you, Mr. President, members. I'll be brief. We're at the point now where a General File vote is looming. I appreciate the body's hard work on this important issue. And I want to say, we are going to be working between General and Select on an amendment that I hope there can be a lot of collaboration on. If you want to be involved, you need to e-mail my office so that you're in the loop. No one should be left out. But that amendment, we've been keeping a short list--it's grown as the time has gone on here--of the issues that we want to address. Accountability is one of those issues. We're going to address the price for surface water. We're going to address irrigation of land from wells after we purchase surface irrigation rights from the same land. And we're going to talk about, what are we actually doing with the state's contribution, and make sure we make a clear record and even add statutory language to the extent we can get it put together and agreed upon in the amendment. But we are at a point in the session where this isn't going to be a deal where we put this in the top desk drawer for a week and come back to it. Those meetings have to start tomorrow, those discussions have to start tomorrow, because this bill will be back up on Select File in a timely fashion, and we will be back on this issue to make sure we address those concerns. So if you wait until Friday, you've waited too long to start communicating. You get up tomorrow morning and you send your points. And you can send them to the Chairman to start with, and Jody in his office, so that we can start a collection point. But certainly, let me know you want to be involved, so that we can work with the Chairman

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as we advance this bill through the Legislature. Thank you, Mr. President. [LB701]

SENATOR FRIEND: Thank you, Senator Flood. Members of the Legislature, you have now heard the closing on the advancement of LB701 to E&R Initial. All those in favor of advancement signify by voting aye; all those opposed signify by voting nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB701]

CLERK: (Record vote read, Legislative Journal pages 1157-1158.) 38 ayes, 1 nay, Mr. President, on the advancement of LB701. [LB701]

SENATOR FRIEND: LB701 does advance. Mr. Clerk, next item. [LB701]

CLERK: Mr. President, LB701A is by Senator Louden. (Read title.) [LB701A]

SENATOR FRIEND: Senator Louden, you are recognized to open on LB701A. [LB701A]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. LB701A contains funding for components to LB701 that have already been extensively discussed. Section 1 appropriates \$3 million to the Department of Natural Resources in fiscal year 2006-2007. This funding would be used to purchase surface water rights from the Bostwick Irrigation District. Section 2 appropriates \$3 million from the Water Resources Cash Fund in fiscal year 2007-2008, and \$3 million from the Water Resources Cash Fund in fiscal year 2008-2009. You will recall that in LB701, \$2,700,000 in General Funds were transferred to Water Resources Cash Fund in both years of the biennium, and a \$300,000 grant from the Environmental Trust is anticipated in each year. Section 3 appropriates \$2,083,086 General Funds to the Department of Agriculture in fiscal year 2007-2008, and \$2,082,086 General Funds to the Department of Agriculture in fiscal year 2008-2009. This fund would be used for the riparian vegetation management program. LB701A also earmarks \$2 million of funding in each year for state aid. The bill has the emergency clause to allow the funding in Section 1 to become available in the current fiscal year. I thank you for your patience and attentiveness, and I ask for your positive affirmative vote for LB701A. Thank you. [LB701A LB701]

SENATOR FRIEND: Thank you, Senator Louden. Members of the Legislature, you have heard the opening on LB701A. Is there anyone wishing to discuss the item? Senator Louden, I see no one wishing to discuss LB701A at this point. You are recognized to close. Thank you, Senator Louden. Senator Louden waives closing. Members, the question is, shall LB701A advance to E&R Initial? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB701A]

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CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB701A. [LB701A]

SENATOR FRIEND: LB701A does advance. Mr. Clerk, do you have items? [LB701A]

CLERK: I do, Mr. President. Your Committee on Judiciary reports LB8, LB107, and LB382 to General File. Amendment by Senator Langemeier to LB343 to be printed. And new resolutions: Senator Erdman offers LR70, LR71, and LR72. Those will be laid over, Mr. President. (Legislative Journal pages 1158-1160.) [LB8 LB107 LB382 LB343 LR70 LR71 LR72]

SENATOR FRIEND: Thank you, Mr. Clerk. Members of the Legislature, we continue on with General File, I believe. Mr. Clerk. []

CLERK: Mr. President, LB368, a bill by Senator Erdman. (Read title.) The bill was introduced on January 12 of this year, at that time referred to the Banking, Commerce and Insurance Committee for public hearing. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM717, Legislative Journal page 891.) [LB368]

SENATOR FRIEND: Senator Erdman, you are recognized to open on LB368. [LB368]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. In 2001, the state of Wyoming passed legislation authorizing the establishment of new-generation cooperatives. At that time, it created a lot of questions in the Midwest. Most questions revolved around protecting the statutory and regulatory structure that currently supports the traditional cooperative system. Unquestionably, the newly created model in Wyoming wasn't a cooperative in the traditional sense, but it was really a limited liability corporation with a cooperative component. A similar version of this legislation was adopted in Minnesota in 2003, followed by Tennessee and Iowa in 2005, and Wisconsin in 2006. In Nebraska, most of the traditional cooperatives are undergoing a redeployment of cooperative assets. In each of the past three decades, the number of local supply and marketing cooperatives have declined by about 30 to 32 percent each year...excuse me, each decade. This has been brought about due to changes in rail rates for shipping grain, governmental programs, and the changing nature of multinational companies that cooperatives compete with. However, while the number of cooperatives in Nebraska has declined rapidly, cooperatives continue to provide necessary services and products for ag producers in over 400 locations throughout Nebraska. In November of 2005, the Nebraska Cooperative Council organized a task force to study the implication of any type of new-generation cooperative legislation, in essence, to study whether or not the efforts of other states should be pursued in Nebraska. The individuals who served on that task force included cooperative managers, farmers, co-op producers, regional representatives, including representatives from ag organizations, including the Nebraska Corn Growers, University

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of Nebraska Institute of Ag Research, and obviously, as a part of that, the research analyst for the Ag Committee of the Legislature. The task force met throughout the spring and summer of 2006 to gather information and to hear both proponents and opponents from other states in sharing their perspectives. The task force addressed many concepts and ideas when they were studying this issue. No one wanted to undertake this just because other states had done so. There had to be an economic value to farmers and ranchers, as well as local cooperatives. In their first meeting, the task force had both proponents and opponents from Washington, D.C., Wisconsin, and Iowa meet with them. Initially, everyone was apprehensive over this concept, particularly as to whether or not this concept would dilute the existing legal foundations for the traditional farmer-owned cooperative. Ultimately, the task force became convinced that this structure would be beneficial to farmers and ranchers, the local cooperatives, and for economic development in Nebraska in general. One of the primary reasons for the states moving forward with their legislation is value-added ag and the need for startup capital. Traditional cooperatives can only generate capital by one of two ways: either by patron member investment, or by borrowing the money. Patrons are those who use the services of the cooperative by buying and selling to the cooperative. Farmers have been investing money and committing their ag production to enterprises such as bean crushing plants, ethanol plants, flour processing facilities, and many others, in order to purchase or construct the fiscal assets necessary to participate in value-added agriculture. Farmers realized that the largest hurdle they had to overcome was raising sufficient capital to adequately fund that enterprise. Initial value-added ventures typically followed the traditional cooperative model as prescribed under Capper-Volstead, which is a federal law that most states, including Nebraska, have followed, regarding the limitations of ownership and return on investment. The limitation that exists with the traditional cooperative model has, in our current economy, restricted the ability of traditional cooperatives to seek investment capital to fund startup costs, expansion, or other activities that require equity capital. Consequently, in an effort to create a business model, which is what LB368 is, that remained farmer-owned but allowed nonfarmer investment, the Limited Cooperative Association Model Act was developed. LB368 creates the Nebraska Limited Cooperative Association Act, which, again, is a new business model for Nebraska. This legislation would do the following. It would allow farmers to participate in a business model on a member basis with nonfarmer investors. Second, it would make value-added ventures attractive to investment bankers and other sources of investment capital. Third, it provides an avenue for local cooperatives to participate as patron members or investor members in value-added enterprises in the trade territory that will benefit all of the farmer owners of that cooperative. Fourth, it provides the flexibility for the board of directors to make decisions to return investment to investors early, keeping farmer owners for the long term, and I think that's a key part of this proposal. Fifth, it would provide economic development opportunities in a number of nonagricultural areas. Even though LB368, to this point in my explanation, has generally dealt with the impact that it would have in ag production or value-added projects, it is a business model similar to other business

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models in the state, and would be eligible for their use in non-ag-related ventures, as well. Consequently, the limited cooperative association model provides a means for a value-added venture to seek and obtain investment capital from any source, while at the same time having member participation by farmer owners. There are two important policy questions that I think were answered in the task force process and I believe need to be answered by the Legislature as we proceed. Number one, is value-added agriculture important to the state of Nebraska? And number two, would the envisioned legislation composed in LB368 enhance our value-added opportunities in the state of Nebraska? To each of these questions, I believe that answer is yes. Value-added ag is important to Nebraska, and this type of legislation will enhance those opportunities. LB368 is largely based on the current NCCUSL draft. LB368 expressly provides, however, that a limited cooperative association may not be a bank or an insurance company as defined under Nebraska statutes regulating those industries. You have received information that I have distributed to you that outline some of the information, entitled, LB368, the Nebraska Limited Cooperative Association Act. You will find in that packet there are different examples of how this law may be utilized in different aspects to accomplish what I believe is the desired goal. The basic fundamentals, the three potential applications, and also a potential application in an urban setting, are specifically outlined in that proposal. Members of a limited cooperative association are called patron participants. Those are the individuals who participate in the earnings of the association based on the business that they do with the association. Investor participants are those who make an equity investment in the association and expect a return on their investment. A limited cooperative association is not a traditional cooperative, because of the fact that it has investor participants that are not patrons, although one can be both an investor participant and a patron participant, but have voting rights, rights to distribution representation on the board of directors of the association. Traditional cooperatives limit ownership, voter, and distribution rights to patron members. LB368 also sets restrictions on allocating voter control...excuse me, voting control and distribution of profits between patron participants and investor participants. Specifically, here are some of the key provisions that are also outlined in the handout that you've received in regards to LB368, and how this business model will be used in the state of Nebraska. Patron participants, again, those individuals who do business with the entity, the limited cooperative, will have 51 percent of aggregate voting power of all participants. That's the default, unless those articles of organization or bylaws provide otherwise. But in no event shall that aggregate voting power be less than 15 percent. That's found in Section 39 of the bill. Patron participants, again, those individuals doing business directly with the entity, must elect at least 50 percent of the members of the board of directors. You'll find that in Section 56 of the bill. Patron participants have a right to at least 50 percent of the distributions of earnings, unless the articles of organization or bylaws provide otherwise. But in no event shall that be less than 15 percent of the distributions of earnings. That's in Section 80 of the bill. Limited cooperative associations are not limited to agricultural entities only. But again, as stated earlier, they may not be used by...as a bank or an insurance company as defined in

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Nebraska law. We also have information that's available to you if you would like it of how these organizations have been established in other states,... [LB368]

SPEAKER FLOOD PRESIDING [LB368]

SPEAKER FLOOD: One minute. [LB368]

SENATOR ERDMAN: ...and they are quite diverse in their application. And I speak...I think that speaks volumes for the ability of folks to be able to apply this new business model as we have with LLCs and other business models in the state. I want to thank the Banking Committee staff for their efforts in working with us on this bill. You'll notice that there was some opposition at the hearing. We did work through those issues, and have provided a committee amendment that addresses those. And I want to thank them for that effort. I also want to thank my staff. As we have gotten to this point, there has been a lot of work done. When you're comparing a NCCUSL draft, which is a uniform law, and trying to make it applicable to Nebraska based on our practices and procedures, it takes a lot of fine-tuning, and we're continually doing that as we move forward. And I look forward to the discussion this morning. I do support the committee amendments, as it was part of an effort that we undertook to try to resolve the differences. And hope that the Legislature will support the committee amendments, as well as the bill, and I look forward to attempting to answer any questions you may have... [LB368]

SPEAKER FLOOD: Time. [LB368]

SENATOR ERDMAN: ...on the application of this new business model. Thank you, Mr. President. [LB368]

SPEAKER FLOOD: Thank you, Senator Erdman. Good afternoon, Senators. While the Legislature is in session and capable of passing business, I propose to sign and do hereby sign LR64, LR65, LR66, and LR68. Continuing with General File discussion on LB368, Senator Erdman, you're recognized. Before we go to Senator Erdman, there are committee amendments. Mr. Clerk. [LB368 LR64 LR65 LR66 LR68]

CLERK: Mr. President, Banking, Commerce and Insurance Committee would offer committee amendments, AM717. [LB368]

SPEAKER FLOOD: Senator Pahls, you're recognized to open on AM717. [LB368]

SENATOR PAHLS: Mr. President, members of the body, the committee amendments to LB368 would amend Section 5 of the bill to provide that a limited cooperative association shall not issue any evidence of indebtedness to a participant unless, prior to issuance, the association provided participants with a disclosure stating that the money is not insured or guaranteed by an agency of the United States government, and that

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the investment may lose value. The disclosure would not be required if the participant meets the definition of an individual credited investor under subsection (8) of Section 8-1111 of the Securities Act of Nebraska. The committee amendments would further amend Section 5 of the bill to provide that any extension of credit by a limited cooperative association to a participant in connection with a sale of the association's goods or services should not exceed nine months or be secured by real property, except that an extension of credit in default may be extended or renewed in the successive periods, not exceeding nine months, and may be secured by real property. No new money may be advanced by any association in connection with such an extension or renewal. The committee amendments would amend Section 48 of the bill to correct a drafting error, so that subsection (1) would correctly read, an investor participant or transferee may grant a security interest in financial rights to a limited cooperative association, but not governance rights in such an association. I would urge you to adopt the committee amendments, so that we can begin debate on the bill. Thank you. [LB368]

SENATOR FRIEND PRESIDING [LB368]

SENATOR FRIEND: Thank you, Senator Pahls. Members, you have heard the opening on the Banking, Commerce and Insurance Committee amendments from Senator Pahls. Senator Chambers, you are next to speak and you are recognized. [LB368]

SENATOR CHAMBERS: Thank you, Mr. President. Senator Pahls, were you here the other day when Senator Dubas had a bill, and I had made the remark that it was like a dog with a big bark but it lacked teeth, and therefore was a toothless bill? You remember me saying something to that effect? I would like...I'd like to ask Senator Pahls that question, if he will respond. [LB368]

SENATOR FRIEND: Yes, Senator Pahls, will you yield? [LB368]

SENATOR PAHLS: Yes, I would. [LB368]

SENATOR CHAMBERS: And Senator Pahls, you did nod and indicate that you had heard an exchange of that kind between myself and Senator Dubas the other day on her bill, correct? [LB368]

SENATOR PAHLS: Yes, I did. [LB368]

SENATOR CHAMBERS: Well, this is a bill which, it seems to me, goes the opposite direction. It's pulling teeth. So why would you do that in your committee amendment? Or you're not aware that that's what it does? [LB368]

SENATOR PAHLS: May I respond? [LB368]

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SENATOR CHAMBERS: It says, this association shall not issue dentures. If it shall not issue dentures, then that means you're pulling the teeth. So why are you prohibiting the issuance of dentures? That's what I'd like to know, if you are so kind as to answer. [LB368]

SENATOR PAHLS: (Laugh) Well, in other words, a person loaning money...if I'm going to loan money to you, I need to know certain things. [LB368]

SENATOR CHAMBERS: Well, why did you specifically put in your bill, associations shall not issue dentures? Why would you put that specifically in the bill? [LB368]

SENATOR PAHLS: Are you talking about the amendment? [LB368]

SENATOR CHAMBERS: Yes. [LB368]

SENATOR PAHLS: Well, I don't see that. [LB368]

SENATOR CHAMBERS: Read lines 5 and 6. [LB368]

SENATOR PAHLS: I'm reading it from my paper here. [LB368]

SENATOR CHAMBERS: Take your time. [LB368]

SENATOR FRIEND: Three minutes and ten seconds. [LB368]

SENATOR PAHLS: Just a second. I can't find it. Oh, okay. Okay. I see you're playing with me now. I...are you and I reading the same word, i-n-d-e-b-t-e-d-n-e-s-s? My paper reads i-n-... [LB368]

SENATOR CHAMBERS: Are you on page, line...are you on page 1, line 5? [LB368]

SENATOR PAHLS: Yes, debentures. Yes, I am. [LB368]

SENATOR CHAMBERS: Shall not...the last two words on line 5 are, shall not issue...why does it say, shall not issue dentures? [LB368]

SENATOR PAHLS: Debentures. I'm sorry. [LB368]

SENATOR CHAMBERS: It shall not issue what? [LB368]

SENATOR PAHLS: Debentures. [LB368]

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SENATOR CHAMBERS: Oh, debentures. I stand corrected. Thank you, Mr. Chairman. [LB368]

SENATOR FRIEND: Thank you, Senator Chambers and Senator Pahls. Senator Engel, you are next to speak. You are recognized. [LB368]

SENATOR ENGEL: Mr. President, members of the body, I have a question to ask Senator Erdman, if he would respond. [LB368]

SENATOR FRIEND: Senator Erdman, will you yield to a question or two? [LB368]

SENATOR ERDMAN: I would. [LB368]

SENATOR ENGEL: How are these new entities going to be taxed, and/or the investors, how are they taxed on the proceeds? [LB368]

SENATOR ERDMAN: That's a fair point, Senator Engel, and I think that's an appropriate one. Generally,...and I'm reviewing the testimony again from the individuals at the hearing, because that's the closest language that we have. The patron participants, which would be the people that do the business with the actual entity, may be able to take their income under Subchapter T, which is how, as I understand the law, how you would be in a patronage situation under a traditional cooperative, at this point. And I'll double-check and make sure that that's accurate. The investor members would be able to take their income as a partner of a member of an LLC, and would be taxed under Subchapter K of the Internal Revenue Code. So essentially, what you're doing is you're taxing the investors at the LLC model that the IRS represents...or, recognizes, and you're going to tax the patrons on their investment under Subchapter T as you would other traditional cooperatives in the state of Nebraska. [LB368]

SENATOR ENGEL: And I'm sure you'll explain both of those to me at a later date, right? [LB368]

SENATOR ERDMAN: (Laugh) I will get more information on what that specifically means. But I think the simple answer is, is that it applies the existing tax structure to them that you would have for these entities individually. If you had a patron cooperative that was wholly members, say it was farmer cooperative, you would be taxed at that rate, and you would be passing on dividends and other assets to those members, in which they would be subject to a tax under the IRS. For the investors, you would treat them the same way as an investment that they receive from an LLC. [LB368]

SENATOR ENGEL: Okay. Then my second question. And I'm not representing the banking industry, but is this in direct competition with the banking industry, or other loaning facilities, loan facilities? [LB368]

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SENATOR ERDMAN: It is not. [LB368]

SENATOR ENGEL: It's not. Thank you. I'll get those answers from you later. Thank you. [LB368]

SENATOR ERDMAN: I'll get those for you, Senator Engel. Thank you. [LB368]

SENATOR FRIEND: Thank you, Senator Engel and Senator Erdman. Senator Gay, you are next to speak, and you are recognized. [LB368]

SENATOR GAY: Thank you, Mr. President. I rise in support of...well, the amendment, but the bill in general. I had some questions when this came to the Banking Committee, and wondered, why do we need this? And Senator Erdman did a fine job explaining that. But the more I look into this, and some of the opportunities that this can create in the ag economy, I'm more sold on it all the time. Senator Engel just talked about, is it a--that was a question I had, too--is there a conflict between traditional lenders per se, that this new business model would kind of cut them out of the loop, I guess? And it doesn't at all. Actually, it creates more opportunities for people who have had an agricultural background. And maybe, say, somebody sells their farm and they're not currently involved in the farming, but they want to invest in their local community or a changing ag environment, and this allows them to do that without being the patron member. But as Senator Erdman said, I think, you know, with the changes that we have...we just had a whole two days' discussion on water issues, but with the changing global economy and everything that's changing, these select ag, whatever term he used, but different opportunities in agriculture, as they arise, people need to get together and form these local groups. And so I do think this is a very useful tool. I commend Senator Erdman for bringing it to the floor. As I say, the more I've looked into this, the more I'm sold on it. So I just rise in support of the amendment and the bill. Thank you, Mr. President. [LB368]

SENATOR FRIEND: Thank you, Senator Gay. To continue discussion on the Banking, Commerce and Insurance Committee amendments, AM717, Senator Stuthman, you are next and you are recognized. [LB368]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to ask a few questions of Senator Erdman, if he'd respond. [LB368]

SENATOR FRIEND: Senator Erdman. Senator Erdman, will you respond to a question or two from Senator Stuthman? [LB368]

SENATOR ERDMAN: I would, Mr. President. [LB368]

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SENATOR STUTHMAN: Thank you. Senator Erdman, is this...this limited co-op association, is this totally different than the co-op associations that we have right now, where you have owner equity in it? Or are these going to be combined? Can you have investors in that co-op also? [LB368]

SENATOR ERDMAN: The current structure that you know of, Senator Stuthman, as a cooperative limits the membership to only those that do the business with the entity. And so from the standpoint of what you know of as a cooperative, as I said in my opening, this is an LLC with a co-op component. And so you'll be able to have both investors and members, patrons, in one entity. So you'll take the good of the cooperative side, which allows for local ownership, which allows for local equity and return on that investment locally, with the opportunity to access investment, maybe from outside interests, or maybe it's from noninterest...my example would be non-ag interest, to be able to accomplish a similar goal with a little more flexibility. When you do that, you do give up some of the federal protections that we have. So it's...it allows for investors and patrons, in addition to the traditional model that you would know. [LB368]

SENATOR STUTHMAN: Thank you, Senator Erdman. Also, I would like to ask on the amendment, on page 1--and this is AM717--it said, goods and services...starting in line 18: goods and services shall not exceed nine months from the date of such sale. Explain that to me. Is this what I would call an open note? [LB368]

SENATOR ERDMAN: Senator Stuthman, the reason that the committee amendment is drafted the way that it is, is currently, as an LLC or even as a cooperative, you can lend money. The example would be a purchase money security interest. If I was a farmer, I could finance my inputs through the local cooperative. They could then finance me for that period of time. What the intent behind the committee amendment is, is to make sure that there is limitations on that, so that it's not directly in competition, as Senator Engel pointed out, with the banking industry. And so what that specifically refers to, if you go up to line 16, it's the extension of credit that's the key part, the extension of credit by a limited cooperative to a participant in connection with the sale of goods and services. So if there was a limited cooperative association--and again, I'll go back to an agricultural example, that they were able to sell you inputs--under this proposal, under this language as it's written and it's been agreed to, that note, if you will, that extension of credit, could not exceed nine months. At that point, the limited cooperative association could reevaluate the status of that credit, could extend it for another nine months, or, if it's found to be in default, could take additional collateral. But that's simply designed to limit the reach of the lending ability for those input types of scenarios. [LB368]

SENATOR STUTHMAN: But with this situation, that, in my opinion, would be in...have direct communications...or, not communications is the word I'm looking for. A local bank could do the same thing. So we're limiting...are we limiting a local bank from offering

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that type of a service, too? Or what is the real intent of trying to establish this? Is this for more credit for people? Or is it for allowing more establishments to offer credit? [LB368]

SENATOR FRIEND: One minute. [LB368]

SENATOR ERDMAN: Senator Stuthman, I would argue that this is a limitation on an existing right that an LLC or a cooperative would have. And under some of the concerns that were expressed by the Banking Association, they wanted to make sure that it wasn't directly in competition, when in fact these tools are already readily available under existing law under other circumstances. So it doesn't prohibit anybody who's not a limited cooperative from offering credit to those members for their purposes. [LB368]

SENATOR STUTHMAN: This offering credit to their members, would that be credit to these investors, too, or just the patrons? [LB368]

SENATOR ERDMAN: It would be either, both. [LB368]

SENATOR STUTHMAN: Okay, thank you. [LB368]

SENATOR FRIEND: Thank you, Senator Stuthman and Senator Erdman. Senator Louden, you are next and you're recognized. [LB368]

SENATOR LOUDEN: Thank you, Mr. President and members. I would like to ask Senator Erdman some questions, if he would yield, please. [LB368]

SENATOR FRIEND: Senator Erdman, will you yield to a question or two from Senator Louden? [LB368]

SENATOR ERDMAN: I would. [LB368]

SENATOR LOUDEN: Now this...as this bill is written, is this for new entities to be formed, or can this work with co-ops that are already in business and formed? [LB368]

SENATOR ERDMAN: It would generally be for new entities, Senator Louden. And there are substantial tax obligations for an existing cooperative should they choose to organize under this model that would probably be less preferable to them. And so it's designed to allow those entities to be able to work together under new structure, but it's not designed, and I don't believe it will be utilized by existing cooperatives to reorganize. [LB368]

SENATOR LOUDEN: Okay. My next question, where you have that nine months in there for the...as, I guess, loan a bill, or whatever they take on, does this in any way affect existing co-ops? Will that affect them on the amount of time that they can carry

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people on their books, and that sort of thing, unsecured loans, I guess you'd call it, or for goods or services that they've sold? [LB368]

SENATOR ERDMAN: No. [LB368]

SENATOR LOUDEN: Okay. Such as your electrical companies and stuff that carry people through the summer and that sort of thing? [LB368]

SENATOR ERDMAN: No. [LB368]

SENATOR LOUDEN: That has no effect whatsoever on... [LB368]

SENATOR ERDMAN: None at all. [LB368]

SENATOR LOUDEN: ...on all those? Okay. And when you mentioned some of these...if this limited co-op, I guess is what you call it, is formed up, now, the reason for that is that you would have your patrons that more or less have formed the cooperative, and then they can still go out and either borrow money, sell bonds, or sell some type of a stock or something to investors, but yet those investors wouldn't have any control or any say so on the day-to-day direction of the board? Is that clear? [LB368]

SENATOR ERDMAN: Not quite. What it's designed to do is strike a balance between the patron members who do business with the company on a day-to-day basis, and the equity investors, those folks who are the investor patrons who are putting up the capital to get it established. Both would have representation on the board. Both would have rights for distribution of the earnings from the entity. Where that is set at is, is that currently, under the bill, the default is, is that 51 percent of the board...let me make sure I've got this right. A majority of the board would come from...the board of directors would be controlled by at least 50 percent of the patrons. You can change that, and the reason you would change that is you may have investors that may want more say, or less. But the default in the bill is that it's a 50-50 joint board between investors and patrons. [LB368]

SENATOR LOUDEN: Okay. Then if I have this clear, then the patrons would have control over who they elect as directors? The investors wouldn't necessarily would unless they were also members? [LB368]

SENATOR ERDMAN: The investors would have the opportunity to have representation on the board as investor patrons...or, investor participants. The members...the patron members would have representation on the board based on their membership through the business that they do. So both would have representation. [LB368]

SENATOR LOUDEN: Okay. And they would both all have one vote, like a co-op,...

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[LB368]

SENATOR ERDMAN: They would have one vote. [LB368]

SENATOR LOUDEN: ...no matter how much money was invested or anything like that,... [LB368]

SENATOR ERDMAN: I believe that is accurate. [LB368]

SENATOR LOUDEN: ...or how much stock they have in it? Well, what's the difference then between this and, oh, some of your...like, your farm credit services used to sell bonds,... [LB368]

SENATOR FRIEND: One minute. [LB368]

SENATOR LOUDEN: ...and some of your co-ops used to sell stocks and bonds, you could buy bonds on some of these, I think, CCA, at one time, and they paid a percentage. What would be the difference between these...that and what they used to do like that? [LB368]

SENATOR ERDMAN: As I would understand those entities, they have a certain threshold that they have to meet, whether it's their membership, the people that they do business, their member owners, that they have to meet. That would be different than this bill. To access farm credit, I believe you have to be in a different category. And to access co-banks specifically, you have to be at, like, 80 percent farmer owner to access some of those. Some of those other programs I'm not specifically aware. But there are, I would say, safeguards in place to make sure that the entity has the opportunities to take care of its own needs and not get into competition with those that are providing similar services. [LB368]

SENATOR LOUDEN: Okay, thank you, Senator Erdman, and thank you, Mr. President. [LB368]

SENATOR FRIEND: Thank you, Senator Louden and Senator Erdman. Senator Dierks, you are recognized. [LB368]

SENATOR DIERKS: Thank you, Mr. President. I wonder if I could visit with Senator Erdman a little. [LB368]

SENATOR FRIEND: Senator Erdman, will you yield to a question or two? [LB368]

SENATOR ERDMAN: I would. [LB368]

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SENATOR DIERKS: Senator Erdman, who do you envision as being part of the investors that would be involved with this? What entities would do that? [LB368]

SENATOR ERDMAN: It could be individuals, Senator. It could be organizations. An example that I would give you, in western Nebraska, when a group of farmers was trying to purchase a cooperative...purchase a processing facility as a cooperative, there were nonfarmers in the area that would have liked to have invested in that entity, and they were citizens of the community. Some of them were involved in banking. But they were local folks who wanted to invest, but because of the cooperative law and the investment provision, they were prohibited. So it would be open to anyone who would be deemed an investor and would be willing to subject themselves to the provisions of this act. It doesn't limit that. What the bill does is limit the ownership rights to those folks who do business with that entity. [LB368]

SENATOR DIERKS: So then could Monsanto, for instance, be an investor? [LB368]

SENATOR ERDMAN: They could, just as any other entity that could be an investor in an LLC in Nebraska. So any other...if you think of that model, Senator Dierks, that's what we're doing. We're taking the LLC component. So anybody that you would generally deem as an investor of an LLC would potentially be an investor in this component of the limited cooperative. [LB368]

SENATOR DIERKS: Thank you. Thank you, Mr. President. [LB368]

SENATOR FRIEND: Thank you, Senator Dierks and Senator Erdman. Continued discussion on AM717, the Banking, Commerce and Insurance Committee amendments. Senator Wallman, you are next and you are recognized. [LB368]

SENATOR WALLMAN: Thank you, Mr. President, and thank you, Senator Erdman. As a former co-op board president, and we needed more tools, like, we tried to start ethanol plants or something like that, years ago, and couldn't get the money. And I think this is an excellent tool to help us get started out and do some good things. And it's an extra...it's a thing that private companies have almost already, but the co-ops weren't allowed to have it, like Senator Erdman explained. So I would urge you to support this amendment and this bill. And I'd yield the rest of my time to Senator Erdman. [LB368]

SENATOR FRIEND: Senator Erdman, you have just over 4 minutes. [LB368]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. Let me briefly go through some of the other entities that have been organized in other states, in addition to, obviously, the value-added ag component, which I think is key for our state. If you look at a lot of the entities that have been organized in value-added agriculture, they're LLCs. They're designed because they needed the investment to

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make that happen. What's missing from those components, generally, is the local ownership. And by adoption of this bill as state law, we enable individuals to earn equity and to become local owners of those entities. And I think that's a key component that is missing currently in the state of Nebraska. We are willing to bring entities in the state of Nebraska, to have them locate here, because of the potential that they bring and the opportunities for economic development. But we have not given the tools to allow for the local ownership, other than simply coming up with the millions of dollars to make the investments. And so I think this balances those out. We have looked in other states. Obviously, there's been a number of traditional cooperative ideas that have followed this model. We look at a sugar cooperative or other cooperatives that are designed to work with other traditional cooperatives. But some of the other areas that are kind of interesting, we start looking at informational technology companies. There have been healthcare companies that have been organized. There have also been what I would consider to be some very creative solutions. You have seen an example in your handout dealing with how a grocery store may operate under this. And so it is broader than just simply the value-added agriculture. And so I appreciate the comments so far. I look forward if you have other questions. I do fundamentally think that this is a vital tool that we need for the future of the state of Nebraska. As we proceed--and we've had some discussions this year, we'll continue to have discussions into the future about the new cutting-edge technology that's available, whether it's in agriculture or whether it's in other areas--having a component where you give individuals the opportunity to make an investment, but also you reward individuals for doing business with that entity and creating that local ownership, creates a better value, or greater value, in that economic development, because you're creating something that's not only needed at the time, but also is sustainable due to the fact that its members will do business with it and will create the opportunities in that community that could spur other businesses and ventures that will be beneficial throughout the state. Thank you, Mr. President. [LB368]

SENATOR FRIEND: Thank you, Senator Erdman. Senator Nelson, you are next to speak, and you are recognized. [LB368]

SENATOR NELSON: Thank you, Mr. President, members of the body. I would like to direct a couple of questions to Senator Erdman, if he would yield. [LB368]

SENATOR FRIEND: Senator Erdman, will you yield to some questions? [LB368]

SENATOR ERDMAN: I will. [LB368]

SENATOR NELSON: Thank you, sir. There's a lot of volume here, and I haven't been able to look through it all. But if I could direct you to page 30 of the bill, on line 22 there, I think you mentioned this already...or, rather, 23, there shall be not less than 51 percent of the entire voting power entitled to vote, but the articles of organization or bylaws may reduce the collective voting power of patron participants to less than 15 percent. Could

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you give me an instance of where you would want to do this? I'm interested in seeing that the patrons are protected. Is it possible that investors who put more money in than the patrons have, that they can manipulate this in some way, to change the voting power? [LB368]

SENATOR ERDMAN: There would be no opportunity to do that, as you would outline as manipulation, Senator Nelson. The default is as you have outlined it on page 30, that the aggregate voting power of all patron participants--again, those doing business with the entity, the local owners--shall not be less than 51 percent. That only changes if that membership agrees to give up their position. So we are creating the opportunity at the outset that they are protected from what you have outlined. The reason why you want to have some flexibility is that there may be a reason or a legitimate situation where in order to attract additional investors, some amount of that control may need to be given up. And so that's the flexibility that's allowed. But the conscious decision was made by myself and those that are working on this bill to state that the outset, and if there is no agreement, that the patron participants, those that do business with it, shall have the majority of those voting rights. [LB368]

SENATOR NELSON: All right. Thank you. And then moving on to page 38, at the bottom there, Section 56, it says, at least 50 percent of the board of directors of a limited co-op association shall be elected exclusively by patron participants. I wasn't able to find how many directors can be elected, but it does appear to me that the patrons are always protected by that 50 percent provision. Is that correct? [LB368]

SENATOR ERDMAN: I believe that's accurate, and I believe that's also the intent of the drafting of the bill. [LB368]

SENATOR NELSON: So it may be that 80 to 90 percent of the investment is from outside investors, patrons, or investors, I guess, rather than...what is it that we call the...? [LB368]

SENATOR ERDMAN: You have patron participants, and investor participants. [LB368]

SENATOR NELSON: Right. All right, patron participants. So they may have very little investment there, but they will continue to control as far as the board of directors is concerned. Is that correct? [LB368]

SENATOR ERDMAN: As I read Section 56, I believe that's accurate. [LB368]

SENATOR NELSON: All right. Thank you very much, Mr. Erdman...or, Senator. That answers my question. Thank you, Mr. President. [LB368]

SENATOR FRIEND: Thank you, Senator Nelson. Senator Loudon, you are next, and

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you're recognized. [LB368]

SENATOR LOUDEN: Thank you, Mr. President. I would like to ask Senator Erdman questions, if he would yield, please. [LB368]

SENATOR FRIEND: Senator Erdman, will you yield to a question or two? [LB368]

SENATOR ERDMAN: I will. [LB368]

SENATOR LOUDEN: Senator Erdman, I have, I guess, a question. If...say someone wanted to form a...well, a crushing plant, for instance, I guess, and a bunch of the local people went in there and put about so much money together. Then could they go ahead and get a couple or three larger investors to put up the lion's share of the money to go ahead and build this crushing plant? And could...would that how this would work, with a limited cooperative association? Is that what this is designed to do? [LB368]

SENATOR ERDMAN: I think that would be acceptable, Senator Louden. The investor participants would have an opportunity to make an investment. There's no specified amount on what they would have to invest, obviously. But they would have...based on their involvement with the entity, that's how they would be treated. So if it was local investors that secured other investors, when it came to determining the investor participation, they would all be determined as investors, and so they would have that opportunity, which is generally a limitation that we have under existing cooperative law, in that you'll have the local entities, or local individuals be able to raise the money locally, but then they can't go out and find the additional assistance, whether it's within their community or elsewhere, in order to be able to meet that total amount that they need to be successful. [LB368]

SENATOR LOUDEN: Yeah. Now, what would be in this thing to protect these, I would say, your...is this paper you handed out, on the right-hand side, the large investors, what is in this act to protect them? [LB368]

SENATOR ERDMAN: They are given... [LB368]

SENATOR LOUDEN: Because I mean, you have a bunch of people that put up 10 bucks apiece, and then you have three people that put up \$1 million apiece, and yet everybody gets one vote. So what is in there to protect the large investor? [LB368]

SENATOR ERDMAN: They, as Senator Nelson pointed out, have representation on the board of directors. They have voting rights under the act as a whole...under the entity as a whole. The value of them making an investment is that they believe that that's a prudent investment and that they will receive a return. And to the extent that the entity is able to do that, it will be attractive to them. There is that opportunity. And simply given

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that opportunity, it puts the burden on the LCA, the limited cooperative association, to make the point to those investors that they'll have a chance of getting their return. But in that process, they also have representation in the decision making of that company. [LB368]

SENATOR LOUDEN: Now, one other question. The other day, I think, we advanced a bill that would give a tax credit for, what, diesel ethanol plant, or something like that...or, not ethanol, but biodiesel plants. I think we advanced a bill that would give investors a certain amount of credit. Could these, I call them the high rollers, on that side, would they be able to use that credit then on their taxes, being as they were investors into...say it was a crushing plant? Would this work with this here? Or does that have to be plainly an LLC for that to work? [LB368]

SENATOR ERDMAN: I'll have to double-check, Senator Louden. It would be my understanding that they would have the same opportunities of every other business model, that however they're organized is not reflective of how we treat them under those credits. And so the entity itself would get the credits, regardless of how they're organized. I'll have to specifically check on regards to Senator Langemeier's bill and determine whether or not it's authorized specifically. But it's my understanding that they have the same opportunities as any other business model under existing law. [LB368]

SENATOR LOUDEN: Then they could receive tax credits if they were invested in some type of a plant like that. [LB368]

SENATOR FRIEND: One minute. [LB368]

SENATOR LOUDEN: With...what's the difference between this and an LLC? [LB368]

SENATOR ERDMAN: Great question. An LLC, you generally will have individuals that are putting the money in that are the investor side of this. What this allows is that if those individuals who want to be a part of this business model say, we would like, as your example of a crushing plant, we would like to be the producers that deliver the commodity, but we need the folks to help us build the plant, it brings those two entities to the table under one component, or one business model. Under an LLC, that opportunity is not readily available. You have to go through other hoops and circles to try to accommodate that. And so it simply allows for that flexibility, given the new business structures that we're seeing in other states and how we could facilitate that in Nebraska. [LB368]

SENATOR LOUDEN: Okay, thank you, Senator Erdman. And thank you, Mr. President. [LB368]

SENATOR FRIEND: Thank you, Senator Louden and Senator Erdman. Senator Pahls,

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there are no other senators wishing to speak. You are recognized to close on AM717. [LB368]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I almost started out having to go to my orthodontist, but I just have a little bit of a pain there, (laugh) thanks to Senator Chambers. I think by the discussion from Senator Erdman, you can see that he really understands this bill. So I urge you to support the amendment, and on with the bill. [LB701]

SENATOR FRIEND: Thank you for fighting through the pain. You've heard the closing on AM717, the Banking, Commerce and Insurance Committee amendments. The question is, shall the amendments be adopted to LB368? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB368]

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB368]

SENATOR FRIEND: The committee amendments are adopted. We return to discussion on the advancement of LB368 to E&R Initial. Anyone wishing to speak to the item? Senator Erdman, I see no senators wishing to speak. Senator Nelson wishes to speak. Senator Nelson, you are recognized. [LB368]

SENATOR NELSON: Thank you, Mr. President, members of the body. I generally support this. I think it's a good idea--basically, an LLC with a co-op model. I do have one additional question for Senator Erdman, if he would yield. [LB368]

SENATOR FRIEND: Senator Erdman, will you yield to a question from Senator Nelson? [LB368]

SENATOR ERDMAN: I will. [LB368]

SENATOR NELSON: Senator Erdman, we know how this works as far as farm producers. And I might have been involved in other discussion, but could you outline just briefly what other types of businesses and entities might take advantage of this act? And specifically, could producers of corn who are interested in getting an ethanol plant started in their territory use this type of vehicle, this LLC? [LB368]

SENATOR ERDMAN: Senator Nelson, they very well could. The third illustration of the handout that I gave you talks about a sunflower LCA, limited cooperative act. It talks about being able to work together as a producer of sunflowers in order to be able to not only produce them, but market and process those. And so it would be applicable, as it has been used in other states, for ethanol. It would also be used in other value-added

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ventures relating to agriculture in the state. I can give you an example that comes to mind on a non-ag example, if you would like, and how it may apply, as it has been used in other states, as well. [LB368]

SENATOR NELSON: Yes, if you will. [LB368]

SENATOR ERDMAN: Okay. One of the things that you may see is that you have condominiums or associations for home ownership that get established, and depending upon how they're organized, you have certain opportunities under those for ownership. One of the things that you may see is, you may see a housing complex or an apartment complex go up in a condominium organization mentality, and that is that you own the unit. And you would have investors that would help to build that housing. Maybe it's affordable housing, or something like that. They would put the money up to invest. The people who would be the tenants would be the members, the patrons who are doing business with that association, and over time, they would earn their ownership in that entity, and the investors would receive their return on their investment. And so it not only is applicable in ag-related situations, but in areas such as affordable housing or other areas like that, that I think are important. It could very well be utilized, as it has in other states, here in Nebraska. [LB368]

SENATOR NELSON: How long, if you know, in other states, how long has this particular type of vehicle been operative? And are they well received? [LB368]

SENATOR ERDMAN: They have been well received, Senator Nelson. They're quite new to the business model opportunities that folks have to choose from. I think one of them that I have here goes back to 2001 in Wyoming, so almost half a decade. They've been out. There's been an effort nationally to look at all of these laws and make sense of them. We're following that effort, and I believe that our draft reflects that. But they are well received, because there...as Senator Wallman pointed out, there is a need to be able to have local ownership and member ownership in these entities, and still be able to access the capital. And it would have been a huge benefit for us in western Nebraska in a value-added venture for dry bean production, had we had this tool available to us. [LB368]

SENATOR NELSON: All right. In my practice, I've had occasion to form LLCs. They're a popular vehicle now. They serve their purpose very well. And I want to thank you for bringing this forward in this new bill. And I, too, wish that it could have been available a little earlier than it has been. But I am certainly supportive of this, and again I want to thank you, Senator Erdman. Thank you, Mr. President. [LB368]

SENATOR FRIEND: Thank you, Senator Nelson and Senator Erdman. Senator Karpisek, you are recognized. [LB368]

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SENATOR KARPISEK: Thank you, Mr. President, members of the body. Could I ask a question of Senator Erdman, please? [LB368]

SENATOR FRIEND: Senator Erdman, will you yield to a question from Senator Karpisek? [LB368]

SENATOR ERDMAN: I will. [LB368]

SENATOR KARPISEK: Thank you. Senator Erdman, I, too, support this bill. My question is, I guess I think back to I-300, and I think this probably wasn't...wouldn't have been able to have been done under I-300. Is that correct? [LB368]

SENATOR ERDMAN: That's not accurate. It would have complied with that law, and it will comply with our new situation under our...under the ruling. So this was never intended to be a bill to circumvent. I believe what it does is it enhances the opportunity for farmers, family farmers, to have ownership in these ventures. [LB368]

SENATOR KARPISEK: And I guess that was my other concern, is the vertical integration rather than the horizontal. Would this...I know Senator Dierks asked the question of the feed lot, the producers, those sort of things, the meat packers. Would this make it easier for vertical integration? [LB368]

SENATOR ERDMAN: It would be my opinion that it would be no easier than other restrictions. If you understand there are provisions such as I-300, there are other statutory restrictions that we have in the state of Nebraska in addition to that. What I believe that this component is of value to--and I think the example Senator Dierks gave was Monsanto, not specifically a processor--but the opportunity is, is that those local farmers have the opportunity to become owners in a venture that they otherwise would never be able to attain. And so existing statute would continue to pertain in those areas of law that we have set our public policy. As we as a Committee in the Agriculture try to determine how we proceed now, it will still be subject to those decision making process, as every other business model is in the state of Nebraska. [LB368]

SENATOR KARPISEK: And that was my question, as we move forward over the interim, if this will put a precedent, this bill, for how we move forward post-I-300, or if this is just a part of how we're going to move forward? [LB368]

SENATOR ERDMAN: I think it's independent, Senator Karpisek, of those deliberations that I hope we as a committee have the opportunity to do and do well. The reality of giving local producers--and I'll go back to the ag example--giving local producers the opportunity to be owners and to have the protections that Senator Nelson pointed out, the 50 percent voting of the board, have that members...that representation directly elected by them, giving them that control, I think protects them as individuals and their

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interests that we believe are important as a state. But it also provides them the opportunity to maximize their production if there are investors. And again, I gave the example to Senator Dierks, there were investors in our local community who just happened to not be farmers, that because of the existing cooperative law, couldn't allow them to attain the levels of success that they would have in the short term. They had to extend their equity drive three times to get there, because the members didn't have the funds. So we need to be cognizant of, there are others in Nebraska, in our home communities, that want to be a part of some of those ventures. But again, we have protected the board of control for these entities to those individuals that are doing business with the company. [LB368]

SENATOR KARPISEK: And that's my main concern, is the loss of local control, loss of family control. So thank you for answering those questions, and thank you for bringing the bill. Thank you, Mr. President. [LB368]

SENATOR FRIEND: Thank you, Senator Karpisek, Senator Erdman. Senator Erdman, there are no other senators wishing to speak. You are recognized to close on the advancement of LB368. [LB368]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I appreciate the discussion. I hope in this discussion you have seen the need for this new opportunity. And it's not essentially an idea that was created; it's a matter of combining two very successful business models into one business model, and that's taking the components of patron...the members who do business with an entity, and allowing them to access the investment that they need to be successful in their own ventures. That's missing today in Nebraska. It's missing today in most other states. And I think it's a testament to us as a state if we proceed forward with this opportunity to maximize the opportunity for that local ownership. We have other bills that have been introduced this year--Senator Langemeier's bill dealing with those credits and the ownership responsibility before you're eligible; Senator Dierks has a bill in Natural Resources dealing with wind. We have recognized the value of having local ownership and making those investments, and what that means to those local communities, but most importantly, what it means to those families and their ability to make their own course and to chart that course of success, and to accomplish that. And from that, we see the revitalization of some of these areas. We've seen that in the other states that have acted with the limited cooperative model. I am hopeful and optimistic that working through the entities that are interested in the passage of this bill, that have worked tirelessly to get here, that we will see successful results in the makeup...in the addition of new ventures in the state that will protect and will provide that local ownership that I think is vitally needed in the state. And I would encourage your support of LB368. Thank you, Mr. President. [LB368]

SENATOR FRIEND: Thank you, Senator Erdman. Members of the Legislature, you've

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heard the closing on the advancement of LB368 to E&R Initial. All those in favor of advancement please vote aye; all those opposed signify by voting nay. Have you all voted who care to? Record please, Mr. Clerk. [LB368]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB368. [LB368]

SENATOR FRIEND: LB368 does advance. Mr. Clerk, do you have items? [LB368]

CLERK: Mr. President, I have one. Senator Pirsch would like to add his name to LB368 as cointroducer. (Legislative Journal page 1161.) [LB368]

And I have a priority motion, Mr. President. Senator Janssen would move to adjourn until Thursday morning, April 12, at 9:00 a.m. []

SENATOR FRIEND: Members of the Legislature, you've heard the motion to...the motion is to adjourn until Thursday morning, April 12, 2007, at 9:00. All those in favor signify by saying aye. All those opposed say nay. The ayes have it. We are adjourned. []