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Floor Debate
April 03, 2009

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SPEAKER FLOOD PRESIDING []

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-fifth day of the One Hundred First Legislature, First Session. Our chaplain for today is Reverend Cedric Perkins of the Pilgrim Baptist Church in Omaha, Senator Cook's district. Please rise. []

REVEREND PERKINS: (Prayer offered.) []

SPEAKER FLOOD: Thank you, Reverend Perkins. I call to order the fifty-fifth day of the One Hundred First Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record. []

ASSISTANT CLERK: There is a quorum present, Mr. President. []

SPEAKER FLOOD: Thank you, Mr. Clerk. Are there corrections for the Journal? []

ASSISTANT CLERK: I have no corrections this morning. []

SPEAKER FLOOD: Are there any messages, reports, or announcements? []

ASSISTANT CLERK: Mr. President, I have a report of registered lobbyists for the current week; reports from the Auditor of Public Accounts; and the Department of Health and Human Services. Committee on Judiciary reports LB304 and LB598 to General File. (Legislative Journal pages 913-914.) [LB304 LB598]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Howard, first and foremost, welcome back. For what purpose do you rise? []

SENATOR HOWARD: Thank you, Mr. Speaker. If I may request a moment of personal privilege. []

SPEAKER FLOOD: You may proceed. []

SENATOR HOWARD: Thank you to my colleagues and friends on the legislative floor and to their staff and especially to my staff. Thank you to Governor Heineman and to Sally for their support. Thank you to Bill Drafting. Thank you to Accounting. Thank you to the Bill Room. Thank you to the cafe staff and to all in our legislative community. Thank you to my friends in the Rotunda, my neighbors, my constituents in District 9, and

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to everyone across Nebraska who has sent their support through cards, e-mails, flowers, and donations to the Carry A. Howard Scholarship Fund. When Carrie was a little girl, a teacher drove her home from an after-school event and she asked her what we'd be doing for the weekend. She told the teacher that we were going to buy flowers and put them on the middle of the dining room table and pretend that we were rich. I was rich because I had Carrie in my life. I love her and I thank you all. []

SPEAKER FLOOD: Thank you, Senator Howard. We will proceed this morning with LB136A under General File. Mr. Clerk. [LB136A]

ASSISTANT CLERK: Mr. President, LB136A introduced by Senator Avery. (Read title.) [LB136A]

SPEAKER FLOOD: Senator Avery, you're recognized to introduce LB136A. [LB136A]

SENATOR AVERY: Thank you, Mr. President, colleagues. LB136A simply provides funds to carry out the provisions of LB136 that we debated yesterday and approved without any negative votes, as I recall. This is an important program. As I said yesterday, it's the linchpin to the package of bills that we'll be taking up on Select File that will help us respond to the safe haven crisis that we discovered last year. I would point out that this is my first A bill in my two and a half years in this body. I would urge your support. Thank you. [LB136A LB136]

SPEAKER FLOOD: Thank you, Senator Avery. There are no other members to speak. Senator Schilz, you are now recognized. [LB136A]

SENATOR SCHILZ: Thank you, Mr. President--sorry for the late button there--and members of the body. I stand here today because yesterday afternoon or whenever it was that we first took up this bill, I've been sitting here and wondering just what others in the body have been saying over time is...you know, these are all great causes that we need to find ways to help these children that need it. But as I start to look at everything that starts to pile up and I start to watch the ticker adding up on all the dollars that will be spent on all these problems, not just one but all of them that we're talking about, and how swiftly these bills are getting pushed through, it makes me want to pause and take just a minute and think about them pretty hard because at some point we're all going to have to reconcile all this. And does everybody in here really know everything that we're passing here today or what we've passed so far? Does everybody really understand the ramifications yet? So I'm sitting here trying to figure out exactly what the priority should be. Do we pass a bunch of bills and then figure out how to do it when we come down to the budgeting process or do we scrutinize these bills and scrutinize how much they cost and what they will be doing so that we know what we're going into when we get to the budget? And so I'm trying to figure out myself which to go because there's no doubt, there's no doubt that if this is needed to help fix the issues that were brought up with the

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safe haven issue, then as Senator Avery has said, you know, there were promises made. And I think a promise made is a promise that should be kept. But, you know, have we really sat down and thought about it? And maybe we have and maybe I just need some explanation from some folks to show me that. But Senator Friend said yesterday, you know, have we proven that this program actually works over time? You know, in something like this where you have a government program, isn't success measured by how many people don't need it rather than by how many people do need it? And so I'm just somewhat...maybe confused isn't the right word, but wondering how to prioritize this and how to move forward. So with that, I thank you very much. [LB136A]

SPEAKER FLOOD: Thank you, Senator Schilz. Senator Avery, you're recognized. [LB136A]

SENATOR AVERY: Thank you, Mr. President. Thank you, Senator Schilz, for your comments. I, too, share your concern about the bigger picture. And I've had conversations with Senator Heidemann about this, and the group of senators that has been meeting on this package of bills are very much aware of your concerns because we had the same ones. And we are, I can assure you, doing everything we can to keep the fiscal impact of these bills as low as possible. I would point out that if you go to the original fiscal note, in the first year LB136 would have cost \$2.4 million. And we eliminated a number of provisions in that bill to bring it down to a little over \$2 million. Now, there's some administrative costs in here, but we will leverage significant federal money. We talked about this yesterday, and if we don't accept that money by matching the 28 percent of the funds from the state, then that money will go elsewhere and we will have lost an opportunity to help children. I believe that this is important and I hope that you will vote green on this. Thank you. [LB136A]

SPEAKER FLOOD: Thank you, Senator Avery. (Doctor of the day and visitor introduced.) Senator Friend, you're recognized. [LB136A]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. Mr. President, thanks for returning my call. I'm sorry I didn't get back to you. This relates a little bit to what I was actually going to talk to Mike about. It's nothing of any major import, I don't think, but it has to do with this A bill. I was sitting in front of Appropriations, I don't know, a week and a half ago. Senator Ashford and I have a bill that requires an appropriation or we believe it requires a certain appropriation. We don't know exactly what that appropriation should be yet. Senator Ashford knows what he thinks he'd like it to be. I have a feeling I know that it's going to be somewhere in between what we originally thought that we wanted and what the number was when we came to the floor a couple of weeks ago. The reason that I bring that up is because we all have those type of things. Senator Avery was applauding...pointing out the idea that this has been his first A bill in the time that he's been in the Legislature. I don't know if

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that's something to necessarily be that proud of because I've had some A bills. We all will have an A bill in our time here. If you spend eight years here, you're going to end up dealing with one. The question that we have to ask ourselves...and I think it's very, very important. I spent ten minutes yesterday talking about SCHIP. You run the risk when you do that, especially if you don't like necessarily the expansion of a federal and potentially a state program. You run the...especially one that deal with kids and health insurance for kids, you run the risk of actually looking like you have devil horns sticking out of the top of your head. All right. Fine. Picture me with devil horns sticking out of the top of my head. I don't really care. You have to take every A bill that you have out here and you have to analyze, you have to scrutinize, and you have to give it an excruciating amount of effort. And when I was in front of the Appropriations Committee I said, look, I understand what you folks are going to be going through here. I'm not telling you what the right number is. I'm just telling you my thought process on this particular bill would indicate to me that this would be valuable money on the front end to try to deter violent crime. Now, I could be wrong about that. Remember I said I was unelectable. I've got seven years of a voting record in here and I voted for spending bills. When I was walking around before I got elected the very first time at 39 years old, I'm 47 now, I'm telling everybody we've got to cut government spending, we got to cut government spending, we have to cut government spending. I've tried to do that when possible. Sometimes it's tough. I see an opportunity here after analysis and the ten minutes that I spent and the time that I spent in the last couple of years studying SCHIP, I don't like this idea. I don't think we have to expand government in this area. Others may not like the idea that I had and don't think that we ought to expand government in an area where we're trying to prevent violent crime. Fair enough. I want to hear the arguments. I said yesterday this is a freight train going downhill. This money is going to go through. We are going to approve this spending. I'm telling you here and now I'm going to vote red on this. [LB136A]

SPEAKER FLOOD: One minute. [LB136A]

SENATOR FRIEND: I'm going to vote red because I have not determined based...with my...and by the way, I got e-mails yesterday after I made my comments about how people are talking about how great this program has been. The problem is the e-mails that I got didn't indicate to me anything that I didn't already know. I have trouble figuring out how valuable this program is. It's as simple as that. And with that said, we're asking now, all the great work that this package includes, \$2,500,000 out of General Fund this year, \$3,400,000 out of General Fund in the next biennium or, excuse me, in year two. I can't support it. I don't have enough proof that I think this is going to be valuable enough. And I thank Senator Schilz for standing up and actually raising a concern. I have major concerns. [LB136A]

SPEAKER FLOOD: Time, Senator. [LB136A]

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SENATOR FRIEND: Thank you, Mr. President. [LB136A]

SPEAKER FLOOD: There are no other lights on. Senator Avery, you're recognized to close on LB136A. Senator Avery waives closing. The question before the body is, shall LB136A advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. A record vote has been requested. Record please, Mr. Clerk. Record vote. [LB136A]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 914-915.) Vote is 39 ayes, 4 nays, Mr. President. [LB136A]

SPEAKER FLOOD: LB136A advances to E&R Initial. Members, please find your seats in preparation for Final Reading. Members, before we begin please note that we will be taking a vote to suspend at-large reading of LB483E. The agenda does not indicate that with an asterisk, but we will be suspending the reading of this bill due to its length. Again, if you could please mark your agendas, LB483E. Mr. Clerk, the first bill is LB105. The first vote on this bill is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB136A LB105]

ASSISTANT CLERK: 46 ayes, 0 nays to dispense with the at-large reading, Mr. President. [LB105]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB105]

ASSISTANT CLERK: (Read title of LB105.) [LB105]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB105 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB105]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 915-916.) Vote is 47 ayes, 0 nays, 2 excused and not voting, Mr. President. [LB105]

SPEAKER FLOOD: LB105 passes. Members, before we move on to the next bill, given the impending threat of severe winter weather throughout the state of Nebraska over the weekend, I would encourage you to check your e-mail Sunday evening, shortly after 9:00 p.m. In the event that there is a need to cancel or delay the start of Monday's legislative business, we will notify members via e-mail after 9:00 p.m., and this same information will also be posted on the Legislature's home page. Thank you. Mr. Clerk, we now proceed to LB105A. [LB105 LB105A]

ASSISTANT CLERK: (Read LB105A on Final Reading.) [LB105A]

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SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB105A pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB105A]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 916.) Vote is 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB105A]

SPEAKER FLOOD: LB105A passes. Mr. Clerk, we now proceed to LB110 where the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB105A LB110]

ASSISTANT CLERK: 40 ayes, 1 nay to dispense with the at-large reading, Mr. President. [LB110]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB110]

ASSISTANT CLERK: (Read title of LB110.) [LB110]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB110 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB110]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 917.) Vote is 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB110]

SPEAKER FLOOD: LB110 passes. Mr. Clerk, LB110A. [LB110 LB110A]

ASSISTANT CLERK: (Read LB110A on Final Reading.) [LB110A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB110A pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB110A]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 918.) Vote is 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB110A]

SPEAKER FLOOD: LB110A passes. Mr. Clerk, we now proceed to LB165E. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those

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opposed vote nay. Mr. Clerk, please record. [LB110A LB165]

ASSISTANT CLERK: 46 ayes, 0 nays to dispense with the at-large reading, Mr. President. [LB165]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB165]

ASSISTANT CLERK: (Read title of LB165.) [LB165]

SPEAKER FLOOD: Thank you, Mr. Clerk. All provisions of law relative to procedure having been complied with, the question is, shall LB165E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB165]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 919.) Vote is 47 ayes, 0 nays, 2 excused and not voting. [LB165]

SPEAKER FLOOD: LB165E passes with the emergency clause attached. Mr. Clerk, LB168. [LB165 LB168]

ASSISTANT CLERK: (Read LB168 on Final Reading.) [LB168]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB168 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB168]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 919-920.) Vote is 47 ayes, 0 nays, 2 excused and not voting. [LB168]

SPEAKER FLOOD: LB168 passes. Mr. Clerk, LB177. [LB168 LB177]

ASSISTANT CLERK: (Read LB177 on Final Reading.) [LB177]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB177 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB177]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 920-921.) Vote is 45 ayes, 0 nays, 2 present and not voting, 2 excused and not voting, Mr. President. [LB177]

SPEAKER FLOOD: LB177 passes. Members, before we proceed to the next bill, at this

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time the pages will be handing out a member from me regarding the nights that I have identified that may be potentially late nights for the purposes of legislative business. Please take a moment to review this memo and contact me if you have any questions. Proceeding now to LB184. [LB177 LB184]

ASSISTANT CLERK: (Read LB184 on Final Reading.) [LB184]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB184 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB184]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 921.) Vote is 45 ayes, 0 nays, 2 present and not voting, 2 excused and not voting, Mr. President. [LB184]

SPEAKER FLOOD: LB184 passes. Mr. Clerk, we now proceed to LB207. [LB184 LB207]

ASSISTANT CLERK: (Read LB207 on Final Reading.) [LB207]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB207 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB207]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 922.) Vote is 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB207]

SPEAKER FLOOD: LB207 passes. Mr. Clerk, we now proceed to LB377E. [LB207 LB377]

ASSISTANT CLERK: (Read LB377 on Final Reading.) [LB377]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB377E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB377]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 922-923.) Vote is 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB377]

SPEAKER FLOOD: LB377E passes with the emergency clause attached. Members, we now proceed to...(Visitors introduced.) Proceeding now to LB327E, the first vote is to

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dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB377 LB327]

ASSISTANT CLERK: 40 ayes, 1 nay on the motion to dispense with the at-large reading, Mr. President. [LB327]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB327]

ASSISTANT CLERK: (Read title of LB327.) [LB327]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB327E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB327]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 924.) Vote is 47 ayes, 0 nays, 2 excused and not voting. [LB327]

SPEAKER FLOOD: LB327E passes with the emergency clause attached. Mr. Clerk, we now proceed to LB260. [LB327 LB260]

ASSISTANT CLERK: (Read LB260 on Final Reading.) [LB260]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB260 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB260]

CLERK: (Record vote read, Legislative Journal pages 924-925.) 36 ayes, 9 nays, Mr. President, 2 present and not voting, 2 excused and not voting. [LB260]

SPEAKER FLOOD: LB260 passes. Mr. Clerk, we now proceed to LB483E where the first vote is to dispense with the at-large reading. All those in favor of dispensing with the at-large reading vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB260 LB483]

CLERK: 43 ayes, 1 nay, Mr. President, to dispense with the at-large reading. [LB483]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB483]

CLERK: (Read title of LB483.) [LB483]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied

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with, the question is, shall LB483E pass with the emergency clause attached? All those in favor aye; all those opposed vote nay. Mr. Clerk, please record. [LB483]

CLERK: (Record vote read, Legislative Journal pages 925-926.) 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB483]

SPEAKER FLOOD: LB483E passes with the emergency clause attached. Mr. Clerk, we now proceed to LB403. [LB483 LB403]

CLERK: (Read LB403 on Final Reading.) [LB403]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB403 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB403]

CLERK: (Record vote read, Legislative Journal pages 926-927.) 44 ayes, 0 nays, 3 present and not voting, 2 excused and not voting, Mr. President. [LB403]

SPEAKER FLOOD: Thank you, Mr. Clerk. LB403 passes. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LB105, LB105A, LB110, LB110A, LB165, LB168, LB177, LB184, LB207, LB377, LB327, LB260, LB483, and LB403. Mr. Clerk, we now move to General File, LB98. [LB403 LB105 LB105A LB110 LB110A LB165 LB168 LB184 LB177 LB207 LB377 LB327 LB260 LB483 LB98]

CLERK: LB98, by Senator Carlson. (Read title.) Introduced on January 10, referred to Agriculture, advanced to General File. There are committee amendments. Senator Carlson opened on the bill and committee amendments yesterday, Mr. President. (AM641, Legislative Journal page 721.) [LB98]

SPEAKER FLOOD: Senator Carlson, if you would, please summarize your bill in under 2 minutes for the benefit of the body. [LB98]

SENATOR CARLSON: Thank you, Mr. President, members of the Legislature. Yesterday I talked a little bit about the task force that's been operating for a year and a half. And I didn't really emphasize the importance of the senators' involvement that have been on that task force--Senator Dierks, Senator Fischer, Senator Hansen, Senator Harms, Senator Preister. And the law reads that they need to be current active senators, and so Senator Preister is no longer a part of that task force, but Senator Christensen has been recently appointed to it. This group has done great work and I appreciate everything that they have done. In the last year and a half we've made great strides in clearing the streambeds of this unwanted vegetation. Our rivers are our liquid highways, and when they need to be cleared, we want it done the right way. We want to

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have no negative effects on the ecosystem. It's important that it be done in the correct manner. Many projects have been completed to improve our river streambeds and restore them to what they used to be. We must get it done. We must get it done the right way. We've made great strides in the last year and a half. We need to finish the Republican, and then get on the Platte River at the Wyoming line and work east and not stop until we reach the Missouri River. I estimated yesterday in the material I gave you that in 2008 we saved 46,000 acre-feet of water on the Republican. Even since yesterday I've gotten some figures from increased flow from the western part of the Republican, and I think we could add another 13,900 acre-feet to that figure. We need to continue... [LB98]

SPEAKER FLOOD: Time, Senator. [LB98]

SENATOR CARLSON: ...and I'd appreciate your help and I'll be able to answer questions. [LB98]

SPEAKER FLOOD: Senator White, you are now recognized. [LB98]

SENATOR WHITE: Thank you, Mr. President. Members of the body, I agree with Senator Carlson. Keeping our rivers clear of obstruction and weeds is critically important. In fact, it is so important that there's already laws existing on the books requiring it. I urge every member of the body right now if they have their computer handy to turn it on and go to 31-224. Section 31-224 states, "Watercourses"--and by the way, a watercourse is defined as a stream with a bed that may sometimes be dry, so it certainly is the Republican River--"Watercourses, drains, ditches; annual removal of rubbish by landowners or tenants; exceptions: It shall be the duty of landowners in this state, or tenants of such landowners when in possession, owning or occupying lands through which a watercourse, slough, drainage ditch or drainage course lies, runs or has its course, to clean such," it is the landowners' duty, "to clean such watercourse, slough, drainage ditch or drainage course at least once a year, between March 1 and April 15, of all rubbish, weeds or other substance blocking or otherwise obstructing the flow of water in such watercourse, slough, drainage ditch or drainage course, whenever such obstruction is caused by any of the acts of said owner or tenant, or with his knowledge or consent." And then it says there is a case interpreting this and the case interpreting it is Barthel v. Liermann, 2 Neb. App. 347, 509 N.W.2d 660 (1993). Okay. This case states landowners do not have to cause the obstruction in a waterway before the section requires them to clear it. The obstruction need only have occurred with their knowledge or consent. Landowners who are aware of weeds and cattle obstructing the ditch had the duty to clean the ditch out under this section, despite the fact they did not affirmatively obstruct the ditch. Here's the interesting thing, folks. It is already the obligation of the adjoining landowners. I have an obligation to mow my year, but I don't come to the state and ask them to pay it. We have an obligation in law that has been in law for many, many years and it states it is the landowners' obligation to pay for this.

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The Republican River does need to be cleaned, the Platte River does need to be cleaned and it does need to be done properly, but the state does not need to pay for it. In fact, for years in this state it has been the legal obligation of the adjoining landowner. While I like Senator Carlson, I support the aims of the bill, this is a perfect example of corporate subsidies at work. Why should the general taxpayer pay for an obligation that has been defined for years to be the landowners' in the adjoining property? I urge you to read the law. I urge you to read the cases, and you will recognize that all we're doing is shifting the cost of abiding by a legal duty from the people who are actually prospering through the use of the land and the riparian rights and the irrigation from them to the general tax public. And then taxpayers wonder why it is so expensive to run state government. Thank you, Mr. President. [LB98]

SENATOR KARPISEK PRESIDING []

SENATOR KARPISEK: Thank you, Senator White. Senator Harms, you're recognized. [LB98]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of AM641 and the underlying bill, LB98. I didn't realize how important this bill was when we originally passed it two years ago, and the results of what has taken place with what Senator Carlson has introduced and the amount of water that we're saving and the amount of water that's becoming usable water for agriculture and also for the cities and the counties. That's how we recharge and regenerate our own water, I think it's important that we continue to progress along this line and that we continue to fund this program. I guess in regard to the question that...and the information that Senator White has given us today, I'm not sure under the conditions that we have today that landowners can even afford to do this. I would not have understood until I got on this task force how expensive it is and the amount of money that you have to spend to get this under control. Unfortunately, this bill or this law that Senator White has brought forward has never been...I don't know, it's not been enforced. And now it's completely out of control as far as the vegetation is growing. And I don't think we have any choice but to go in and help these people get this done. And the other side of it is, if we don't do that...let's just go to the North Platte River, for example, where I'm probably more familiar with because I live near that river. It's extremely important that not only do we take care of the Republican River, but the North Platte River is our next major issue here. With these Spring storms that we're having coming in, and we're talking about another 10, 11 inches of snow starting to come across Nebraska, I will tell you the North Platte River cannot contain the water if it gets hot quickly after a snowstorm like this. You'll have flooding in our communities, you'll have flooding in many of the cities. And I guess my point is that I don't think we have any choice here. I don't think it's a funny matter. I think it's a serious issue, and I don't think that at this point that the people in...the landowners can afford to do this. And so I would urge you to continue to support this bill. I think it's important for us, and I think it's our future. This city, Omaha will be

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affected by this. If we don't get this cleaned up, we don't have it taken care of, you're not going to have the water. Your Ogallala Aquifer that we're so happy with is not going to get recharged, regenerated the way it has in the past. And so it's important for us to understand there's serious ramifications for this, not only for the rural communities but for our cities. So I'd urge you to support this bill because I think it's only the beginning of where we have to go in the future. Thank you, Mr. President. [LB98]

SENATOR KARPISEK: Thank you, Senator Harms. Senator Dierks, you're next. Others in line are Senators Wightman, Christensen, Wallman, Loudon, Fulton, Dubas, Hansen, White, and Stuthman. Senator Dierks. [LB98]

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. I've been privileged to be a member of that LB701 Task Force. I've had the privilege of being on quite a number of task forces over the last 22 years with my tenure as a legislator. I've never served on one that was more effective than this one. I've seen such tremendous results from the LB701 Task Force. It's almost unbelievable. We took a...one of the first meetings we had was down by Franklin, Nebraska, and we took an airboat ride that day on the Republican River and we saw no signs of sand bars or banks. They were all completely occluded with vegetation, the salt cedar and the phragmites. And I'm told by the experts that each one of those salt cedar plants can drink as much as 120 gallons of water a day and there are thousands of them out there. So we're in the throes of a lawsuit by Kansas and they're suing the state of Nebraska for millions of dollars because we're not putting as much water in the state of Kansas from the Republican River as our compact agreed...that we agreed to with our compact. My question is for those who oppose what we're doing, how do we, how do we square that with our taxpayers when we can allow the state of Kansas to sue us and we can't fight it back? One of the questions that I would have about Senator White's amendment is, I belong to a subcommittee of that task force called the Streambed Ownership Task Force and we're having extreme difficulty making a determination on where the property rights begin and where they end along some of these rivers. We have the same problem with the Missouri River. We've had this Missouri River problem since...I remember Senator Wehrbein fighting that particular problem back in the early nineties. We still don't have that answered because the streambed moves. And the...what they call the cadastral line, which is the middle of it, it moves with the water flow. The reason that it's difficult to establish is because along the Platte River, for instance, if you own an acre more on the one side of the river than the other side, the county on the north side is going to get more tax revenue from it. So it's a difficult situation and it isn't just all black and white. We need to do these things that the task force has done. We took another ride down that river a year later near Franklin. You couldn't believe the results. I think maybe there are some pictures in that handout that Senator Carlson gave us. Another thing that I wonder about is, I'm familiar with the lawsuit that Senator White spoke of. I've known both the families of the Barthels and the Liermanns. That was in my legislative district and it was going on when I was still in my legislative district. And I had a very good

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friend who was an attorney with a license in Nebraska and Kansas and now resides in Iowa who did all pro bono work for the Barthels on their particular case. It was difficult. It had neighbors fighting neighbors. We need to take a lot of things into consideration if we're going to try to stop what I call excellent piece of legislation. I think LB6...LB701 was outstanding. I think it does a great job and I think that...I would urge you to hold fast and support that legislation. Thank you. [LB98]

SENATOR KARPISEK: Thank you, Senator Dierks. Senator Wightman. [LB98]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I, too, rise in support of LB98. I applaud Senator Carlson for finding the funding, most of the funding at least, outside of the General Fund. I think it took a lot of effort to get where he is on LB98 and the amendment, AM641. I can tell you I've ridden with Senator Carlson, been with him a couple of times over in the Republican River Valley and have seen what has been done under the vegetation funding, under LB701 of the 2007 Legislature. I would say that no war on terror was ever equaled by the war that Senator Carlson has waged on Russian olives and phragmites. You ought to take a ride with him through the western end of the state. He has all of the Russian olive spotted in the Platte River and I just think that we've done a tremendous job with LB701 and the funding we provided there. I certainly agree with Senator Carlson, we've discussed this a number of times, on how much bang we're getting for our bucks in buying up water rights on some of the projects on the Republican River in order to provide water flow to Kansas pursuant to our contract with...our tri-state contract on the Republican River. I think we've gotten way more value for our dollar in the money we've spent in control of vegetation than we have in buying up water rights. So I think it's an absolutely essential part of the compliance that we're going to have under the contract with Kansas and Colorado in the Republican River. I would suggest, with regard to the issues raised by Senator White, he's correct. There is a case that provides that the landowner...and a statute that provides the landowner has this obligation. However, as Senator Dierks pointed out, a lot of times the title to this land is in real question. Generally speaking, for those of you who don't know, there really is no title to the accretion land. It's not considered deeded land. In the Platte sometimes that accretion land constitutes a tract of land a mile wide that flows generally all along the Platte River, the North Platte and the South Platte. It's larger from North Platte on to the east when the two rivers that flow together and it's the Platte River. But we're talking tremendous areas in there that are clogged with vegetation, impedes the flow of the river, and without there being a record title, I don't know how we would ever control the buildup of vegetation. Sometimes also we have a buildup of sediment that forms islands out there because of the vegetation. As Senator Harms suggested, I don't think in many instances the landowner would even have the resources to take care of that vegetation. It's a very costly matter to take care of the vegetation as shown by the fact that we've spent \$2 million a year for the last two years in trying to control this vegetation. Not only that, if you got out into the Platte, I'm not sure whether it would be true in the Republican or not, the Corps of Engineers and other

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environmental groups would have a lot to do with any method that you would use in removing any sediment which oftentimes is causing the obstruction... [LB98]

SENATOR KARPISEK: One minute. [LB98]

SENATOR WIGHTMAN: ...thank you, Mr. President...in controlling the vegetation, on what type of spray you might use because it is a flowing stream and those waters have declared to be public waters. So I just don't think that it's practical that we look, as suggested by Senator White, to controlling that vegetation through the landowners. Number one, he won't have...in many instances, he's not going to have the resources necessary to provide for that. So I urge your support for LB98 and AM641. Thank you, Mr. President. [LB98]

SENATOR KARPISEK: Thank you, Senator Wightman. Senator Christensen, you're recognized. [LB98]

SENATOR CHRISTENSEN: Thank you, Mr. President. I would like to see if Senator White would yield to a question, please. [LB98]

SENATOR WHITE: With great pleasure. [LB98]

SENATOR CHRISTENSEN: Senator White, whose responsibility is children? [LB98]

SENATOR WHITE: The children's responsibility are...depending on their age, one, themselves and then, of course, their parents. [LB98]

SENATOR CHRISTENSEN: Correct. And what are we doing with safe haven bill in legislation? Are we not taking care of some state issues that are really parent issues? [LB98]

SENATOR WHITE: The safe haven bill, as it is now, means that you will drop your child off and you won't be charged with abandonment. Just so you understand, Senator, and this is a misconception that has been rampant, nothing in the safe haven bill ever, ever excused a parent for paying support. We never excused a parent from paying the charge to support their child, never have. [LB98]

SENATOR CHRISTENSEN: But at the same time in that, we took the responsibility of any kids that were dropped off and that become responsibility of the state. [LB98]

SENATOR WHITE: No, we took physical custody. [LB98]

SENATOR CHRISTENSEN: Correct. [LB98]

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SENATOR WHITE: We took physical custody. But the obligation, the legal obligation of that parent to still reimburse the state and to pay the costs for that child was never removed. [LB98]

SENATOR CHRISTENSEN: And that again comes back if they can afford to, so. But I'd rather dwell on the benefits of this bill, and that has been...I don't care whether you go out to Nine Mile Creek, you go to the Platte River or the Republican River where they have done vegetation removal, there has been an increase flow in water, there's been reduced flooding, and there has been a benefit to the state of Nebraska as a whole. And, you know, look if you want to take the Republican, that seems to be hit on because that's where this started a lot, you go below Harlan County, they were having flooding at 440 CSF, that's cubic feet per second, 450 gallons to a cubic foot and so...or acre-foot, I should say, but it should be same. But anyway, after doing vegetation removal, the capacity of that river went up over 800. And that's the damage of putting anything in your liquid highway. And that's why this has to be done. But I'd like to address something else and that is the fact that in 2002 I was trying to clean my own river stream and riverbeds and I was told to get out. I didn't have a permit. I tried to get a permit. I had to go to public hearing. Game and Parks come out. Bureau of Reclamation come out. U.S. Fish and Wildlife come out. All give me multiple reasons why I couldn't clean that river on my property. This was even where I owned the ground on both sides of the river and technically to the very center of the river. I was told, get out or be jailed, in 2002. So, you know, I get a little bit testy when somebody tells me it's my responsibility and then, the same people tell me it's my responsibility, threaten to arrest me. So I don't know where the federal law comes in here dealing with U.S. Fish and Wildlife and things this way on this bill... [LB98]

SENATOR KARPISEK: One minute. [LB98]

SENATOR CHRISTENSEN: ...versus where we come in as state law, but I was one that was threatened. So I don't know what needs to be done here. I know ever since LB701 went through and the vegetation passed, it has not been an issue. But there's been some problems here in the past and I don't know if anything else needs corrected but I'm here to tell you that not every agency is looking at this law, that Senator White give me a copy of, the same way that everyone else is. Thank you. [LB98]

SENATOR KARPISEK: Thank you, Senator White and Senator Christensen. Next is Senator Wallman, you're recognized. [LB98]

SENATOR WALLMAN: Thank you, Mr. President. Would Senator Carlson yield to a question? [LB98]

SENATOR KARPISEK: Senator Carlson, will you yield? [LB98]

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SENATOR CARLSON: Yes, I will. [LB98]

SENATOR WALLMAN: If I own a five-mile strip on the Republican River Valley and do not want them weeds out or trees out, are you going...is somebody going to make me? [LB98]

SENATOR CARLSON: Well, I don't know, Senator Wallman. Just like Senator Christensen said when he'd like to have done something on his property, he was told not to do it. We do all kinds of things in this state in order to help ourselves out. The river is a liquid highway that you deserve access to, I deserve access to, everybody in the state deserves access to, and water flows down the river and when anything is done in that river it needs to be done right. Do we want 5,000 different landowners putting all kinds of chemicals and whatever they want to do into the river in order to comply with this law, which can be interpreted different than what Senator White said? [LB98]

SENATOR WALLMAN: I'll agree. Okay, question number two: The money we got last year from the General Fund, is that being paid back? [LB98]

SENATOR CARLSON: No, that's not being paid back. That was an appropriation to finish a job. [LB98]

SENATOR WALLMAN: So, river quality, I want to know...ask Senator Christensen, what are the nitrate levels? Did they go up or down since we've been doing this management with weeds and trees? [LB98]

SENATOR KARPISEK: Senator Christensen, will you yield for a question? [LB98]

SENATOR CHRISTENSEN: Yes. Well, I am sure since we've done the management of trees, nitrates level went down because we've had more water flowing. So anytime you got more water, it's going to be diluted. The content of the base water probably never changed. But because there's increased water amounts, I'm sure it decreased the levels. [LB98]

SENATOR KARPISEK: Thank you, Senator Wallman. Mr. Clerk, do you have an announcement? [LB98]

CLERK: I do, Mr. President. Executive Session of the Government, Military and Veterans Affairs Committee at 11:00 in Room 2022. [LB98]

SENATOR KARPISEK: Thank you, Mr. Clerk. Next speaker is Senator Louden, you're recognized. [LB98]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I certainly

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support LB98 and the amendment, AM641, that Senator Carlson brought forwards, since I done some work on this when we were getting LB701 instituted here a couple years ago. Out in western Nebraska at the Nine Mile Creek, also on the North Platte River, we've been cleaning the waterways out for several years now and it has increased the flow. This is something where you didn't have to wait until you had a study done to see if...what the flow was or the transpiration was of the vegetation was along there. We went ahead and done it. I was noticing when Senator White mentioned some of the laws, and of course, I'm not a lawyer, I'm just an innocent cowboy that relies on common sense, but some of the parts that he talked about were the watercourses and drains. Well, some of those laws are in there because you could go ahead and allow the weeds to go into a ditch or a slough and then let the sand blow in there or the dirt blow in there and say, well, that's dammed up. Then actually I built a small retaining dam on my property and I can retain water that would drain and which is against the law in the state of Nebraska. You've got to let water run on through if it's a drain. So some of that is part of the stuff that Senator White is talking about. Also in some of that same legislation there is in there that if a slough or watercourse or something gets obstructed with trees and everything, you can get five landowners to petition to have the county clean that out. So I think what he's talking about is a little bit different subject than what we're talking about when we're talking about cleaning out a river. Now, you're also, in statutes, you have to mow your county roads to the center of the county road. That's the occupation of the landowner to do that. But there's nothing in statutes or anyplace that tells us we got to go out there and mow the interstate that borders our land or we don't go and mow the state highway that borders our land. In fact, if we want to mow that state highway, we have to get a permit in order to cut that hay or grass on a state highway. So the state takes care of those transit courses, whether they're highways or rivers or any of that part. So I think what Senator White is trying to do...I understand what he's trying to point out, that there are things in statute to take care of that now, but I think what those are in statutes are altogether different ideas or systems than what we are talking about in taking care of the Russian olives, which has been a huge growth in the Platte River starting clear up in Wyoming there. It's literally taken over that whole system. So we're going to have to decide whether we want to let our water be transpired by forestry vegetation and noxious weeds and vegetation such as your phragmites and your salt cedar, or are we going to conserve that water, be able to use it for agriculture and for industrial uses by using the same amount of water in a better way. There's many uses that can be used for those forestry products and that trees and stuff on those rivers. There's wood chip...biomass wood burning, and using wood chips to heat and cool various state agencies around the state of Nebraska. Money should be appropriated for something like that. That's something that we cannot only be saving money to heat our state and city, county buildings, but we could also be using it to clear this vegetation without... [LB98]

SENATOR KARPISEK: One minute. [LB98]

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SENATOR LOUDEN: ...much of a cost. This is something that I think has to be done. It's beside the point. We have shown now that this is a great increase. Right now I think McConaughy is supposed to be standing at about somewhere around 48 or 49 percent of capacity, which is the highest it's been in years, and a lot of that has been by the fact that we've cleaned vegetation out. There hasn't been that much more moisture in Wyoming to fill that dam, so it's come by conserving the rain and the flows that we have in-state to go into McConaughy, which isn't a great deal, because the Platte River, the North Platte River watershed isn't that big in Nebraska. Thank you, Mr. President. [LB98]

SENATOR KARPISEK: Thank you, Senator Louden. Senator Fulton, you're next and you're recognized. [LB98]

SENATOR FULTON: Thank you, Mr. President, members of the body. Would Senator White yield to a question? [LB98]

SENATOR KARPISEK: Senator White, will you yield? [LB98]

SENATOR WHITE: Yes. [LB98]

SENATOR FULTON: Okay, Senator. Could you...you're...when you talk about this law that you found has garnered my attention. [LB98]

SENATOR WHITE: Yeah, but you know it's not like it's some orphan waif I found. I mean, it's in the statutes. Our body passed it, Senator. [LB98]

SENATOR FULTON: Well, that's part of my question, I guess. We had this, this issue is not new. It's been before us. LB701 was the bill we had last year. [LB98]

SENATOR WHITE: Yes, two years ago I think. [LB98]

SENATOR FULTON: And you voted in favor of that bill, as did I. [LB98]

SENATOR WHITE: I did. I did. [LB98]

SENATOR FULTON: I don't think it had anyone against it. So this is somewhat of a surprise to me. Can you explain to me what is the upshot of this bill? I assume that your position will be you voted for LB701 last year unaware that this law existed, you've come to learn that the law now exists, and so you stand in opposition to LB98. Is that correct? [LB98]

SENATOR WHITE: Well, actually what I stand in opposition to, Senator, is the concept that any time certain businesses, in this case agriculture, that are quite politically

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connected, want something that is already defined as their financial obligation, they can stand up and yell and scream and we'll pay for it. And then at the same time, people come back and say, why state government costs so much. [LB98]

SENATOR FULTON: Senator, then are you going to be in favor of this bill? [LB98]

SENATOR WHITE: Do I favor clearing out the rivers and the streams of phragmites and salt cedars? Absolutely. Do I favor taxpayers paying for an obligation that has been for decades placed on adjoining landowners which they have ignored and, as a result, now it's a critical problem that's costing the state, among other things, \$100 million in a potential lawsuit against Kansas City...or by Kansas against us? I don't like that one bit, Senator. They've ignored their legal obligation to keep those riverbanks clear. And what I can tell you, Senator Christensen, had he been my client and some thug come up and told him that he's going to go to jail, I'd have been in front of district court with an injunction and this case, this law, saying, wait a minute, he's just discharging his legal... [LB98]

SENATOR FULTON: Senator, just on the merits of this bill, because I'm looking at this from the vantage of, number one, my responsibilities as a lawmaker and how should I vote on this bill, but I'm also looking at this through the eyes of the Appropriations Committee. And I understand this isn't necessarily General Fund dollars, which I'm thankful for, but I want to make a decision on this bill and I'm having a hard time discerning what the argument opposed to the bill is. [LB98]

SENATOR WHITE: Well, Senator, let me put it to you this way. Do you think that the state should be in the business of paying the expenses of maintaining property that state statute for decades has put on a private landowner? And if so, if you say, well, we're going to pay this because it's a good thing--it is a good thing, okay--why aren't you going to pay for the cost of mowing my yard, because I have a legal obligation to mow my yard? [LB98]

SENATOR FULTON: So I'm...then you're against LB98? [LB98]

SENATOR WHITE: I'm against the state taxpayer paying for an obligation that is already placed on the adjoining landowners. I mean, how come we have not asked the adjoining landowners to this land...or to the river to pay for this? [LB98]

SENATOR FULTON: Senator, I'm not trying to...I'm, truly, I'm not trying to pin you down one way or the other. I'm sure there are arguments in favor, arguments against and I'm just...I'm very black and white in that regard. If there are arguments neutral, so be it, I can usually glean that. But I'm hearing an argument that would militate against LB98 and I'm trying to discern if indeed that is your intention. [LB98]

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SENATOR WHITE: I oppose the bill because it takes a financial obligation that for decades, probably a lot longer than that, have been placed on the landowners, okay, and it moves to the taxpayer. [LB98]

SENATOR KARPISEK: One minute. [LB98]

SENATOR WHITE: It's corporate subsidies, it's subsidies, it's welfare. [LB98]

SENATOR FULTON: Okay. I understand that. Then how do we...how would we go forward if indeed we were to...if the logic...what you're putting forward is you would be opposed to LB98 because this is a subsidy that is not the responsibility of the taxpayers. Then what would you recommend the taxpayers' remedy be? [LB98]

SENATOR WHITE: Well, actually I think what ought to happen is there ought to be a lawsuit ordering adjoining landowners of the Republican River to pay for the environmentally responsible method of clearing the streambed. [LB98]

SENATOR FULTON: Okay. So that would be...the argument against this and the remedy for taxpayers would be to go after those landowners and make them pay for it. Would we then...would we go back and get the money that we voted for on LB701 last year also? [LB98]

SENATOR WHITE: Personally, no. I mean, we weren't there. [LB98]

SENATOR KARPISEK: Time. [LB98]

SENATOR FULTON: Thank you. [LB98]

SENATOR KARPISEK: Thank you, Senator White and Senator Fulton. Senator Dubas, you're next and you're recognized. [LB98]

SENATOR DUBAS: Thank you, Mr. President, members of the body. I stand in support of LB98 and the amendment. I'm a cosigner of this bill. I have supported the work that the task force has done. This is critical to the ag and general economy of the state of Nebraska. As landowners, I want to assure members of the body that for decades we have worked diligently to control weeds on our properties. Weeds cost us money. My father-in-law has declared an all-out war on the musk thistle. The man goes after musk thistles with a vengeance, again, because he knows those musk thistles destroy our pastures and cost us money. So we do take that responsibility very seriously. Across the state, our state is divided into weed districts. I think most counties have a weed superintendent or access to a weed superintendent who works with landowners in helping them control weeds on their lands, in the road ditches, and in the various other places across the county. But historically in the past, whenever the state has been short

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of money or we've had to start to look at budget cuts, it's the weed money that we usually go after first. We have raided those cash funds, those weed funds for many years. It's the first place we seem to go. It's not a glamorous agency and most people do not fully recognize the importance of what these weed superintendents in these weed districts do to support the economy of the state. So we've tied their hands many times by cutting their funding and decrease their ability to take care of the weeds throughout the state. The drought over the past seven to eight years, in western Nebraska especially but throughout the entire state, has really exacerbated this problem. As Senator Harms mentioned, it's extremely costly to take care of the weeds on your property, and as farmers' incomes decreased because of the drought, their inability to raise their crops, you know, they essentially have to cut corners and, unfortunately, this was probably one of the areas that they began to make cuts in. And just taking care of the weeds along the rivers and in the rivers is not like just going out and weeding your garden. It's a huge, huge task. And these weeds...when we talk about...when you maybe mention to your child, gee, you're growing like a weed. That's literally, weeds do essentially grow overnight and they spread. The phragmites, the Russian olives, you can look at a riverbed and in the course of the week see dramatic, dramatic changes as far as the spread of these weeds. So it's not a problem that's easily managed once it begins to get out of control. I think it was mentioned about who actually owns these accretion lands and that's a challenge also. You start getting into the rivers and you do run into the Army Corps, you do run into Game and Parks. It becomes much more of a challenge. And it's much more of a challenge to control these weeds in the riverbeds because you just can't go out with any type of spray or you have to be very, very cautious about what you're using to clean up these riverbeds so that you don't damage the aquatic life and the ecosystem of the river system. So we've had a lot of extenuating circumstances that have truly exacerbated this situation. The fact that farmers have to be so much more conservation minded about the way we use water, that's actually made a problem on the river. We don't have the runoffs like we've had in the past that does the natural scouring of these riverbeds. And then again, you throw the drought in where there's not any runoff at all, and that again, has just multiplied this problem many, many times. [LB98]

SENATOR KARPISEK: One minute. [LB98]

SENATOR DUBAS: If we stop this project now, if we don't find the funding to continue with this project, we have literally just sent \$2 million down the river. This program is working. All you have to do...you don't even have to read the report, just look at the pictures to see the dramatic results and effects of this program. If we do not continue this so that we can get it fully under control, so that landowners can then again continue their responsibilities and their jobs of maintenance and supervision of the weed population in their particular area, we're right back to square one and we've spent \$2 million with nothing to show for it. So I strongly encourage the body to give this bill careful consideration and, hopefully, your strong support. Thank you. [LB98]

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SENATOR ROBERT PRESIDING []

SENATOR ROBERT: Thank you, Senator Dubas. (Visitors introduced.) Returning to discussion, those wishing to speak: Senators Hansen, White, Stuthman, Haar, Christensen, and others. Senator Hansen, you're recognized. [LB98]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I agree with Senator White that we do have a problem here because we're doing work on private land even though it's accretion land that has no title, according to Senator Wightman. I know full well that the owners are responsible for their land, but we have a situation and I want to give you some numbers that just gives you an idea what the size of this problem might be. Nebraska is about 500 miles across. They say that...the university says that this is a 500-mile campus. So keeping that in mind, you drive one border to the other border, it's about 500 miles. In perennial streams, the ones that flow everyday of the year, and certainly they go up and down, but they do flow every day of the year, 17,783 miles of perennial streams in this state; canals and ditches, 2,517 miles. Those two together, somewhere, it depends on the sources, but there's somewhere between 20,000 and 24,000 miles of streams in this state. When you add in the intermittent streams, there's a total of over 81,000 miles of streams in this state. You take both sides of that, that's 160,000 miles of stream bank that someone is going to have to be responsible for. The responsibility, of course, goes to the landowner. This is a pilot project. It was a pilot project in 2007 and it needs to be a pilot project for two more years. Senator Carlson has made a sunset on this one, too, just like he did his first bill. The invasive species that we have here that are not...they're certainly not natural, they're certainly not common to the area are phragmites, salt cedar, purple loosestrife. Those are the three that are invading our rivers and our streams. And of that 81,000 miles of streambed, every one of those, whether they go dry or not, if they have a wet period in the course of the year, they're all eligible for invasive species. I came up with a few other terms for invasive species. That's the one that Senator Carlson chose to name the bill, but there are some other terms for invasive. We could call them weeds, because a tree or a grass or any type of plant, if it doesn't have a function and if it's out of place it becomes a weed. Freeloader, some of these are freeloader plants. They don't have any purpose in life. They don't have any purpose but they still clog the rivers, streams, and ditches. Loafers, some of these plants just stick around until they get a little water and they grow. They're opportunistic. I want to give one little example about that. If you travel I-80 and you get just west of Aurora, there's a pile of rubble. It's rubble of the interstate that the Department of Roads have taken out, piled up, and on top of that pile of rubble grows a red cedar tree. There's no competition for it. There's no weeds growing in that pile of rubble, yet there's a red cedar tree found that for a home and grows to probably about five feet tall. Sinister, if we're calling these plants sinister, we can surely think of what that means. Fruitless, pushy, any of these terms tells what about the weeds. But going to the 81,000 miles of streams, rivers, ditches, and canals,

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when phragmites especially has come into this state, it has overwhelmed the landowners,... [LB98]

SENATOR ROBERT: One minute. [LB98]

SENATOR HANSEN: ...absolutely overwhelmed them. This pilot project will clean the rivers up one time and then, after that, it has to be responsibility of the landowner. These weed management areas are county driven. Anyone that owns land in those counties are paying for the weed management boards. This crisis that we're in right now has forced weed management districts to work together, which they've never done before. But they work together now and they work together very well. I belong to the task force also and it's amazing the cooperation that we're having. They spray with helicopters. It's the most efficient, cheapest way to do it. And that's another thing the landowner probably could not line up by himself, is a helicopter to spray phragmites along the riverbanks. It's a problem. I realize that it's the responsibility of the landowner but we're in a crisis situation. It's a crisis situation that's been helped through this task force and... [LB98]

SENATOR ROBERT: Time. [LB98]

SENATOR HANSEN: Thank you, Mr. President. [LB98]

SENATOR ROBERT: Thank you, Senator Hansen. Senator White, you are next and recognized. [LB98]

SENATOR WHITE: Thank you, Mr. President. I want to make a couple of points. First of all, is it a good project to clean these out of the river and waterways? Absolutely. Absolutely, it is. It's important, we need to do it. The second point I want to make though is, in an off-the-mike conversation, it was indicated to me that, well, maybe the Republican River is not a watercourse. Now, handing out to you, along with the statute, which by the way, folks, I didn't draft it. I didn't even vote for it, but it's been the law in this state for a long, long time, just like it's a law in this state, for example, that I have to maintain my property. And whenever people in...if I, for example, stood up and said, look, we've got a crisis in Omaha, we have a crisis with graffiti, we have a lot of poor homes, a lot of small businesses that can't afford to clean it off, I need a lot of state money to clean it up, we would hear, and properly we would hear, over and over again, why the heck is the state paying for somebody to maintain other private property? We would hear that over and over again. What I don't like is the double standard. And there's a taxpayer situation here. Folks, this is a watercourse. Webster's Dictionary describes "watercourse." Watercourse means, under the law, a running stream of water having a bed and banks, the easements that one may have in the flowing of such stream, its accustomed course; a watercourse may sometimes be dry. Okay, look, we passed a clear statute a long time ago. And you know, I can call a pig a bluebird but that

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doesn't mean it will fly or it can sing. The Republican River is a watercourse. The existing law in this state has been, adjoining landowners have the responsibility to keep it clear of obstructions. All right. Now, we want to go away from it, we want to talk about a crisis, we want to talk about, well, we need to do this one time, and then it's their responsibilities. Well, first of all, folks, it was their responsibility for decades and they ignored it, just like AIG ignored their legal obligations and now we're bailing them out. When we do these things, folks, we need an honest, look-you-in-the-eye appraisal that we are shifting what was a private business's obligation to the taxpayer. Okay? And I'm not...I'm sorry it upset some of the folks who have a vested interest in this bill, but I am not going to pretend that that is not a hypocritical stand that in the case of mowing my lawn or graffiti, well, that's Omaha, this is our area. I want to explain something and this is something I think every agricultural interest, every taxpayer ought to recognize. Number one, groundwater is a public property. It does not belong to the people who have the land overlying it. Second, the Republican River got into crisis because a lot of individuals put a lot of wells in and made, hopefully, a lot of money irrigating corn on land that probably shouldn't have been farmed. Okay. They did and they made a lot of profit. Okay, I'm good with that. But they now have put us in a situation where we are exposed to \$100 million lawsuit from Kansas. The river is occluded with phragmites and salt cedars in one big reason--because we no longer have the annual floods. Now, that and in part is, a large part, is because of the groundwater pumping for agricultural. Okay. They've made profits by it. And now there is a cleanup cost because they've changed the nature of agricultural and that cleanup cost is to get the river watercourse clear. [LB98]

SENATOR ROBERT: One minute. [LB98]

SENATOR WHITE: Now, the people that made the money pumping that water, are they going to pay for it? No, they're down here holier than thou telling you, it's all of your obligations to pay for a problem they created and a problem they profited, despite the fact that a statute existed for decades saying it was their obligation. One other point: Yeah, the cities have a stake in this, but deal with this factor if you're from ag. The constitution says the public groundwater belongs to the public in the following order: first, domestic, which means cities; then ag; and then industry. So if there is ever a shortage of water, we drink before we irrigate. Thank you, Mr. President. [LB98]

SENATOR ROBERT: Thank you, Senator White. Senator Stuthman, you are next and recognized. [LB98]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I haven't been involved in any of the debate so far this morning, but first of all, I want to thank Senator Carlson for the material that he passed out yesterday, the information, the pictures and the examples. And I think that's a very good illustration of, you know, what needs to be done on the river. I also sympathize with Senator White, the fact that there

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is something in statute and I've always dwelt on that on county roads, county road right of ways, and who's supposed to maintain those road right of ways and clear them of brush. But as serving on the county board in Platte County, the river seems to be, the Platte River, the Loup River seems to be a lot different situation as far as who owns the property. Yes, it is defined as to who owns the property. Between Platte and Butler County, it is to a defined line what was currently...was supposed to have been the running stream but it was...there was a lot of accretion ground and the river moved and a lot of acres were in a different part of the county and we tried to adjust that. We still have it to the center of the river as a defined line. Property owners own it to the center of the river. Another situation is with Platte County and Polk County. The fact is Polk County owns it up to the bank of the river and the property owners in Platte County own their ground and the complete river also, the whole river. So there's a lot of different situations. The situation that I have and it's...they say until the running channel. We have many floods up in our area of the Loup River and I have a constituent that has had an irrigated farm at one time with an irrigation well on. Now the irrigation well, because of the floods, that irrigation well is probably from here to the Cornhusker into the river. The column is still sticking up out of the river. The farm is gone. It's washed away. I mean it's over probably 120 acres of good irrigated ground. It's gone. It's just plainly gone. What Senator Christensen was talking about, the fact that, you know, he would like to go in and work in the riverbed, and I agree with him. You know, even if you own that property in there, that is the waters of the state and situations like I just said where a person lost his farm, maybe he should have put up a dike or a berm or something like that. I'll tell you one thing. If he would have done that, they would have taken that dike out before the sun would have come up the next morning. And the ones taking it out would have been the Army Corps of Engineers, would have taken that out. We have instances where the banks keep eroding and constituents come to me and say, you know, what can we do about that, you know. The channel is changing. We really can't do very much about that because it's a natural flow of the water. But I will say that with the situation in that Senator Carlson gave those examples in those photos, if that was all left there, if those trees are all left there and a flood will come...and floods will come. It's not will they come or not; it's just when they will come. And if those trees are all there and you've got good clean property aside of it, I will tell you, the next channel will be in that clean property. The water will go where it wants to go. So I think what we're doing here is a very good idea. I would like to see some changes in statute as far as property owners. What is their responsibility on rivers, and if they have the right of ownership to it... [LB98]

SENATOR ROBERT: One minute. [LB98]

SENATOR STUTHMAN: ...why can't they do anything on it? But they can't. We've had property owners that wanted to remove brush piles or remove some trees so that the channel would stay the same. They can't do that, because it's in the waters of the state, in the channel. So I think that's an issue we should be working on instead of trying to

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say it's your responsibility, you pay for cleaning it up, you can't take anything off of it, you can't change anything there and you got to clean it up, but you can't clean it up. So it is a situation that we need to deal with and I think we're going in the right direction with this because this issue is also an issue of the state because of the lawsuit with Kansas. Thank you, Mr. President. [LB98]

SENATOR ROBERT: Thank you, Senator Stuthman. (Visitors introduced.) Returning to discussion, those wishing to speak: Senators Haar, Christensen, Wallman, Schilz, and others. Senator Haar, you're recognized. [LB98]

SENATOR HAAR: Mr. President, members of the body, first of all, I wanted to congratulate Senator Carlson on his legislative work with this bill. I think it's one of the few cases where not only does something work, it works better than we thought it would. So I thank him for that. I think...well, I will support this bill. I think Senator White has raised some good issues that need to be addressed. However, I would hate to see this project stopped right now because of its success. My other concern as we address the issue that Senator White has talked about, in other words, what is the responsibility of people along those waterways to take care of the weeds and trees and so on, that we have to do this in an environmentally sound and safe way. Just spraying them with certain chemicals is not the way to go. They have to be very specific chemicals so that they don't kill the fish and other sorts of things in the river. So again, I'd like to congratulate Senator Carlson. I'll support this, but I also hope that at some point we'll address the issues that Senator White has brought up. Thank you. [LB98]

SENATOR ROBERT: Thank you, Senator Haar. Senator Christensen, you are next and recognized. [LB98]

SENATOR CHRISTENSEN: Question. [LB98]

SENATOR ROBERT: The question has been called. Do I see five hands? I do. [LB98]

SENATOR CHRISTENSEN: Call of the house. [LB98]

SENATOR ROBERT: There's also been a request for the house, a call of the house. The first question is, shall debate cease? All those in favor vote yea; all opposed vote nay. The question is, shall the house go under call? All those in favor vote aye; opposed vote nay. Mr. Clerk, please record. [LB98]

CLERK: 26 ayes, 0 nays to cease debate...or to place the house under call. Excuse me, Mr. President. [LB98]

SENATOR ROBERT: Thank you, Mr. Clerk. The house is under call. Senators, please return to the Chamber and record your presence. All unauthorized personnel please

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leave the floor. Members, please check in. The house is under call. Senator Lathrop, Senator Nordquist, Senator Avery, Senator Ashford, please return to the Chamber. The house is under call. Members, the question before the body is, shall debate cease? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB98]

CLERK: 28 ayes, 12 nays to cease debate, Mr. President. [LB98]

SENATOR ROBERT: Debate does cease. Senator Carlson, you're recognized to close on AM641. [LB98]

SENATOR CARLSON: Mr. President and members of the Legislature, AM641 and LB98, I believe, is the right thing to do. Our responsibility as a legislative body is to pass laws and make policy that's in the best interest for the people of Nebraska. This is a good policy. It's a good bill, and I believe it's a good thing for all citizens of Nebraska. There are other examples when state law is in effect that landowners should have done something and didn't and the state stepped in to help: disease control in livestock, disease control in plants. We have a state fund where communities can request dollars that are state dollars to demolish buildings that are eyesores in the community, and those buildings are owned by somebody. It's the owner's responsibility to take care of that, but there is a fund that can be used and state dollars are used. This is not necessarily a unique situation. I think that as we deal with the rivers in our state, that's also a unique situation. Water is so critical to everybody in the state. And as we do things to improve the condition of our rivers, one of the things that is used is chemical. When that's applied, it needs to be done correctly. We can't take chances. And although there's landowner responsibility, we need to do things in a correct way. We can't jeopardize our water supply. It's part of the reason for proceeding in the manner that we've proceeded. This has been very, very important from the standpoint of Nebraska's position in the compact with Kansas. It's been very important to put us in a much, much better position in being in compliance and staying there. The job is half done. We need to continue until we finish it. We need to have the task force functioning for four additional years. That would be six years total and that gives them an opportunity to see, on some of the five-year guarantees that we have, how that's working; what kind of maintenance program it's going to take that the landowners would then be responsible for to keep our rivers in the condition that we've brought them to. I appreciate the efforts that so many have made in making this a success. I appreciate all the testifiers that came to the hearing and indicated their support for this project, and I would ask for your vote. Thank you. [LB98]

SENATOR ROBERT: Thank you, Senator Carlson. Members, you have heard the closing to AM641 to LB98. The question before the body is, shall AM641 be adopted? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB98]

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ASSISTANT CLERK: 40 ayes, 2 nays on the adoption of AM641, Mr. President. [LB98]

SENATOR ROBERT: AM641 is adopted. I raise the call. Returning to discussion on LB98, those wishing to speak: Senators Wallman, Schilz, Loudon, Fulton, and others. Mr. Clerk, we have an amendment. Senator Wallman, you're recognized to speak. [LB98]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I'm a farmer. Friends, family, irrigate. I'm not against irrigation, but I want to tell you one thing. The phragmites grow that big because of nitrates in the water. A small town in my area had to put up a nitrate treatment plant. You think they blamed the farmers? Nope. They could have. They was very good about it. They put it in. Did we as ag producers help them put that in? I'm sorry, we didn't. I'm sorry. I'm sorry for what we're doing for the aquifer. I'm sorry how we're letting the weeds grow up in our areas where we should be taking care of it. I'm sorry as ag producers how we've let things go to heck. Our fault. A person told me he had 80 pivots in that valley. One person told me he had 100 and they can't afford to control their weeds. Doesn't that bother you? Doesn't bother anybody? We're supposed to take money out of Environmental Trust, take it out of here. I'm not against cleaning up the valley. I emphasize that. Why should we leverage environmental issues and things like that when it's our responsibility? We have weed control things. We have NRDs. We have all these things in place. They can tax us. I looked at my tax sheet this morning. I pay taxes on my noxious weed stuff, NRDs. They build trails. Do I like trails? Kind of iffy, but I pay taxes so Senator Gloor can ride by my place on a bicycle and that's okay. That's okay with me. I changed my attitude completely about trails and about river streams, riverbeds. Somebody is going to say, whoa. I talked to one guy in the Blue River Basin. He keeps his clean. He says no way in "H" would you spray his riverbed, no way. Doesn't care what kind of chemicals you use, he wouldn't let it happen. And this guy is a graduate of the University of Nebraska and a good friend of mine. So should we as a state pay for this? I don't like it. Maybe you guys like it, I don't know. If you're ag producers, I should like this bill. Vote for it, you know. I voted for it out of committee because I thought it should have a chance on the floor to see what other people have to say. Most generally I...but on LB701 I didn't vote yes or nay, I passed. Was that being a coward? Probably, because I respected the people that worked so hard on this commission and I knew they put a lot of time and a lot of effort. Did I vote yes or no? I passed. I, too, spent a lot of time going to water meetings, water task force, water quality issues. Folks, that vegetation in the riverbed grows like the dickens because it's got high nitrate in the water. Does that bother me? Sure, lots of things. As you get older you think about your grandkids, you think about your relatives. You want them to have a healthy lifestyle coming up the road, and that's our responsibility as an ag producer. Is that a heavy responsibility? It is. My father taught me that. My grandfather taught me that. If you want to pass your land on to the next generation, take care of it. The Mississippi River Delta... [LB98]

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SENATOR ROBERT: One minute. [LB98]

SENATOR WALLMAN: ...makes you sick when you go to foreign nations that have cleaned up their riverbeds, cleaned up their streams and have done a good job. So thank you, Mr. President. [LB98]

SENATOR ROBERT: Thank you, Senator Wallman. Mr. Clerk, you have an amendment? [LB98]

CLERK: Mr. President, Senator White would move to amend with FA25. (Legislative Journal page 928.) [LB98]

SENATOR ROBERT: Senator White, you're recognized to open on FA25. [LB98]

SENATOR WHITE: Thank you, Mr. President. FA25 would provide, since we're in a crisis and we need to prevent the state from getting hit for a big judgment because we're not delivering enough water to Kansas, would provide that the state will advance this money. And it will make sure that the cleanup is done consistent with federal EPA laws and it's done in a responsible manner. But it would then divide the cost according to the footage, the frontage footage of the adjoining property owners. It would then divide that amount and charge it back to the owners so that the law of the state of Nebraska, which says the owners of the adjoining property are responsible, is honored. The river is cleaned up. We prevent any access liability to Kansas. People have problems with financing, I can recognize that. They have a chance to negotiate terms of repayment to the state and basically every one of the good principles that we've talked about here...and I want Senator Carlson and everyone else to know, I don't have a problem with the underlying project or cleaning up the river, quite the contrary. And if we actually had to get to a point where a compromise where they say, well, the adjoining property owners just can't afford all of this, I'll talk even about a burden sharing with them. But what I have a profound problem with, and I cannot help it and I will not back off of it, is the idea that...and I would propose to you a lot of money was made. This land along side the Republican River, if you've ever been down there, and I have many times, is essentially sandy soil that was marginal agricultural land in many periods. It was farmed now using irrigation techniques. And I am all for that. It has created a lot of wealth. A lot of people made money buying very inexpensive land that was dryland, putting down wells, using the public property of underground water, and farming. Got no knock with it. But as a result, the river got screwed up, in part at least. They say the dams caused some of it. I don't dispute that and that's why I'm willing for the state to talk about taking some responsibility. But the adjoining landowners created a problem and they made a lot of money doing it. And now, the entire cost of cleaning up that problem, which is a river occluded with foreign invasive species, is supposed to be dumped on the taxpayers. I cannot count the number of times that the sponsors of this bill and others

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have just railed against bailouts, corporate welfare, private welfare, the state is not obligated. You know what? I have a problem. I listened to them and I believed them. I really thought they meant it. I really thought they were worried about protecting taxpayers from being...having costs dumped on them that didn't actually belong to the taxpayer. And here we have one of the most flagrant examples. And yet, they're lined up fully in support of it. I do not want to obstruct this process. I do not want that river not to be cleaned up. I do, and I am willing, on behalf of my constituents, taxpayers in Omaha, to help bear part of the burden. But I will not, nor should anybody who purports to care really about taxpayers and fiscal conservatism, turn away and ignore what has been the law since 1911 in this state that says that obligation is actually the landowners' on the adjoining banks of the river. Now, folks want to just say it's all our responsibility, it's a good project, and they want to ignore that. Then I do not think they should expect that when other bills come up that talk about transferring obligations of other taxpayers that they should object, because they no longer can do that without fairly being labeled a hypocrite. And I want people to know, the Farm Bureau in the Revenue Committee came up and objected like crazy to the checkoff money on corn going to the Republican River bailout. And you know what their argument was? Their argument was, look, my land is nowhere near the Republican River Valley. One guy said, I don't even irrigate. I get it. I get it. My constituents aren't even in agriculture. Okay. So the question is, if the checkoff to the Farm Bureau is...on corn is objectionable as a source for paying this, and they testified in Revenue that it was, why is it okay to take income tax and sales tax money to pay for it? Now, if it is indeed a state obligation, if it is too big for the individual landowners, let us work together for a reasonable solution, but one that holds people who really contributed to causing the problem at least partially responsible for paying for its solution. After all, they profited from creating the problem. Thank you, Mr. President. [LB98]

SENATOR STUTHMAN PRESIDING []

SENATOR STUTHMAN: Thank you, Senator White. You've heard the opening on FA25. Those wishing to speak: Senator Louden, Coash, White, and others. Senator Louden, you're recognized. (Visitors introduced.) Senator Louden, you're recognized. [LB98]

SENATOR LOUDEN: Thank you, Mr. President and members. As I rise to certainly oppose this floor amendment of Senator White's, one thing as I've heard the discussion on what's caused the vegetation in the rivers and streams that we have here, part of that is because we've controlled flooding. That was what Lake McConaughy was put in for. Harlan County Dam and some on those on the Republican River was put in there after the 1935 flood. And whenever you control flooding, then you don't have that natural source of scouring the rivers with the floods to clean those things out like we have when it was without the flood control and the dams in there. This isn't just something that Nebraska has to contend with. Any of you that may be interested in it,

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there was an article on the Hoover Dam. The Hoover Dam and the lake behind it there is filling up with silt. Right now they're estimating it's going to cost \$82 billion to clean the silt out behind that Dam in the lake there, and also at the present time they want to try and make a 52-mile long tunnel around all of that so that, as the river comes in, the silt can be directed around the dam. So you have problems with all that whenever you start controlling the water and controlling the floods. You want to remember that Hoover Dam is supposed to be a great generation plant, and it is. It puts out over 2,000 megawatts of power. But don't forget that down here at Gerald Gentleman plant, it puts out over 1,300 megawatts of power so we have nearly two-thirds of a Hoover Dam or three-fifths of a Hoover Dam sitting right down here by Sutherland. So that's all part of our using our resources, and that, of course, relies on some water also. But I would want to point out, when you say that nitrogen is what causes the phragmites, not necessarily so. Phragmites in the native form grows up there in the Sandhill lakes. Phragmites grows wherever they have water. They don't necessarily have to have nitrogen to grow. The kind that grows in some of the rivers is a kind that's invaded from...it's a different, a little bit different species. You can't hardly tell by looking at them but they are a little bit different species and they're a lot more hardy. And they're up and down the Platte River and they've come in there, where I think at North Platte I don't think you could...I don't think an animal, man or animal could walk to the river, the phragmites are so thick. So this is what it's all about. Whenever any of you that do canoeing canoe down a river, you know the landowners can't stop you from going down that river because they actually don't own the water in the river. And this is what we're talking about, is who owns the water out in the middle of the river? Who owns that out there? And as Senator White has tried to come up with these statutes that it's up to the local landowners to clean that, it probably is on the banks up to a ways and it's up to landowners to not allow any trash to be...collect in any of the waterways that would divert it. I think Senator Stuthman mentioned that, by doing that, you could divert the water in a flood and then you could actually claim accretion land. So this is a little bit more complicated than what it's put out, that it's just a matter that the landowners are supposed to clean the trees and the vegetation up in the river. It's been the state waterways and that, so LB458 was the original bill that Senator Carlson had and it was put into LB701 a few years back. Before that we were doing that kind of work with Nine Mile Creek out in western Nebraska, which started the flow a going as soon as there was vegetation removed. So it's amazing how much of water... [LB98]

SENATOR STUTHMAN: One minute. [LB98]

SENATOR LOUDEN: ...is transpired by vegetation. And this is what we're trying to control. I think we're spending a lot of time on something here that probably isn't necessary. This is an investment for Nebraska on how we're going to control the water, what we're going to do with our rivers, and keep them cleaned up. It wasn't necessarily that those people put in irrigation wells and slowed the water up on the Republican River. You had a drought, was part of your problems in there. There probably was too

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much well drilling done but some of that well drilling wouldn't take effect for 40 or 50 years. It isn't all of it. It depends on whether they're drilling in the alluvial basin of the river or not. And there's areas that could be probably shut down on some well drilling. If it was curtailed, would make a difference but it wouldn't be that much right away. So in the meantime, we can do something positive by taking care of vegetation by removing vegetation in these waterways because we've already seen that happen... [LB98]

SENATOR STUTHMAN: Time. [LB98]

SENATOR LOUDEN: ...in areas in western Nebraska. Thank you, Mr. President. [LB98]

SENATOR STUTHMAN: Thank you, Senator Louden. Senator White, you are recognized. [LB98]

SENATOR WHITE: Thank you, Mr. President. Ladies and gentlemen of the body, let's look at the reality of things here. We have a law that's been in effect for nearly a century. There's no question that Senator Louden's right about a landowner has to allow people on navigable waters to float through, no question about it. He's also absolutely right that the presence of dams have contributed to this, no question about that. I also have no problem if the state helps pay for it. And matter of fact, I'd say we did a \$2 million down payment without asking a nickel from the adjoining landowners, not a nickel. Now, I ask you, is it unreasonable to stand up for the taxpayers and say, look, yeah, we got a crisis, yeah, we got problem, yeah, and it may be too much for the landowners to handle 100 percent by themselves? Senator Hansen from North Platte said, well, you know, maybe we clear it up and then we hold them responsible to keep it clear. They were responsible in the first instance. But that at least is a movement to acknowledge that as an adjoining landowner you have an obligation to keep that clear too. What I object to is the...just the blithe assumption that they should be able to dump the entire problem on the taxpayers of the state of Nebraska. And nobody has really, truly come to grips with that and explained to me why this is any different than any other property owner being required to pay to control any other nuisance on their property. I'm not allowed to allow weeds grow and become obnoxious on my property. If there's graffiti on my property, I have to clean it up. I don't even profit from it. I can at least argue that a lot of money was made by people adjacent to this river and that they made it in a way that contributed in a substantial way to the problem inside of the river. But nobody from that area stood up and said, look, yeah, you're right, we've got some responsibility here and we ought to cowboy up and pay our share. Now, let's talk about what we can afford to do. And nobody here in this bill, as it exists now, says going forward the adjoining landowners must keep the river clear if the state pays to clean it up this time. I mean, the law is already there. They blew it off and ignored it. Okay, but what are we going to do forward? And the idea that somehow it's me digging up trouble, you know, I have the funny impression that when we pass laws they're supposed to mean something, that they're laws. They're not suggestions, they're not good ideas,

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they're not just idle thoughts. They're laws. I would very much like any member who strongly supports this to, please, please stand up, ask me to yield a question, and hopefully explain to me why we can ignore what is absolutely clear law. In 1993 the Court of Appeals said, weeds in a watercourse are the obligation of the adjoining landowner to get them out of there whether he knows they're there or not. I mean, all he has to do is know they're there. Well, everybody knows this stuff is in the river. Explain to me, please explain to me, why a guy struggling to make it with a family on \$15,000 a year in south Omaha or north Omaha has to pay to keep up his property... [LB98]

SENATOR STUTHMAN: One minute. [LB98]

SENATOR WHITE: ...but property worth millions of dollars that produces huge amounts of profit from farming, that actually caused the problems, should be free of that and be allowed to pass it all on to the taxpayer. Please explain that. Thank you, Mr. President. [LB98]

SENATOR STUTHMAN: Thank you, Senator White. (Visitors introduced.) Senator Price, you are recognized. [LB98]

SENATOR PRICE: Thank you, Mr. President and members of the body. I rise in support of LB98 and I would call the attention to the body, earlier this year we had discussions on LB180. LB180 was an act relating to solid waste, and where the discussion on the floor was centered around clearing abandoned lots, buildings, and that people abandoned buildings on lots and we're using a fund to clear those lots. And I think a lot of the discussion was surrounding the apportionment of those funds. And you can go back and look in the record to see where the votes were for expending public dollars for things that were abandoned. I'd also like to bring up again, when there are many challenges for those individuals who have rivers and streams on their property, of course, of late in the Republican River Basin, it wasn't the largest issue, however, there was an issue and is an issue of accretion, land accreting on one side or the other base on the flow of the stream. I will not purport to be an expert in these areas, however, we did hear testimony on this. When we were trying to work on legislation for boundaries between counties and the river channel, and establishing that river channel, and the fact is that when land is deeded, let's say there's a family deed that's been there 100 years, in 100 years a lot of land can accrete. And then there becomes a problem of who is responsible for this accreted land that has no deed? And let alone what will happen should that land pass from...and you want to sell it. Now, you're trying to sell undeeded land with water rights or without water rights. If you want a headache, go ahead and unravel that knot. So this is not an easy subject. We have been faced with many challenges that nature has blessed us with. And I would just remind the body again, our statutes seem to be replete with funding for individuals and organizations that do not meet their obligations and we fund the restitution, if you would, and repair and compensation and elevation based on what is needed there. And we use public monies

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to do so. Senator Carlson's efforts here in LB98 are nothing short of spectacular. There is nothing that is more amazing than those pictures when you pull the vegetation and the water runs. Water is so vitally important for our state, for our obligations to other states. And here we have an opportunity to take care...yet again, yes, it is a burden on the taxpayer, but yet again, we do this again and again and again. And I rise in strong support of LB98. Thank you, Mr. President. [LB98 LB180]

SENATOR STUTHMAN: Thank you, Senator Price. (Visitors introduced.) Senator Schilz, you are recognized. [LB98]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. I would just like to stand up and commend Senator Carlson for what he's done on this legislation, not only this year but in years past. I would also like to stand up and say that Senator White has some very good points. I mean, there is in statute that you take care of this. I mean, there's no doubt, but being a landowner that owns land on the South Platte River, you know, as we look at it there, and we don't have the phragmites there that you see here, even though it's starting to move into that area, the problem that you run into is a liability question. If I spray these weeds here, who downstream is going to come back on me and say, hey, you killed this or you've done that? If I go in there and try to remove anything mechanically, the Corps of Engineers can actually come out. In order to change a streambed, you have to get a 404 permit to do that. So it starts to become a question of, hey, how much headache do I really want to take on? And most people have answered that question with, well, I don't want any headache, so I will wait until something is done for me. And that's not exactly the best scenario, but that's the way it is. I think we should also remember, too, that when this law was first passed, this bill was first passed a couple of years ago or whatever, we were standing in the frying pan and we were trying to leap far enough to jump out of the fire. And that's where we were. And that's how we come to being with this. We lost a lawsuit with Kansas and now we're in the penalty phase. If we don't stay in compliance, Senator White is correct, \$100 million may be what we owe because we're in the penalty phase, and that's continuing to tick right now. So the question is, do we continue to do what we're doing, which I think is a good program? I think it has given us benefits that we may not have seen otherwise. Just a little side note: I remember when I was doing some negotiating on the cooperative agreement, when we talked about maybe up in the mountains of Colorado we should clear-cut some forest so that more water would come down to get into the Platte River system, Fish and Wildlife Service jumped up and down and said, no, no, that will not provide us the advantages we need. Well, I think that what we've shown here is that these things can work and if you do them correctly and do them smartly, they can benefit us. You know, we're not expending General Funds here, guys. This is money that's already sitting there. Maybe we do need to go back, as Senator White has said, and relook at this law. And I'm not talking about LB98. I'm talking about the law that says, hey, in streambeds the individual landowner should do that. Maybe that's the law we should be looking at. And with that, I thank you very much. [LB98]

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SENATOR STUTHMAN: Thank you, Senator Schilz. Mr. Clerk, have you got any items or messages? [LB98]

CLERK: I do, Mr. President, thank you. Bills read on Final Reading this morning were presented to the Governor at 10:30 a.m. (re LB105, LB105A, LB110, LB110A, LB165, LB168, LB177, LB184, LB207, LB377, LB327, LB260, LB483, and LB403). Enrollment and Review reports LB430, LB679, LB198, LB322 to Select File, some of which have Enrollment and Review amendments attached. Transportation Committee, chaired by Senator Fischer, reports LB211 and LB368 as indefinitely postponed. Amendments to be printed: Senator White to LB16; Senator Hansen, LB430; Senator Hadley, LB420; Senator Wallman, LB98; and Senator Dierks to LB241. Mr. President a couple of announcements: The Education Committee will meet in Exec Session Monday at noon in Room 1107; and the Agriculture Committee will meet in Exec Session at 9:50 Monday in Room 2022. One name add: Senator Howard would like to add her name to LB396. (Legislative Journal pages 928-935.) [LB105 LB105A LB110 LB110A LB165 LB168 LB177 LB184 LB207 LB377 LB327 LB260 LB483 LB403 LB430 LB679 LB198 LB322 LB211 LB368 LB16 LB420 LB98 LB241 LB396]

And I do have a priority motion. Senator Flood would move to adjourn the body until Monday morning, April 6, at 10:00 a.m. []

SENATOR STUTHMAN: You have heard the motion to adjourn the body until Monday, April 6, at 10:00. All those in favor of this motion say aye. All opposed, nay. We are adjourned until Monday. Thank you. Have a nice weekend. []