

January 9, 1989

LB 58, 84, 98, 102, 140, 141, 241-266

CLERK: Mr. President, new bills. (Read titles for the first time to LBs 241-266. See pages 112-18 of the Legislative Journal.)

Mr. President, in addition to those items, the Rules Committee would like to announce that Senator Carson Rogers has been selected as Vice-Chair of the committee.

Mr. President, Revenue Committee will be or are...is conducting a meeting underneath the south balcony.

Mr. President, the Judiciary Committee will conduct an Executive Session upon recess on the south side of the Chamber; Judiciary upon recess. And Transportation will meet in the lounge upon recess...or, Senator...I'm sorry, Senator Lamb, do you want that this afternoon, Senator? I'm sorry, Transportation upon adjournment this afternoon in the Senators' Lounge; Transportation this afternoon.

Mr. President, Government Committee has selected Senator Bernard-Stevens as Vice-Chair.

Mr. President, Senator Conway would like to add his name to LB 140 as co-introducer; Senator Beck to LB 102 and to LB 141; Senators Smith and Hartnett to LB 58; Senator Hartnett to LB 98; Senator Rod Johnson to LB 84.

Mr. President, the last note is a Reference Committee meeting at two-thirty this afternoon in Room 2102; Reference Committee at two-thirty in Room 2102. That's all that I have.

PRESIDENT: Senator Emil Beyer, for what purpose do you rise?

SENATOR BEYER: Mr. Speaker, a point of personal privilege. I hope that the senators have noticed that we have a familiar face back in the Legislature and that's our Page Supervisor, Kitty Kearns. We're glad to have her back and we've missed her and we wish her good health from now on. (Applause.)

PRESIDENT: Thank you. Ladies and gentlemen, would you please listen as your Speaker speaks.

SPEAKER BARRETT: Thank you, Mr. President, and members, just a reminder to committee chairs, committee clerks, if you plan to have a hearing next week, I believe the first day would be the

January 23, 1989

LB 1-6, 8-12, 14-17, 251, 714

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Welcome to the 12th day, the beginning of a new week, in this the First Session of the Ninety-first Legislature. Our chaplain of the day this morning for the opening prayer, Captain Joseph Wheeler of the Salvation Army. Captain Wheeler, please.

CAPTAIN WHEELER: (Prayer offered.)

SPEAKER BARRETT: Thank you, Captain Wheeler. Please come back and be with us again. Roll call.

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

SPEAKER BARRETT: Thank you. With a quorum present, any corrections to the Journal?

CLERK: No corrections, Mr. President.

SPEAKER BARRETT: Messages, reports, announcements.

CLERK: Mr. President, your committee on Natural Resources whose Chair is Senator Schmit to whom was referred LB 251 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with committee amendments attached, and that is signed by Senator Schmit. (See page 389 of the Legislative Journal.)

Mr. President, I have a notice of hearing from Senator Chizek, who is Chair of Judiciary. Your Enrolling Clerk did present to the Governor as of 12:15 p.m., Friday, bills read on Final Reading Friday. (Re: LB 1, LB 2, LB 3, LB 4, LB 5, LB 6, LB 8, LB 9, LB 10, LB 11, LB 12, LB 14, LB 15, LB 16, LB 17.

One last item, Mr. President, Senator Smith would like to add her name to LB 714 as co-introducer. That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you, sir. To item 5 on the agenda, confirmation report.

CLERK: Mr. President, Senator Schmit, as Chair of Natural Resources, would report on the appointment of Mr. Lawrence Myers to the Nebraska Power Review Board.

statement is like, that is unnecessary. That is not what a lien is for. A lien is to tell the world that certain property is pledged, and since there is not a pledge of certain property that places that at priority, it is really unnecessary to use the lien method. It's a good option. It's certainly a good fallback, but it is certainly not required and take that into account should this issue come up on Select File. Thank you. I move the advancement of the bill.

SPEAKER BARRETT: Thank you. You've heard the closing and the question is the advancement of LB 94 to E & R Initial. Those in favor vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of LB 94.

SPEAKER BARRETT: LB 94 is advanced. LB 251.

CLERK: LB 251, Mr. President, introduced by the Natural Resources Committee and signed by its members. (Title read.) The bill was introduced on January 9, referred to Natural Resources. I do have committee amendments pending, Mr. President.

SPEAKER BARRETT: On the committee amendments, Senator Schmit. (Gavel.)

SENATOR SCHMIT: Mr. President and members, LB 251 is a bill which allows for the registration of certain types of land with the Game and Parks Division and the committee amendment strikes language which requires consultation with the Game and Parks prior to the withdrawal of that land from registration and instead replaces it with language which states that the Game and Parks shall be notified prior to the withdrawal of such a piece of property from the registry. It is a question of whether or not there is much difference between the language consultation and notification, but it does relieve the minds of some individuals who are concerned that consultation might give more impact to the opinion of the Game and Parks than was originally concerned or considered to be necessary. So it strikes the words "consultation" and includes the language of notification. That is all that it does. I move for the adoption of the amendment.

SPEAKER BARRETT: Thank you. Discussion on the motion to adopt

the committee amendments, Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, I suppose my comments are more in the nature of a question for Senator Schmit, but it appears to me that basically the purpose of the act, as I would understand it, is to preserve some of these areas, at least a vehicle that identifies them and I assume for the purpose of preserving.

SENATOR SCHMIT: That is correct, Senator.

SENATOR WARNER: It would seem to me that if that is the purpose, then one would want to provide some vehicles that would strengthen the ability to do that. When you change from simple notification to consulting, my assumption would be exactly what you said, that consultation is a stronger term. It almost indicates or implies concurrence. What protection of preserving that area would exist with the adoption of the committee amendment of simple notification which is essentially meaningless, but are there other areas in the act that give some protection to retention of the areas. There is some federal legislation perhaps that restricts the use of federal funds in the area, so designated. Is there...are you aware of any other area that would help protect that area once it is designated to be covered by the act?

SENATOR SCHMIT: Yes, Senator, I'd be glad to answer that. First of all, the act is entirely voluntary in nature. It simply provides a mechanism whereby if I, as a landowner, would like to record in the register a certain type of property, natural vegetation type property, I could do so. But it does not... there is nothing at all which would compel me to do so and since it is a voluntary act to list it with the register, we felt that it is also compatible with the fact that it might be good business practices that it be withdrawn. Actually, there isn't anything that the act contains that is mandatory. There is nothing that would keep me from plowing up a native grass property that I had listed with the register even though that I provide with the original language, and as it was indicated at the hearing, there is only about a 141,000 acres of this kind of property across the entire United States that is listed in this manner and I believe that is in about 31 states. Of course, there were many, many times that much land in natural state in our Sandhills. But you will recall I think a few years ago there was a piece of prairie, I think they called it Seven-mile

Prairie or something of that nature, Nine-mile Prairie, thanks, Kathy, near Lincoln and there were people who were very enamored with the idea that they could find native grasses growing within that short distance of the Capital City of the State of Nebraska. And I concur that if we have those kinds of natural vegetation that it is in our interest to try to maintain and preserve them. However, I also feel that if we make it difficult for those particles of land to be removed from the registry, that it might limit the individual from listing them in the first place...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: I really don't think there is that much difference between the two words. There is nothing overall in the original language that would allow the Game and Parks to refuse to let me take it off the register if I so chose, and several members thought this might perhaps make it, as you said, less restrictive.

SENATOR WARNER: Well, at this point, I suppose...Mr. President, at this point maybe I would just not vote but I'm actually coming from the other direction, Senator Schmit, of ensuring that an area is retained rather than ensuring that an area can be declassified. If the number of acres is as limited as you indicated in the whole United States to 141,000 acres, I'm more inclined to go to the side that the area should not be something that someone at their, even the owner, at their whim can put in and put out. I'm more inclined to think there ought to be a process...(interruption)

SPEAKER BARRETT: Time has expired.

SENATOR WARNER: ...gone through to take something out if, in fact, it was meritorious to being placed in there in the first place.

SPEAKER BARRETT: Thank you. Further discussion, Senator Lamb, followed by Senator Elmer.

SENATOR LAMB: Yes, Mr. President, members, I rise in support of the committee amendment and the concern that the committee had was for the adjoining landowner. For instance, under the green copy of the bill it says that no entity of local or state government may undertake any activities or use the registered

natural area in any way that would negatively impact the values without consultation with the Director of Game and Parks. For one thing, we didn't know what consultation meant. You know, what does consultation mean? Does that, as Senator Warner has said, imply concurrence? We don't know that and we could see times where there may be lawsuits to determine exactly what we are talking about when we say consultation. But we were concerned about the landowner on down the road beyond this land that has been set aside by its owner. What if there needs to be a county road go down there to serve that person, that is on beyond? So we could see situations where local governments may really be tied up and certainly the person that wants his land in this registry is welcome to put it in there, but the concern was that we would be negatively impacting another person on down the road that could not get a road to his place or an improved road there just because between him and the better road there was this land that was in the registry. So since this is a voluntary bill, this allows the landowner to put the land into the registry and then again take it out. It seemed prudent that we should put language in here which ensured that local governments would not be tied up in litigation to determine what consultation meant and furthermore, some of the proponents of the bill said they had no...that that's what they really meant. They really meant notification and some of them did not have any objection to that language as I recall the public hearing.

SPEAKER BARRETT: Thank you. Senator Elmer.

SENATOR ELMER: Thank you, Mr. President, members. As a member of the Natural Resources Committee I participated in this hearing and, of course, the purpose of the bill is to allow a landowner that is interested in conserving something that seems to be unique about his land and allows him to have access to and support from the National Nature Conservancy and the Game and Parks in managing those unique items. He is also allowed to use the land in any way he pleases and it seemed only prudent that if some public entity had some use that needed to be made of that property, to make it less burdensome to do so, of course with the consent of the property owner. And with that, I'd suggest we support the committee amendment.

SPEAKER BARRETT: Thank you, sir. Senator Schmit.

SENATOR SCHMIT: Mr. President and members, again, I want to say that I commend the people who brought this bill to the

Legislature because it does provide a mechanism whereby we can accent and highlight certain types of vegetation, certain types of land with certain types of cover and hopefully it will encourage landowners to record it with the registry. It is my concern, of course, that if you were to place it in that kind of a position and you could never get it out, or if there were some impediment toward removing it from that registry, that there would be less land placed in the registry than would be the case otherwise. I want to emphasize that if I, for instance, wanted to place some of my native grasses under some kind of a covenant, I could exercise that kind of covenant legally and file it with the courthouse and I suppose I could carry that quite a ways beyond even my own children or grandchildren, but it would also, of course, have an impact, maybe positive, maybe negative, upon the value of the real estate. What we are doing here is simply to provide a register so that, for example, the school children in Lancaster County might be able to make a field trip and know where it is at so they would not have to carouse all around Lancaster County to try to find such a patch of grass and very frankly, those areas are becoming less and less available to the public and certainly this does provide that opportunity for us. Those of us who live in areas where there is an abundance of native grasses, we probably aren't quite as impressed, but those individuals who live in the cities of Omaha and Lincoln, larger cities in the state, like to be able to go out and show their children, grandchildren what this territory looked like 150 years ago and the idea of the bill is then to encourage that sort of filing. Obviously it is not something which is going to sweep the countryside, but I would just like to say also that, you know, the 1985 Farm Act has a considerable amount of language which is extremely restrictive relative to the utilization which the individual landowner can make of his property, even so far as maintaining drainage ditches and terraces and waterways on that property. That is a much more restrictive act than this is. This is simply an opportunity for those individuals who might want to record in a register the fact that they do have that kind of property under their possession and to make it available in a manner which then could be publicized if they so chose. Again, as Senator Lamb said, the language of consultation was not meant to be restrictive but simply, I suppose, to give the Game and Parks a chance to talk to someone who wanted to remove their property from the register, a chance to say well, why don't we just leave it in there. But Senator Owen Elmer mentioned some of the other uses. I don't really see too much conflict there. I think if

they need to build a road through it or something of that nature, that would probably be done anyway. But I do believe that we will find more people who will make use of the register if it is less restrictive, if they should so choose, to remove it from that register or if, in fact, it should change hands. Also I want to point out, there is no penalty in the bill so that in the event that an individual did choose to remove it or to use it in a different manner, there would be no penalty for it. It is just an acknowledgement of the fact that there ought to be some way for those of us who want to preserve a small portion of the native vegetation, native land the way it was, they can do so...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...in a very easy manner with no expense and no impediment and no altering of the value of the property. I can understand Senator Warner's concern and his deep commitment to the land and I think that that is an admirable and commendable, but as I said, those of us who want to put land under some kind of covenant could do so today and we would certainly not be prevented from doing it and we could make that sort of a covenant permanent. It would not also...it would, of course, be possible under this act to place a covenant on that property if you wanted to do so voluntarily and that would probably be, in my estimation, the preferable way to handle it. I would move for the adoption of the amendment, Mr. President.

SPEAKER BARRETT: Thank you, sir. Additional discussion, Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, again, as I understand the amendment, does not affect the individual's owner of the property to take it in or out, that's discretionary and that perhaps is all right. My concern rests from the fact that if someone chose to put a piece of ground in for the purpose of preserving it, which I assume is the long-term purpose, that it would be helpful, and I'm not going to object to attaching the amendment now, Senator Schmit, but perhaps there at least ought to be a process in taking it out where it is a governmental entity that is taking it which is what I think you indicated most of the time, that at least there is a process in place that puts some burden on the governmental entity to show why that piece of property should be changed from a conservancy type of being indicated...being held for a



conservative purpose to some other purpose. If I had a piece of ground I was going to do it with, let me put it that way, I would be wanting to do it for the reason of preserving it and I would have some obstacles in place for government to come in and say, well we don't care what it is, we need it for whatever worthy purpose it might be, but there ought to be at least be a process that would have to be met to take the ground and maybe it is something we can talk about later but it still seems to me that there ought to be some protection to the individual against government coming in and changing the use of that property if you as owner felt that it should be preserved and it met the criteria to being entered into in the first place, into the registry, there ought to be some process or some test for taking it out beyond just the whims of what a government entity might want to do.

SPEAKER BARRETT: Thank you. Any other discussion on the committee amendments? Closing statement, Senator Schmit?

SENATOR SCHMIT: Yes, Mr. President. In response to Senator Warner's most recent remarks, if I as a landowner had a piece of property included in the register and a governmental entity such as the Department of Roads wanted to build a road across it against my wishes, I believe they would probably have to condemn the property anyway, and, of course, that would be an entirely different procedure. Therefore, it would still give the landowner a considerable amount of latitude. Again I want to emphasize that I do not see that as a major problem. What I do see as a problem is that in the event I, as a landowner, chose to place the property in the National Register, very frankly I would not be adverse to doing that now with some of my native grasses. But if I thought that once having placed it in that kind of a situation it could never be removed, and never is a long, long, long time, I would probably never place it on the register. And so what we are trying to do here and what the introducers and the sponsors of the bill are trying to do was to make it as easy as possible to encourage the placement of this kind of property on the National Register so that once having been placed there, of course, it would enjoy a certain kind of status and hopefully the landowner would continue to keep it there. I guess I'm a little bit adverse to mandatory government regulation of something of that nature. I'm frankly very fed up with the '85 farm bill provisions where you cannot drain a mud hole or plow up a piece of property that you have a deed to which you pay taxes upon and which someone in some wild

imagination thinks it belongs to you. It seems to me we have enough of that kind of dictation already and this is a well-intended piece of legislation and I really commend the people who brought it before us because it does give us a chance to preserve a part of our grassland heritage in a manner which is of no detriment to the landowner. It might even be helpful to that individual landowner and I believe that the more we can do this, the more we are going to be inclined to do it and the less restrictive we are, the more we will use that. I would certainly encourage the amendment to be adopted and that the bill be advanced, and I would not be adverse, Senator Warner, to looking at the kind of amendment which you talk about because I think sometimes we have seen governmental entities that have not shown the best regard for some of our native soils and it might be we want to take a look at that insofar as a government entity is concerned, I would not be adverse to that. But I would ask that the amendment be adopted at this time.

SPEAKER BARRETT: Thank you. The question is the adoption of the amendments offered by the Natural Resources Committee. Those in favor please vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of committee amendments.

SPEAKER BARRETT: The amendments are adopted. On the bill, Senator Schmit.

SENATOR SCHMIT: Mr. President and members, now we come to the interesting part and, Senator Pirsch, I'm going to preempt your question a little bit. You asked me about the money, the fiscal impact. The fiscal impact ranges from two to \$89,000. Now I guess the Game and Parks felt they could eat the 2,000. Obviously, if we go out and solicit any of these or very many of these, it is going to require more visitations by the Game and Parks and they have an estimate of maybe, as much as 89,000 which, of course, then would have to come from the General Fund. I do not envision it to be that kind of an impact. And, again, if the Game and Parks do not have the funds available, I don't think it is going to be any big issue as to whether or not they make a special trip out to inspect this property. I think it is probably something which can be handled in a routine manner. I have not had any complaints from Game and Parks relative to it. There may be some in future years, but I think that if we did

find that kind of response to the bill, I think that probably the Appropriations Committee would consider it a worthwhile expenditure of funds to preserve a small part of our native grasslands. Other than that, Mr. President, I think we've discussed the bill in some detail and I think you understand the nature of the bill. I really did not think it was that momentous a bill, but I am, nonetheless, happy to explain it to you because I do have a particular fondness for Nebraska grasslands and our grassland and prairie heritage and I think that certainly whatever we can do in this very modest manner to encourage the preservation of such grasslands is a small step in the right direction. I'll be glad to answer any other questions.

SPEAKER BARRETT: Thank you. Senator Pirsch, followed by Senator Warner and Coordsen.

SENATOR PIRSCH: Thank you. I'm glad Senator Warner is following me because he might want to follow up and answer some of my questions regarding the budget. It does say that this bill appears to be nearly identical to the natural heritage program which the Games and Parks Commission has been funding jointly with nature conservatory. I am a member of the nature conservatory and we have a portion of the virgin prairie on our farm, so I am very much in favor of continuing this kind of practice. However, I am curious as to whether this would be a new appropriation. According to this it says the commission has requested for FY '90 and FY '91 the addition of three full-time positions plus operating expenses to continue the inventory of these natural areas, and I guess what I would like to ask Senator Warner if he would answer or respond in his next speaking whether indeed that will be a part of the Games and Parks budget appropriation. With that, Senator Warner, did you hear me? Okay. Thank you.

SPEAKER BARRETT: Senator Warner, please.

SENATOR WARNER: Mr. President, members of the Legislature, again, my comments at this point is essentially for information I think, Senator Schmit, and deals around the issue of an A bill. In the request from the...as has been indicated from the Game and Parks Commission is what is designated as an expansion request which in effect I believe would retain three full-time or establish three full-time positions for a natural heritage program. And the similarity, at least in the language

in the bill in the description of the natural conservancy, or excuse me, the natural heritage program, appears to be virtually identical and I'm not objecting, but it would seem to me that if it is the same program, and I'm not sure if that issue was discussed at the public hearing or not, then it would be appropriate that funding for this would be a part of the bill which obviously would require an A bill. And if it is not the same thing, and we are passing it on the assumption that there is no cost, then I assume when this issue comes before as a budget issue, we just plain disregard, almost disregard the request on the assumption that it can be done without any additional General Fund money and which I seriously doubt. I don't know if Senator Schmit can add any light or some member of the committee as to the potential General Fund cost at some point or, if, in fact, the two are different rather than the same as they appear to be, a budget request for an expansion and the provisions of LB 251.

SPEAKER BARRETT: Was that a question, Senator Warner?

SENATOR WARNER: Yes, it was for some enlightenment, if at the hearing there was some indication that if, in fact, these are two different things. They appear to be identical. As a matter of fact...

SPEAKER BARRETT: Senator Schmit.

SENATOR WARNER: ...the questions that they have responded to from the Game Commission preliminary to the budget work would appear that they are essentially dealing with the same issues, the same type of property.

SPEAKER BARRETT: About two and a half minutes, Senator Schmit, if you'd like to respond.

SENATOR SCHMIT: Well, it was my understanding, Senator Warner, that the Game and Parks felt they could handle this out of their cash funds. It would not require an A bill and it was certainly not my understanding that it would be such a momentous task that would require two or three positions. I think that Game and Parks certainly indicated to me that it would be something which could be handled routinely and without a major expenditure. If I am in error, I will check it out and certainly let you know, but I do not believe that it is their intent to spend a substantial amount of money on it. I could be in error, but I

don't think so.

SPEAKER BARRETT: Thank you. Senator Coordsen.

SENATOR COORDSEN: Thank you, Mr. President, members of the body, would Senator Schmit again respond to a question?

SPEAKER BARRETT: Senator Schmit.

SENATOR COORDSEN: I think most of the questions that I had related to the cost of administering this program, but I see from the fiscal note that this is hopefully an extension of an expiring natural heritage program. During the course of the testimony on this particular bill was there any mention made, Senator Schmit, of the number of acres that are enrolled in the natural heritage program or an estimate on the part of the testifiers as to the amount of area that they would think we might be having to look after in the future?

SENATOR SCHMIT: Well I believe, Senator Coordsen, if my memory serves me correctly and I have the identification properly, we were told there were approximately 141,000 acres nationwide and I believe, again, it was 31 states in which this property was located, not, of course, as you can understand an earth-shaking amount. And so their interest is, of course, in trying to encourage the addition of property to the register and I concur with that, but at the present time there is not a substantial amount of land included in this area.

SENATOR COORDSEN: That is in Nebraska.

SENATOR SCHMIT: No, that is nationwide, in Nebraska there is less.

SENATOR COORDSEN: I understood the nationwide estimate. My question I would rephrase, with if there was any indication given in testimony of the amount that was included within the State of Nebraska.

SENATOR SCHMIT: If there was, Senator, I might have...I missed it. I can't tell you exactly the amount of land that had been included within the state.

SENATOR COORDSEN: Okay, thank you.

SPEAKER BARRETT: Senator Lamb, followed by Senator Pirsch.

SENATOR LAMB: Well, Mr. President, members, it was my impression at the public hearing that they were not asking for any more people. They said that present personnel could handle this program, so there was no request for any more. They would like to have \$2,000 for travel and awards, but it was unclear as to whether that would come out of their previously budgeted amount. So it is my impression that no A bill is needed, that if they need the \$2,000, that comes out of their present funds and that they specifically said they did not need more personnel.

SPEAKER BARRETT: Senator Pirsch, please, Senator Warner on deck.

SENATOR PIRSCH: Thank you. Just a quick question, Senator Schmit, that occurred to me. This talks about the joint funding with the nature conservancy. Is there any possibility of that continuing?

SENATOR SCHMIT: Well, Senator Pirsch, I don't know, but if you're a member of that group, you probably could have some influence with them and we'd certainly appreciate your help I suppose, but I don't know myself. I do not know the answer to that.

SENATOR PIRSCH: I just send them small amounts of money. And that didn't come up at the hearing, is that right?

SENATOR SCHMIT: Not that I recall, Senator.

SENATOR PIRSCH: Okay. I guess other than to explore that maybe further, I would have to support this bill, but I might change my mind if we cannot work out some of the financial expense.

SPEAKER BARRETT: Senator Warner.

SENATOR WARNER: Mr. President, and, again, I'm not trying to give the bill a problem, Senator Schmit. I'm trying to establish what, in fact, the long-term impact is. But one of the questions that were asked in December of the Game Commission relative to their expansion request indicates that instead of funding 100 percent, the General Fund pick up only the natural conservancy share which relates to the same kind of property,

share with non-Game fund picking up 47 percent of the cost as currently financed. And response from the agency is that from the outset it has been our opinion the natural heritage program should be funded under the General Fund as all Nebraskans benefit, and admittedly, the non-Game fund has been used to fund a portion of the contract, however, to continue to do so was never our intent and it goes on which I'll be glad to share with you but it would clearly indicate to me that if it is, in fact, the same program, that it was intended and is intended to have a General Fund appropriation. There was a second question that they also were asked to respond to which was the retention or expansion of three positions which again indicates that in order to proceed with it that it was not a one-time inventory as initially started out but is an ongoing program. In fact, it indicates this process that they currently have had was initiated by establishing a list of approximately 600 species and communities, elements to track. I'm not sure what that means but known location information of these elements are being collected from various sources indicating those that establish a base line and it is anticipated that for 2,000 location records along with other information in a data base is going to continue. In any event, without going into more detail it would appear to me that there is a direct relation between the two and that for the proper implementation of the intent of the legislation is going to require more than the \$2,000 Cash Fund that they indicated. And I'm only raising the question so that we do not have another piece of legislation enacted and then goes unfunded and is meaningless. I have a lot of sympathy with what it is that...the purpose of the bill, but I also have a lot of sympathy that this body doesn't get back into expenditures without knowing that we are incurring an obligation at the same time. So I would suggest that we very clearly define whether or not this is the same program or a different program and then address the funding issue appropriately where the cost occurs, which I believe probably is with the passage of the act.

SPEAKER BARRETT: Thank you. Any other discussion? Senator Schmit, would you care to close?

SENATOR SCHMIT: Yes, well in closing I would just like to say that I hope certainly that the program will grow, that it will become popular and that it will be a very significant addition to the program of the Game and Parks, and Senator Warner is entirely correct in attempting to delineate whether or not the General Fund impact is going to be in excess of the 2,000 or

more likely the 89,000 which was raised. It was my understanding that the \$2,000 was supposed to have covered the cost and that the \$89,000 is a different program. I do not believe, as I understood the individuals who testified, that they ever intended for the program, this program in particular, to cost anywhere near \$89,000. I will, however, check on it because I think it is important that we do know. I think that it might be compatible with the nature conservancy program and certainly the nature conservancy could provide funds for this kind of an activity if they so chose. But I do believe that there isn't any way that we could at the present time possibly spend anywhere near the \$89,000 on this program. It would have to grow by leaps and bounds if that were to occur and I'm sure as Senator Warner has said, he is interested in this kind of a preservation program, if that were to occur, the Game and Parks would come before the Budget Committee and make their case for the funding. I just want to say that I have from time to time on this floor expressed concern about lack of adequate debate. If the debate on LB 251 is any indication of what we can expect in the days ahead, this should be the most informed Legislature that we have sat in in 20 years, and so I just want to suggest that this was probably a step in the right direction and it probably is a good idea, it is a good idea without any doubt to explore these areas because the funding in any program is critical to its success and, of course, the tendency of budgets to grow is well known around here and certainly very few of them start with massive appropriations. Most of them start with small appropriations such as this one and then have a tendency to grow, but I do believe that this will be a limited amount of money for a very worthwhile program, one which we can keep an eye on and one which will benefit a great many people and our children in years to come and, therefore, ladies and gentlemen, I would move that the bill be advanced as amended.

SPEAKER BARRETT: Thank you. The question is the advancement of LB 251 as amended. Those in favor of that motion vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB 251.

SPEAKER BARRETT: LB 251 advances. Anything for the record?

CLERK: Mr. President, your Committee on Government, Military and Veterans Affairs, whose Chair is Senator Baack, reports



January 25, 1989

LB 51, 60, 94, 97, 175, 189, 207  
251, 261  
LR 20

**SPEAKER BARRETT PRESIDING**

**SPEAKER BARRETT:** Welcome to this the 14th legislative day in the First Session of the 91st Legislature. Our chaplain of the day, Pastor John Eilers, Southview Christian Church in Lincoln. Reverend Eilers.

**REVEREND EILERS:** (Prayer offered.)

**SPEAKER BARRETT:** Thank you, Reverend Eilers, we're glad to have you with us. Roll call.

**CLERK:** Mr. President, I have a quorum present.

**SPEAKER BARRETT:** Record, Mr. Clerk. Corrections to the Journal, please.

**CLERK:** No corrections, Mr. President.

**SPEAKER BARRETT:** Any reports, announcements or messages?

**CLERK:** Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 94 and recommend that same be placed on Select File; LB 97, LB 251 all on Select File, some of which have E & R amendments. (See pages 422-23 of the Legislative Journal.)

Your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 51 and find the same correctly engrossed; LB 60, LB 189, and LB 207 all correctly engrossed, all signed by Senator Lindsay as Chair.

Business and Labor, whose Chair is Senator Coordsen, reports LB 261 to General File, and LB 175 to General File with amendments. Those are signed by Senator Coordsen as Chair. (See page 423 of the Legislative Journal.)

Mr. President, new resolution. (Read LR 20 for first time. See page 424 of the Legislative Journal.) That will be laid over, Mr. President.

Mr. President, hearing notices from Judiciary, signed by Senator Chizek as Chair; Revenue, signed by Senator Hall as Chair. Mr. President, a series of reports, two from the Lewis and Clark and the Middle Niobrara NRD districts regarding payment of

CLERK: On LB 97, Senator, I do have E & R amendments pending.

SPEAKER BARRETT: Senator Lindsay, on the amendments.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 97 be adopted.

SPEAKER BARRETT: Shall the E & R amendments be adopted? All in favor say aye. Opposed no. Carried, they are adopted.

CLERK: I have nothing further on the bill, Senator.

SPEAKER BARRETT: To the bill as amended, Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 97 be advanced.

SPEAKER BARRETT: Shall LB 97 be advanced as amended? All in favor say aye. Opposed no. Carried, the bill is advanced.  
LB 94.

CLERK: LB 94, Senator, I do have E & R amendments.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB...or excuse me, that the amendments to LB 94 be adopted.

SPEAKER BARRETT: Shall the amendments to 94 be adopted? Those in favor say aye. Opposed no. Carried, they are adopted.

CLERK: Nothing further, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 94 be advanced.

SPEAKER BARRETT: Thank you. Shall LB 94 be advanced as amended? Those in favor say aye. Opposed no. The ayes have it. Motion carried. The bill is advanced.

CLERK: LB 251, Senator, I do have E & R amendments pending.

SPEAKER BARRETT: Senator Lindsay.

January 27, 1989            LB 251

SENATOR LINDSAY:    Mr. President, I move that the E & R amendments to LB 251 be adopted.

SPEAKER BARRETT:    Shall the amendments be adopted? Those in favor say aye. Opposed no. Carried, they are adopted.

CLERK:    Mr. President, Senator Warner would move to amend the bill.

SPEAKER BARRETT:    Senator Warner.

SENATOR WARNER:    Mr. President, members of the Legislature, was that printed in the Journal, Mr. Clerk?

CLERK:    No, sir, it was not.

SENATOR WARNER:    Oh, my.

CLERK:    I can read it, if you like, Senator, if that would be helpful.

SENATOR WARNER:    Please.

CLERK:    (Read Warner amendment as found on page 465 of the Legislative Journal.)

SENATOR WARNER:    Thank you, Mr. Clerk. I apologize for not having this handed out. I neglected to write on the...when I filed it, to have it printed in the Journal. What the amendment does is not perhaps all that substantive in a sense, but I...when the issue was discussed on General File I was concerned that if an individual had chosen to place some property in this category and subsequently a governmental subdivision or the state found it necessary to somehow affect the use of that property, by taking it or otherwise affecting it, under the bill, as proposed, they merely have to...and amended, they merely have to notify the Director of Game and Parks. What the amendment does, it still would be a matter of notifying, in effect, the director, but it goes one step further in that it would require that there would be a hearing process by that governmental entity where the owner of the property could come in and present material as to the negative impact of what was proposed to be done, and then that material would be filed with the Director of the Game Commission...Director of the Game and Parks Commission as well. My concern is that as it was drafted,

at least as I would interpret it, since the intent of the legislation is to allow an individual to take the initiative to put a piece of ground into this type of classification or register that they ought to have...be provided an opportunity to defend that property in its retention, if local government has some method of using that or proposed use of the property. This merely ensures that that individual has an opportunity to express the...what they would view would be the negative impact. So that, too, would be taken into account by local governments or the state before some fashion of property was taken or utilized for public purpose. The purpose of the amendment, I submitted to Senator Schmit the other day, I have no idea what Senator Schmit's attitude is, but I would move for its adoption.

SPEAKER BARRETT: Thank you. Discussion? Senator Schmit.

SENATOR SCHMIT: Well, Mr. President and members, Senator Warner did show me the amendment several days ago. I understand that under his amendment the local subdivision of government would have to hold a public hearing before removing this land from the register. And although it may make the process a little more cumbersome insofar as removing the property, I really see nothing wrong with it. It may also make someone think twice before putting a property under the register. But I really don't think it's any problem, and I have no problem supporting the amendment. And I guess, if I don't understand the amendment correctly, Senator Warner can make those corrections. But as I understand the amendment, I have no objection to it.

SPEAKER BARRETT: Thank you. Any other discussion on the Warner amendment? Senator Lamb.

SENATOR LAMB: Mr. President, members, I would have a question of Senator Warner.

SPEAKER BARRETT: Would you respond, Senator Warner?

SENATOR LAMB: If we have this, let's just use a road, say that a county decides there should be a road along this property, how does the county determine whether there is a negative impact? How...what burden does the local subdivision bear in deciding whether or not what they want to do does reflect a negative impact? It seems to me there is no definition of what a negative impact may be, and some of those local subdivision officers may not really know whether or not it is negative.

Could you enlighten us on that, Senator Warner?

SENATOR WARNER: Well, first the hearing, as proposed here, does not put a restriction upon the governmental subdivision that they must, in fact, make a finding, and as a result of a finding determine whether to take or not take the property. The purpose of it is solely one of providing to the owner of the property the opportunity to express those potential negative impacts so that the local government can at least take that into account in the process. Obviously, a negative impact, under this type of property, I would think would be a wide, wide range of things that I would be very hesitant to try and draft into statute specifically. It's an opportunity to ensure that if you placed a piece of property into this...into the register and it was going to be adversely affected by a taking on the part of local government, or the state, that you would have an opportunity to go before that body and make a presentation on the uniqueness of it, those type of things that I would think any good governing board would want to take into account as to the extent that they could. Obviously, in some instances it would be impossible just because of simple engineering, perhaps, to take it into account.

SENATOR LAMB: Well, I guess my concern is what kind of a burden. I guess the way the bill is written then, with your amendment, anything that the local subdivision of government would do in that area might potentially be a negative impact, so you would be putting the burden of that decision on the local subdivision. So they would probably hold this hearing just to keep on the safe side, whether or not it's really necessary. Is that your interpretation of the way it would actually work?

SPEAKER BARRETT: Senator Warner.

SENATOR WARNER: My interpretation of the way it would work, it provides a format for presentation to the local governing board, or to the state in which the citizens may not necessarily only be the landowner, but primarily the landowner could bring to their attention the negative impact. As the bill is currently written, the local government entity, as I understand it, is to notify the director of negative impact, which I don't know how they would determine it either without some type of mechanism that provides that input. And a hearing process would provide that input.

SPEAKER BARRETT: Any other discussion on the amendment? Any

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LB 134, 251, 255

closing comment, Senator Warner? Thank you. We'll proceed then to the vote on the Warner amendment to LB 251. Those in favor vote aye, opposed nay. On the amendment to 251. Please record.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of Senator Warner's amendment.

SPEAKER BARRETT: Motion carries, the amendment is adopted. Anything further on the bill?

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

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 251, as amended, be advanced.

SPEAKER BARRETT: Thank you. Shall the bill be advanced? All in favor say aye. Opposed no. Ayes have it, motion carried, the bill is advanced. LB 134.

CLERK: LB 134, Senator, I have E & R amendments.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 134 be adopted.

SPEAKER BARRETT: Shall the amendments to 134 be adopted? All in favor say aye. Opposed no. Ayes have it, carried.

CLERK: I have nothing further on the bill, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 134, as amended, be advanced.

SPEAKER BARRETT: Shall 134, as amended, be advanced? Those in favor say aye. Opposed no. Ayes have it, carried, the bill is advanced. LB 255.

CLERK: I have no amendments to the bill, Senator.

SPEAKER BARRETT: Senator Lindsay.

to put into the record, Mr. Clerk?

CLERK: Mr. President, I do. Your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 94 and find the same correctly engrossed; LB 133, LB 134, LB 251, LB 277 and LB 295, all correctly engrossed, Mr. President. That's all that I have. (See pages 486-87 of the Legislative Journal.)

PRESIDENT: Thank you. Move on to LB 165, please.

CLERK: LB 165 by Senator Chambers. (Read title.) The bill was introduced on January 5, referred to the Government Committee for public hearing. The bill was advanced to General File, Mr. President. I do have committee amendments pending by the Government Committee.

PRESIDENT: Senator Bernard-Stevens, are you going to take the committee amendments?

SENATOR BERNARD-STEVENS: Yes, I am.

PRESIDENT: Okay.

SENATOR BERNARD-STEVENS: Mr. President and members of the body, the committee amendments are relatively simple and somewhat technical. In the bill, it had it that the Douglas County Election Commissioner will be responsible for the redistricting of the City of Omaha and there was a section in there that says about sanctions, about if something would not be done well or not done at all. And there was a section in there calling for a removal of office as one of the possibilities that could be done in the sanctions. It did not specify, however, whether it would be mandatory or if there would be a process. So what the committee has done, through committee counsel, has gone back to an existing section of law which has its process set up on the removal of office of such an elected official and it is not mandatory but it is the process. That's the first part the committee amendment clarifies. The second, the committee amendment basically is for the purpose of the section that calls for a citizen in their ability to create or to have a lawsuit against a county commissioner or some other entity in this particular bill and it clarifies this section as to what the lawsuit could pertain to and the clarification by the committee is that it will pertain to the areas that show compelling

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LB 229, 230, 233, 251, 255  
LR 26

voting, 4 excused and not voting, Mr. President.

PRESIDENT: LB 229 passes. LB 230.

CLERK: (Read LB 230 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 230 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on pages 662-63 of the Legislative Journal.) 43 ayes, 0 nays, 2 present and not voting, 4 excused and not voting, Mr. President.

PRESIDENT: LB 230 passes. LB 233.

ASSISTANT CLERK: (Read LB 233 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 233 pass? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote as found on pages 663-64 of the Legislative Journal.) The vote is 46 ayes, 0 nays, 3 excused and not voting, Mr. President.

PRESIDENT: LB 233 passes. LB 251, please. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LR 26. Okay, now 251.

ASSISTANT CLERK: (Read LB 251 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 251 pass? All those in favor vote aye, opposed nay. Record, Mr. Clerk.

ASSISTANT CLERK: (Read record vote as found on pages 664-65 of the Legislative Journal.) The vote is 45 ayes, 0 nays, 1 present and not voting, 3 excused and not voting, Mr. President.

PRESIDENT: LB 251 passes. LB 255, please.



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LB 57, 58, 70, 94, 97, 115, 116  
126, 133, 142, 156, 191, 229, 230  
233, 251, 255, 256, 295, 327

CLERK: (Read record vote as found on pages 671-72 of the Legislative Journal.) 33 ayes, 11 nays, 1 present and not voting, 4 excused and not voting, Mr. President.

PRESIDENT: LB 156 passes. LB 256.

CLERK: (Read LB 256 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 256 pass? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: (Read record vote as found on pages 672-73 of the Legislative Journal.) 45 ayes, 0 nays, 4 excused and not voting, Mr. President.

PRESIDENT: LB 256 passes. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LB 57, LB 94, LB 97, LB 126 with the emergency clause attached, LB 133, LB 229, LB 230, LB 233, LB 251, LB 255, LB 295, LB 58, LB 70, LB 115, LB 142, LB 156, and LB 256. Mr. Clerk, do you have anything for the record?

CLERK: Mr. President, two items. Government Committee reports LB 191 to General File with committee amendments attached. I have amendments to be printed, by Senator Chambers, to LB 116. That's all that I have, Mr. President. (See page 673 of the Legislative Journal.)

PRESIDENT: Thank you. For those that are interested in the General File list that is coming up, we'll be skipping the third one, LB 744, and over on the back page LB 336. So, with that, we'll go to General File and LB 327.

CLERK: Mr. President, LB 327 was a bill introduced by Senator Wehrbein. (Read title.) The bill was introduced on January 11 of this year, referred to the Government Committee, advanced to General File. I have committee amendments pending by the Government Military and Veterans Affairs Committee, Mr. President.

PRESIDENT: Senator Baack, are you going to handle the committee amendments?

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LB 37, 48, 57, 58, 70, 77, 94  
97, 115, 120, 126, 133, 142, 156  
209, 229, 230, 233, 251, 255, 256  
295, 311, 350, 521, 597, 598, 692  
703, 777, 780

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 209 as amended be advanced.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. It is advanced. May I introduce a guest, please, of Senator Hefner. We have Mr. Art Anderson of Bloomfield, Nebraska. Would you please stand, Mr. Anderson. Thank you. Mr. Clerk, anything for the record?

CLERK: Yes, Mr. President, thank you. Your Committee on Appropriations gives notice of hearing for March 7...I'm sorry, for February 24. That's signed by Senator Warner. A location change for Appropriations hearings on March 1, also offered by Senator Warner.

Mr. President, General Affairs Committee offers LB 703 to General File; LB 777 to General File; LB 780 to General File. Those are signed by Senator Smith as Chair of the Committee.

Agriculture Committee reports LB 37 to General File with amendments; LB 120 to General File with amendments. Those are signed by Senator Johnson as Chair. (See pages 678-79 of the Legislative Journal.)

Mr. President, your Committee on Banking, Commerce and Insurance whose Chair is Senator Landis reports LB 77 to General File with amendments; LB 311, General File with amendments; LB 350, General File with amendments; LB 598, General File with amendments; LB 692, General File with amendments, and LB 597, General File with amendments. Those are signed by Senator Landis as Chair. (See pages 679-82 of the Legislative Journal.)

Your Enrolling Clerk has presented to the Governor bills read on Final Reading this morning as of 11:30 a.m. (Re: LB 57, LB 94, LB 97, LB 126, LB 133, LB 229, LB 230, LB 233, LB 251, LB 255, LB 295, LB 58, LB 70, LB 115, LB 142, LB 156, and LB 256.)

Mr. President, Senator Moore would like to print amendments to LB 48. (See page 682 of the Legislative Journal.)

And, Mr. President, Senator Weihing would like to add his name to LB 521 as co-introducer. That's all that I have, Mr. President.

February 15, 1989      LB 57, 58, 70, 74, 94, 97, 115  
116, 126, 133, 142, 156, 175A, 177A  
208, 229, 230, 233, 251, 255, 256  
261A, 263, 267, 273, 281, 284A, 295  
338, 378, 391, 398, 416, 443, 458  
459, 499, 502

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT:      Welcome to the George W. Norris Legislative Chamber. Please rise for the opening prayer. Our Chaplain for the day is Father Daniel Sieker, of Blessed Sacrament in Lincoln. Father Sieker.

FATHER SIEKER:      (Prayer offered.)

SPEAKER BARRETT:      Thank you, Father Sieker. Please come back again. Roll call.

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

SPEAKER BARRETT:      Thank you. Corrections to the Journal.

CLERK:      I have no corrections, Mr. President.

SPEAKER BARRETT:      Any reports, messages, or announcements?

CLERK:      Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 502 and recommend that same be placed on Select File, LB 281 Select File, LB 416 Select File, LB 443 Select File, those signed by Senator Lindsay as Chair. Mr. President, your Committee on Enrollment and Review reports LB 74 as correctly engrossed; LB 116, LB 175A, LB 177A, LB 208, LB 261A, LB 263, LB 267, LB 273, LB 284A, LB 338, LB 378, LB 391, LB 398, LB 458, LB 459, and LB 499, all reported correctly engrossed, all signed by Senator Lindsay. (See pages 746-47 of the Legislative Journal.)

Mr. President, a communication from the Governor to the Clerk. (Read. Re: LB 57, LB 94, LB 97, LB 126, LB 133, LB 229, LB 230, LB 233, LB 251, LB 255, LB 295, LB 58, LB 70, LB 115, LB 142, LB 156, LB 256. See page 748 of the Legislative Journal.)