

January 19, 1989

LB 94, 247, 570, 576, 683-808

as yet, please contact Joanne immediately. If you don't have the bill that you are expecting, please contact the Bill Drafters Office immediately. Mr. Clerk.

CLERK: Mr. President, for the record, I have received a reference report referring LBs 496-599 including resolutions 8-12, all of which are constitutional amendments.

Mr. President, your Committee on Banking, Commerce and Insurance to whom we referred LB 94 instructs me to report the same back to the Legislature with the recommendation that it be advanced to General File with amendments attached. (See pages 320-21 of the Legislative Journal.)

Mr. President, I have hearing notices from the Judiciary Committee signed by Senator Chizek as Chair, and a second hearing notice from Judiciary as well as a third hearing notice from Judiciary, all signed by Senator Chizek.

Mr. President, new bills. (Read LBs 683-726 by title for the first time. See pages 321-30 of the Legislative Journal.)

Mr. President, a request to add names, Senator Korshoj to LB 570, Senator Smith to LB 576, Senator Baack to 570 and Senator Barrett to LB 247.

SPEAKER BARRETT: Stand at ease.

EASE

SPEAKER BARRETT: More bills, Mr. Clerk.

ASSISTANT CLERK: Thank you, Mr. President. (Read LBs 727-776 by title for the first time. See pages 331-42 of the Legislative Journal.)

EASE

SPEAKER BARRETT: More bill introductions.

ASSISTANT CLERK: Thank you, Mr. President. (Read LBs 777-808 by title for the first time. See pages 343-50 of the Legislative Journal.)

CLERK: Mr. President, I have reports. Your Committee on

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LB 49, 85, 137, 146, 178, 179, 215
293, 345, 377, 387, 424, 434, 463
515, 555, 617, 669, 685, 710, 799
LR 27, 28

Without any further discussion, I believe we should just go ahead and try to advance this bill. Thank you.

SPEAKER BARRETT: Thank you. Any discussion on the advancement of the bill? If not, the question is the advancement of LB 49 to E & R Initial. All in favor vote aye, opposed nay. Shall LB 49 be advanced? That is the question. Record, please.

CLERK: 27 ayes, 0 nays, Mr. President, on the motion to advance LB 49.

SPEAKER BARRETT: LB 49 is advanced. The Chair is pleased to announce that Senator Moore has some eighth graders from Emmanuel Lutheran in York. I believe there are 12 of them in the north balcony, with their teacher. Would you folks please stand and be recognized. Thank you for being with us. Also, Senator Sharon Beck has a special visitor from District 8 this morning, Dr. Paul Paulman, who is here today as doctor of the day. Please welcome Dr. Paulman. Anything for the record, Mr. Clerk?

CLERK: Mr. President, I do, thank you. Retirement Systems reports LB 137 to General File with amendments. That is signed by Senator Haberman. (See pages 1076-77 of the Legislative Journal.)

Transportation Committee reports LB 424 to General File with amendments; LB 799, General File with amendments; LB 146, indefinitely postponed; LB 434, indefinitely postponed; LB 515, indefinitely postponed; LR 27, advanced to the floor, and LR 28, advanced to the floor, all of those reports signed by Senator Lamb as Chair of Transportation. (See pages 1077-80 of the Legislative Journal.)

Natural Resources Committee reports LB 617 to General File; LB 710 to General File; LB 293 to General File with amendments. Those are signed by Senator Schmit as Chair. (Journal page 1080 shows LB 293 as indefinitely postponed and LB 387 as indefinitely postponed.)

Judiciary Committee reports LB 215 to General File; LB 377, General File; LB 669, General File; LB 555, General File with amendments; LB 685, General File with amendments; LB 85, indefinitely postponed; LB 178, indefinitely postponed; LB 179, indefinitely postponed; LB 345, indefinitely postponed; LB 463,

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LB 95, 140, 257, 280, 289, 311, 330
336, 387, 395, 438, 444, 478, 561
588, 603, 606, 643, 683, 705, 710
721, 736, 739, 744, 761, 762, 767
769, 780, 807

indefinitely postponed; LB 478, indefinitely postponed; LB 561, indefinitely postponed; LB 387, indefinitely postponed, all those signed by Senator Chizek as Chair of the Judiciary Committee. (See pages 1081-82 of the Legislative Journal. Journal page 1082 shows LB 721 as indefinitely postponed.)

Mr. President, a series of priority bill designations. Senator Hall would like to designate LB 762 as a committee priority. Senator Hartnett designates LB 95 and LB 444 as Urban Affairs priority bills. Senator Hartnett chooses LB 603 as his personal priority bill. LB 739 has been selected by Senator Hannibal; LB 606 by Senator Schimek; LB 761 and LB 289 by the Natural Resources Committee, and LB 807 by Senator Schmit, personally. LB 769 by Senator Labedz; LB 705 by Senator Ashford; LB 438 by Senator Wehrbein; LB 710 by Senator Scofield; LB 643 by Senator Bernard-Stevens; LB 588 by Senator Chambers; LB 739 by Senator Hannibal; LB 330 by Senator Pirsch; LB 767 by Senator Smith; LB 736 and LB 780 by General Affairs Committee; LB 395 by Senator Peterson. Senator Lamb selected Transportation Committee's LB 280 as a priority bill. LB 311 has been selected by Senator Landis as his personal priority bill; LB 683 by Senator Schellpeper.

Mr. President, I have a series of amendments to be printed. LB 744 by Senator Withem; LB 336 and LB 257, those by Senator Withem. (See pages 1083-88 of the Legislative Journal.)

I have an Attorney General's Opinion addressed to Senator Haberman regarding an issue raised by Senator Haberman. (See pages 1088-90 of the Legislative Journal.)

Mr. President, Natural Resources Committee will have an Executive Session at eleven-fifteen in the senate lounge, and the Banking Committee will have an Executive Session at eleven o'clock in the senate lounge. Banking at eleven o'clock, Natural Resources at eleven-fifteen. That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you, Mr. Clerk. Proceeding then to Select File, LB 140.

CLERK: Mr. President, 140 is on Select File. Mr. President, the bill has been considered on Select File. On March 2nd the Enrollment and Review amendments were adopted. There was an amendment to the bill by Senator Chizek that was adopted.

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LB 259, 569, 695, 710, 812

the advancement of LB 812? Seeing none, those in favor of that motion please vote aye, opposed nay. Have you all voted? Record.

CLERK: 30 ayes, 0 nays, Mr. President, on the advancement of LB 812.

SPEAKER BARRETT: LB 812 is advanced. For the record, Mr. Clerk.

CLERK: Mr. President, for the record, Senator Withem has amendments to LB 259 to be printed; Senator Lamb amendments to LB 695; Senator Peterson to LB 569. And, Mr. President, I have a rules report offered by the Rules Committee, signed by Senator Lynch as Chair. That's all that I have, Mr. President. (See pages 1556-61 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. I'd like to take this opportunity to announce that we will move over LB 247 at this point, and also 588, I believe. Senator Chambers, are you within listening distance? I don't believe Senator Chambers is here, his office doesn't answer, and I did have a discussion with him recently about perhaps moving over this one for a day or so. If there is no objection, I'd like to address LB 710 at this point. Mr. Clerk.

CLERK: Mr. President, LB 710 was introduced by Senators Scofield, Lamb and Dierks. (Read.) The bill was introduced on January 19 of this year, referred to the Natural Resources Committee for public hearing. The bill was advanced to General File. Senator, would you like to offer your amendment now, or would you defer until you open on the bill?

SPEAKER BARRETT: Senator Scofield.

SENATOR SCOFIELD: Why don't I...I think if I can offer the amendment, I'll open at the same time, Mr. Clerk.

CLERK: Mr. President, Senator Scofield would move to amend her bill. (Scofield amendment appears on pages 1561-62 of the Legislative Journal.)

SPEAKER BARRETT: Senator Scofield.

SENATOR SCOFIELD: Thank you, Mr. Speaker and members. LB 710

has a little history behind it, which I think I'll give briefly, and then tell you what the amendment does. As you are aware, a couple of years ago we passed a study bill, 146, to look at the subject of water transfers. At the time it was on the heels of what was known as the Sporhase case in Nebraska, and we were pretty much, I think, under the assumption that the state didn't have a whole lot of opportunity to control water transfers, there wasn't very much that we could, in fact, do about it. And we went ahead and completed the study, which is well done, I might add. And, if you haven't seen it's, you probably got a copy of it, you may want to take a look at that. But as I have talked to people around the state, first of all, and then more recently outside the state, the whole issue of water transfers and how far states might be able to, in fact, go is still very, very much up in the air. You have before you a letter that I'm circulating, and I think it does the best job of summarizing some of the questions that still need to be asked. So what I am proposing is that we build upon the study that we completed and take one step further in light of some of the opinions that are out there, saying that there may be more than we can do than we thought to retain maximum control over our water allocation for the benefit of instate users. It's a very complex area. And the one place that we did not ask the Water Management Board to do, when we did the original study, was to do a constitutional, particularly interstate commerce clause analysis of how this whole issue might in fact be further pursued in the best interests of the citizens of the State of Nebraska. You may be aware there were a number of bills introduced in the Committee on Natural Resources this year as a result of the first study. None of those are out of committee yet, which I think indicates the difficulty this whole area brings to us and the lack of public consensus that there is. So I feel a need to take the next step and really do a good, legal analysis of this, which goes well beyond just the water issues, but specifically a constitutional look at that. So the original bill simply proposed that we do this study, and the amendment that I am offering is a bit more realistic, I think, than my original proposal because it recognizes how legally complex this area is. So I'm suggesting that we ask the University of Nebraska College of Law to enter into this study. And I'm simply raising the amount from the original 10,000, that I had proposed, to 25,000. I talked to the Dean of the Law School, they have said that they would be willing to do that, and we would get the best minds that we have both in terms of constitutional law over there and in terms of water law. And I think that it's extremely

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important that we take this next step before we try to make any of these policy choices on what is an issue that may be among, I would think, the top five in terms of the future of Nebraska. So, with that brief explanation, I would ask you to accept the amendment.

SPEAKER BARRETT: Thank you. Amendment on the desk, Mr. Clerk.

CLERK: Mr. President, Senator Dierks would move to amend Senator Scofield's amendment. (Dierks amendment is on page 1562 of the Legislative Journal.)

SPEAKER BARRETT: Senator Dierks.

SENATOR DIERKS: Mr. President, Mr. Speaker, members of the body, the amendment that I have offered is a friendly amendment. And Senator Scofield is in accord with it. All it does is change the date of the bill. The reporting time is changed from September 1, 1990 to December 1, 1989. We think that this will be ample time for the study to take place, and we'd like to have that report here this year. Would like to, at this time, just make a couple of comments about the legislation, about the bill. I don't believe you can live in Nebraska and not be aware of our very wonderful resource, our water supply, both surface and ground water. And it will be one of the very great assets that we have for years to come. I think that it will be one of the things that attract people to our state, because you have a difficult time finding a better source of good, potable water. I think it's necessary that we know where we are with regards to the legalities of moving this water, and this is a step in the right direction to protect our citizens, to protect their natural resource, and to protect those who might be here in years to come in their ability to use and utilize our water resources. So I'm in full support of the bill. The fact is I'm signed on as a co-signer and would urge your support in accepting the amendment to the amendment and the amendment and the bill. Thank you.

SPEAKER BARRETT: Thank you. Senator Pirsch, would you care to discuss the amendment to the amendment?

SENATOR PIRSCH: I originally was going to speak to the amendment, but I would like to question Senator Dierks, if he would yield.

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SPEAKER BARRETT: Senator Dierks.

SENATOR PIRSCH: Senator Dierks, that's moving it up quite a bit. Do you think that it would have...that that would leave adequate time for those entities to thoroughly do the job that we want them to do?

SENATOR DIERKS: Yes, this has been the opinion of all people involved, that this will be adequate time, the people at the law school, Senator Scofield and myself, we believe this is ample time to get the study done.

SENATOR PIRSCH: Okay, thank you. I have a question for Senator Scofield, also.

SPEAKER BARRETT: Senator Scofield, please.

SENATOR PIRSCH: Senator Scofield, along with the increase in cost, are you adding also, after "Resources Center", the College of Law, Nebraska College of Law?

SENATOR SCOFIELD: No, Senator Pirsch, I am strike the "Resources Center" and simply designating that the College of Law would do this.

SENATOR PIRSCH: Oh, only the College of Law.

SENATOR SCOFIELD: Right.

SENATOR PIRSCH: Okay, I'm glad I understood that. And I have another question for you. In the repealer Section 2-15,118, and 2-15,120, and 2-15,119, what are...what do we need to repeal here?

SENATOR SCOFIELD: I need to go back and check that to be sure, Senator Pirsch, but I think it's the old language that authorized the study that is now complete. But I'll double check that.

SENATOR PIRSCH: Okay, thank you. I, too, support this effort to truly find those kinds of avenues that we need to pursue to protect the quality and the quantity of Nebraska's water resources for future generations. And I support the amendment and support the bill.

SPEAKER BARRETT: Thank you. Senator Scofield, followed by Senator Schmit.

SENATOR SCOFIELD: I would simply rise to indicate my support for Senator Dierks' amendment to my amendment and indicate that I agree that we need the information now, particularly since the committee may well want to deal yet with 383, 384, 385 yet next year, and I think that would better enable us to weigh our policy choices and how far we might have to go. And I think it's also reasonable, given the additional resources that we're putting into this to expect that and to be and to be done well by the deadline that Senator Dierks has set.

SPEAKER BARRETT: Thank you. Senator Schmit, on the amendment to the amendment. Senator Schmit.

SENATOR SCHMIT: Mr. President, members, is the amendment to the amendment, Senator Dierks, change of date? Is that it? Yes, I rise in support of that. And I just want to say this, I had an amendment which would have shortened the time up even to September 1. I really don't think that there is that there is that much case law to study on this. I've talked to some of the attorneys who have been involved in it. First of all, if you will review the management study very carefully, and I'm sure you will, you will learn that the proposal did study both sides of the issue so that there isn't...that it was not ignored totally, in fact it was not ignored. Secondly, I think it is important that we recognize that there ought to...a study ought to be done as soon as possible because, if it's going to have any impact, the sooner we get it done the better. And, third, I want to just say again that I guess I'm a little concerned about implications that the original study was not done well, I think it was. I would just hope that we have to understand that talking about issues doesn't necessarily resolve anything, and studying them doesn't resolve anything. I've almost made a decision, ladies and gentlemen, that, if we are going to only talk and talk and talk about this issue, we don't even need a division of water resources. We seem to create a lot of controversy every time anyone talks about any kind of water development, any kind of storage projects, any kind of recharge. We are concerned about those issues. But any time anyone talks about anything substantive that would provide for some recharge of the aquifer, and Nebraska is one of the few states that does have an aquifer that will accept recharge, everyone seems to get paranoid about it. I'm at the point where, if all we're going

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to do is talk about it, we just as well save the money we put in the entire agency and wipe it out and then go back home and tell our constituents that we don't think water is important, we've got lots of it, and all we've got to do is sit here and watch it go down the Missouri River, and the Platte, the Elkhorn, and trickle on down to the salt water oceans. That's not, in my estimation, good husbandry of water. But, ladies and gentlemen, we are misleading the people if we do not do something substantive to conserve, protect and enhance one of Nebraska's most valuable resources. So I probably won't vote for the bill, but I will vote for the amendment and I have no real deep compassion about the bill. I don't think it's going to help very much, it might not hurt anything, it might help something. Thank you very much.

SPEAKER BARRETT: Thank you. Senator Dierks, would you care to close on your amendment?

SENATOR DIERKS: Yes, Mr. Speaker, only to say that I wish you'd move this amendment on, attach the amendment to the amendment and move the bill. Thank you.

SPEAKER BARRETT: Thank you. Those in favor of the adoption of the Dierks amendment to the Scofield amendment to LB 710 please vote aye, opposed nay. Record.

CLERK: 23 ayes, 0 nays, Mr. President, on adoption of Senator Dierks' amendment to Senator Scofield's amendment.

SPEAKER BARRETT: The amendment is adopted. Senator Scofield, would you care to make a statement on your amendment as amended?

SENATOR SCOFIELD: Well, since we've got an amendment to, I'll just briefly summarize now. This is essentially what the bill will become. We will appropriate \$25,000 to the Nebraska College of Law to conduct this study which will be a focus on the constitutional, and particularly interstate commerce issues relative to a state's ability to control water transfers. And the date that Senator Dierks has added to that would be it would be completed by December 1 of this year. And, with that explanation, I would ask you to adopt the amendment and then the bill.

SPEAKER BARRETT: Is there discussion? If not, the question is the adoption of the Scofield amendment. All in favor vote aye,

opposed nay. Please record.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of Senator Scofield's amendment to the bill.

SPEAKER BARRETT: The amendment is adopted.

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

SPEAKER BARRETT: Senator Scofield.

SENATOR SCOFIELD: Thank you, Mr. Speaker. As I indicated, the amendment now becomes the bill. I would ask you to advance the bill. Thank you.

SPEAKER BARRETT: Thank you. Discussion, Senator Elmer.

SENATOR ELMER: Thank you, Mr. President and members. This is an additional study of legal matters surrounding the use of water and the use of water between states. It does not change the fact that we are using our water more and more and more, and that we do need to address the issues of the interrelationships between ground water and surface water, and provide in statutes some regulations for the use of that. That's the basic problem that we're having is that people are very reluctant to acknowledge that the water that underlies all our land in the state belongs to the citizens of Nebraska and not the individual landowner that overlies the water. And, as the property...the water is the property of the state, then we should be regulating it for the benefit and the future of all our state. The study will help us with legal matters between the states, but it won't solve the problem of the need to put in statute methods to regulate the quantity and quality of the water in Nebraska. I'm very similar to Loran in the...or to Senator Schmit in the feeling about this. Perhaps it will help, but it doesn't really change any of the basics. Thank you.

SPEAKER BARRETT: Thank you. Any other discussion? Senator Scofield.

SENATOR SCOFIELD: Thank you. I appreciate Senator Elmer's concerns, and in fact he asked some very good questions in the committee that I think shed some light on this whole issue. I would disagree with at least one point, and that is while people are very much, and understandably so, protective of their ground

water, I don't think we have fully explored all the avenues that we have, as a state, to protect what is one of our most important resources. And, in fact, I can appreciate the skepticism that I think Senator Elmer views this with a little bit, just because I think we're all a bit skeptical from time to time of studies. But the fact of the matter is we really didn't look at that whole interstate commerce clause question, we really didn't push that very far. In fact, Senator Lamb had a bill that I don't think came out of committee that also raised that whole issue. And I just think it would be irresponsible of us not to pursue this as far as possible so that we have as much information before us as legislators before we waded out into the whole issue of water policy, water transfer policy. You might be interested to know that just last weekend, at the NCSL conference that some of us attended, that this topic came up kind of as an aside in a meeting I was at that was attended by states all over the country. And I was surprised at how much interest there is on this issue. Many other states are grappling with this. Minnesota was one that commented specifically that day, as was Nevada, as was Arizona. I think we have some information here that once we figure out these things we're going to have some answers that some other states are going to want to have as well. In fact the College of Law, when I approached them about their interest in doing this, suggested to me that there are legitimate legal questions to pursue here, and in fact they think there is probably even an opportunity to leverage other funding to pursue this whole, broad policy area and related policy areas. So I think this may well put into our hands, as legislators, information that perhaps no one else in the country might have. Even the National Academy of Sciences is thinking about compiling, at least, what information states now have on the water transfer issue. So I think we really...we owe this to the citizens of Nebraska to make sure that we have thoroughly explored all of our options before we proceed with making policy. So, with that, I would ask you to advance the bill. Thank you.

SPEAKER BARRETT: Thank you. The question before the body is the advancement of LB 710. Those in favor vote aye, opposed nay. Voting on the advancement of the bill. Please record.

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of LB 710.

SPEAKER BARRETT: LB 710 is advanced. LB 646.

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LB 84, 319, 541, 611, 630, 640, 646
651, 653, 653A, 705, 710, 762, 811
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now and Select File. I will try and answer your questions, but now I just ask that we advance the bill.

SPEAKER BARRETT: The question is the advancement of LB 611 to E & R Initial. All in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: 36 ayes, 1 nay, Mr. President, on the advancement of LB 611.

SPEAKER BARRETT: LB 611 is advanced. Anything to read in, Mr. Clerk?

CLERK: Mr. President, Enrollment and Review reports LB 319 to Select File with E & Rs, LB 640, LB 651, LB 541, LB 653, LB 653A, LB 630, LB 811, LB 812, LB 710, and, LB 646, all to Select File, some have E & R amendments attached. (See pages 1615-22 of the Legislative Journal.)

Senator Conway has amendments to LB 84 to be printed; Senator Hall to LB 762. Senator Abboud would like to add his name to LB 705 as co-introducer. (See pages 1622-28 of the Legislative Journal.) Mr. President, that is all that I have.

SPEAKER BARRETT: Thank you, and the Chair would like to remind members of the briefing on the pharmacy school to be held at this hour in Room 1019. Senator Chizek, please.

SENATOR CHIZEK: Mr. Speaker, I would make a motion we adjourn until April 11th at 9:00 a.m.

SPEAKER BARRETT: You have heard the motion to adjourn until tomorrow morning at nine o'clock. Those in favor say aye. Opposed nay. The ayes have it. Motion carried. We are adjourned. (Gavel.)

Proofed by:


LaVera Benischek

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LB 591, 710

arrangement. When we bring LB 641 to the floor I would expect it to have things that the racetrack owners, the thoroughbred horse breeders, the thoroughbred horse owners, all look at as detrimental things to their particular interests, and if everybody is mad about the bill, maybe that makes it a good one. I'm not sure, but we're going to try to something. Hopefully we can have some accord among the various groups when we finish. Thank you.

PRESIDENT: Thank you. Senator Korshoj, please.

SENATOR KORSHOJ: Question.

PRESIDENT: Thank you, you're the last one. Senator Schmit, would you like to close on the advancement of the bill? Okay, the motion is to advance the bill. All those in favor say aye. Opposed nay. It is advanced. LB 710, please.

CLERK: Mr. President, on LB 710 I have no E & R amendments. I do have a motion, however. Senator Schmit would move to indefinitely postpone LB 710. Senator Scofield would have the option to lay the bill over, Mr. President.

PRESIDENT: Senator Scofield, would you like to speak to us about whether you'd like to take it up now?

SENATOR SCOFIELD: Let's take it up.

PRESIDENT: Did you say take it up?

SENATOR SCOFIELD: Yes.

PRESIDENT: All right. Senator Schmit.

SENATOR SCHMIT: Well, Mr. President and members, it isn't very often in the course of a legislative career that we have more money than we know what to do with, but from time to time it appears that that has happened and it has happened this year and as a result we have a tendency to throw money around in an irresponsible manner. LB 710 appropriates along with it \$25,000 to repeat a study that has been performed in the past and to duplicate a report that has been completed by the Water Management Board. I wish, Mr. President, that we'd have a little less hubbub here.

PRESIDENT: (Gavel.) Let's hold it down so we can hear the speakers. Senator Schmit.

SENATOR SCHMIT: To come on this floor and ask for 25,000 or 250,000 or 2.5 million for some meritorious purpose, you have one heck of a time getting people to listen. All of a sudden we find ourselves enacting a bill into law which is not needed because the study has been completed. The research has been done. The university has done...they have plenty of evidence on this issue and the Water Management Board has looked at both aspects of water transfers when they completed their study. All you have to do is go out and ask for a copy of the report, but because there is a small group of people who have got a burr under their saddle about water transfers, and they are taking the position that they've got to have another independent point of view relative to whether or not it's desirable to move water out of Nebraska or into Nebraska or within Nebraska. So in order to salve the feelings of these people we come in with LB 710 and 710, along with being unneeded in the first place, then appropriates \$25,000 of salve or "slickum" or whatever you want to call it for the purpose of satisfying those people. Now this doesn't make any sense. It makes absolutely no sense. There comes a time when you have to accept reality. Senator Bob Kerrey sent to me a reprint just several days ago and believe it or not, a group called the Environmental Defense Fund, which some of you have some acquaintance with, not exactly a right-wing conservative group that is under the auspices of the Republican Party. I'm going to read to you one of their comments and I'd wish you'd listen to it.

PRESIDENT: Excuse me, Senator Schmit. Senator Schmit, excuse me. (Gavel.) Please, let's hold the conversation down so that we can hear. Thank you.

SENATOR SCHMIT: It says, turn water into a commodity. People can buy or sell and the market will soon straighten out inefficient ways of using the stuff. Now that's not Schmit speaking, that's a gentleman from the Environmental Defense Fund. So before the press comes out with six column headlines or scurrilous cartoons showing Schmit with his five-gallon bucket peddling water to Colorado, remember this comes from the Environmental Defense Fund. I'm not advocating the idea. I'm just saying you'd better take a look at things. But here we are without any good reason whatsoever, going to throw 25,000 bucks into somebody's pocket and for a report that has already been

completed. Now a few years ago during the Carter administration when energy was a tough topic, there was an individual came back here, went down to my office and gathered up a lot of the material that we had and wrote an economic feasibility study on ethanol fuels, sent it back east and sold it for 180,000 bucks. Same thing here, he took what we had thrown basically and peddled it to the federal government for \$180,000. We're doing the same thing here. We are allowing someone to get \$25,000 to copy a report that has already been written, printed and available to you. Now, I have another amendment which will strike the 25,000 from the bill, if you want to just have something to pass for nonsense purposes, but the bill ought to die. The bill shouldn't be here. The bill is here because of the "good old boy" syndrome, give good old so-and-so something so they can go back home and say well we did something for you. Mr. Tomlin is a nice guy, I haven't...nothing wrong with him, nothing against him, he is a nice guy, but he is making a career running around saying, Schmit wants to sell our water, we've got to have some other point of view and, therefore, we have to have some kind of a study. First of all, for \$25,000, if you really wanted to do research in depth, you probably couldn't do anything. But the Water Management Board studied all aspects of water transfers including whether or not it ought to be transferred in the first place and that information is there. I'm going to quote you a couple of other comments here. One of the Environmental Defense people says, points up the benefits that farmers would rather temporarily overlook, wouldn't income from water marketing help pay for new irrigation methods that might save water? Another thing he says, if the price per acre foot starts out high, he says, competition will drive it down to a fair level as other irrigation districts get in on the action. Then one more comment which I think, remember, it comes from an environmental person. If there is more of a willingness to pay for maintaining the environment, we wouldn't have to rely on bureaucratic whim. Makes a lot of sense. Many times, ladies and gentlemen, you'll find out that various groups are not as far apart on ideas as we think they are, if they'd ever just sit down and communicate with each other, and I think we've done that many times and we need to do more of it. But this is just simply an unnecessary bill, it is not needed. It ought to die. It should not have come to the floor and time after time after time on this floor we say, well good old so-and-so hasn't passed a bill in three years. Maybe they haven't had a good bill in three years, got to give them something. Well about time, ladies and gentlemen, that you introduce a bill and enact a bill

into law based upon whether it is needed, whether it does anything or whether it is necessary and if it isn't, it ought to die, it ought to die. The bill ought to die. The bill should not be here. There isn't...there aren't five people on this floor can tell you what the bill does including, I'm sorry to say, the five people on the committee who voted to send the darned thing to the floor. We don't need it. Most of all, ladies and gentlemen, I want to tell you, if you saw the paper this morning, you saw the report of the Appropriations Committee and we have put out some recommendations for spending that are going to be a substantial increase over what we did last year. Some of it is necessary, some of it is needed and a lot of it is desirable, but we ought to look at every one of those expenditures. And I'm not saying because an expenditure is large it is unnecessary or that it's good. I'm not saying because it's a small expenditure, it's necessary or it's bad. I'm saying you ought to look at each one of them. And, ladies and gentlemen, this is \$25,000 which is a throwaway, it's throwaway and you don't need to spend it, and you ought to kill the bill, you ought to kill the bill. I think the time has come when on this floor, on a small bill that ordinarily is going to go through 40 to nothing, to stop and say, why? I'm not anti university, I'm not anti anyone else, I just think that there ought to be a way to handle this bill without having to spend the \$25,000 and say we're going to take another point of view. You've got the point of view. That's the responsibility of the Water Management Board, to look at all aspects of it, and I regret very much that we bring this bill to you and waste your time and take your money when it's not necessary. Mr. President, I move and continue to move for the indefinite postponement of LB 710.

PRESIDENT: Senator Scofield, please.

SENATOR SCOFIELD: Thank you, Mr. President. Well I guess we're off to a wild roaring start this morning and it's a good thing I got back when I did. Senator Schmit, if you hadn't paid me such a compliment of telling me I'm part of the good old boys club now, I'd be really mad at you because I thought you told me a long time ago that you were not going to harass this bill and that we were okay on this bill and this comes as an absolute surprise to me that you're going to take this issue. But outside of that small outburst of disgust with this motion, I'd like to simply readdress this issue. And while the water board did precisely what this Legislature directed them to do in the

study, and that was primarily to facilitate the transfer of water in this state. The reason this bill is necessary is that we have not sufficiently looked at the legal questions surrounding the transfer of water. We haven't sufficiently looked at the legal issues particularly related to the interstate commerce clause and that's the reason, in fact, the bill is directed to the College of Law here in Nebraska as we need the kind of thorough constitutional legal analysis of this so that we really know what our options are as policy-makers. You tell me if we know enough to act on any of those bills that came before the Natural Resources Committee this year. I would suggest we do not. There was considerably more than a small handful of people, as Senator Schmit would have you believe, came in and expressed concern on every one of those bills that came out of that study. This is perhaps the most complex, technical, difficult, controversial area, even harder I would suggest than low-level waste, to do a good job of making policy choices. And for us to avoid bringing to ourselves the best quality of information possible before we embark upon studies of water transfers is absolutely irresponsible and does not serve the interests of the citizens of this state. I would further point out, as I pointed out on General File, that this is an issue that is very current all over the western states and, in fact, there is a national group embarking upon a study of this issue right now and the names read like who's who in water law in the United States on their committee that are involved in all of this. And I think Nebraska certainly does not want to necessarily just rely on outside opinions, but we are considerably ahead of other states I would say due to the actions we've already taken and due to the fact that we have completed the work with the water board that Senator Schmit has pointed out. But we are far from possessing enough information to make decisions of the magnitude that are being contemplated by this body right now. I would ask you to reject Senator Schmit's motion and advance this bill to Select File and let's get on about other business. Thank you.

PRESIDENT: Thank you. Senator Elmer, followed by Senator Dierks.

SENATOR ELMER: Thank you, Mr. President. As a member of the Natural Resources Committee I'm one of the members who did not vote to advance this bill. The study is a rehash of the Sporehase decision made by the United States Supreme Court. That decision has been studied and studied and comes down to the

fact that the Supreme Court says that water is an article of commerce and, as such, the State of Nebraska has no right to restrict its movements either within or without the state, that discriminates between citizens either within or without the state. Currently we don't have in place any kind of statutory language that restricts that movement. Anybody from outside the state can come in and buy a piece of land, set down a well field and ship that water anywhere in the world they want to. We need to get on with this and not continue all these studies. Its been said that the El Paso case is going to have an impact on this where the City of El Paso is demanding water rights out of New Mexico. Senator Schmit, would you yield to a question?

PRESIDENT: Senator Schmit, please.

SENATOR SCHMIT: Yes, Senator, I will.

SENATOR ELMER: Senator Schmit, to your knowledge is the El Paso case going to make any impact on the Sporehase decision?

SENATOR SCHMIT: Well, Senator, I'm not going to prejudge that situation, but I just think that that decision is here, I'm going to live with it, we're going to abide by it. I've encouraged the State of Nebraska to do those things that are within our jurisdiction and ability to try to protect our rights and our water supply and I think we should continue to do that. But I just don't think that in this particular instance, Senator, that we, with this bill, all we do is just dump 25,000 bucks in the College of Law for no good purpose.

SENATOR ELMER: Thank you, Senator Schmit. I agree with that particular judgment and would support the IPP motion.

PRESIDENT: Thank you. Senator Dierks, please, followed by Senator Lamb.

SENATOR DIERKS: Thank you, Mr. President and members of the body, I'm standing in opposition to the motion to indefinitely postpone this bill. We have, of course, in this state the most valuable resource that there is in the United States and that's our water. We take a second place to no one and I think that in order to protect this valuable asset that we need to have all the armor that we can. I think it's necessary for us to put together this study to decide and help make the decisions that we have to make in regard to our water resources. It looks to

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me like that the obligation we have is to override this motion to postpone and keep the bill a viable bill. I sincerely hope that you will vote no on the motion to indefinitely postpone. Thank you.

PRESIDENT: Thank you. Senator Lamb, please, followed by Senator Scofield.

SENATOR LAMB: Thank you, Mr. President and members, I rise to oppose the kill motion and as has been stated, this bill has its roots back in LB 146 which was passed a couple years ago which did provide for a study but it, in the opinion of some people, that study was slanted toward directions or methods by which water could be sold and, frankly, this study would be directed toward a study which would be pointed toward the theory that water should not be leaving the state, water should not be transferred out of the state and under the Sporehase decision, how that can be done without getting into trouble with the United States Constitution. So I believe this small amount of money is justified for this study which would be somewhat of a counterbalance to the previous study. So I would oppose the kill motion.

PRESIDENT: Thank you. Senator Scofield, please, followed by Senator Schmit and Senator Schellpeper. Senator Scofield.

SENATOR SCOFIELD: Thank you, Mr. President. I want to just reiterate the point here and I think Senator Owen Elmer's question is relevant here about can anybody really predict what's going to happen in the next lawsuit that is out there and the fact of the matter is, is I think there are a number of them contemplated and that's why this study is so crucial, that we are, in fact, prepared fully with enough information as legislators to make good policy choices. It concerns me when I hear the kind of rhetoric that I just heard here a little while ago about let's get on with the business of selling water. I suspect that may be what people might have been thinking when we get into this low-level radioactive waste mess, let's just get on with it, we don't have any choices. I think we do have some choices. The legal expertise that I have consulted tell me that we do, in fact, have choices in this matter and while we cannot ignore the Sporehase case and we cannot say absolutely that we can't transfer water, and that's an important message for people to understand. Nevertheless, the way we craft the legislation that eventually determines Nebraska policy is difficult work and

needs the best expertise brought to bear on it as possible. I will give the rest of my time to Senator Smith.

PRESIDENT: Senator Smith, please. You have roughly four minutes.

SENATOR SMITH: Thank you, Senator Scofield. I have not been involved in this study and I can't see that I'm an expert in the area, but I do have a concern about our conservation of the water resources that we do have in Nebraska. It is my understanding that the Sporehase study, or decision, did open the door a crack, but we I think have to proceed very slowly. I think we have to be very cautious about jeopardizing the water supply of Nebraska for future generations. It has reached the point where much of our water in Nebraska is, as we're learning more and more, is in the state of being contaminated or is already contaminated and our aquifer in the Sandhills area is probably about the only pure water, we hope at least at this point, that it is still pure, or is still available to us. We need to protect our water resources. I can't reiterate that enough. We must proceed cautiously. This study will give us more time to look very closely at the issue and I would ask the body to support Senator Scofield's bill, LB 710 and oppose the indefinite postponement motion.

PRESIDENT: Thank you. Senator Schmit, please, followed by Senator Schellpeper.

SENATOR SCHMIT: Mr. President and members, I really do not know how to address some of the questions that have been raised here relative to this situation, but just let me tell you this. For 20...you're going to dump \$25,000 into the College of Law. Now I don't know that the College of Law can use another 25,000 or not, but they'll take the 25,000. They'll march over to the commission and they'll talk to Jim Cook and Jim Cook will say, here's what we did on this. They'll take it and they'll bring it back and we'll be as happy as a hog in a mudhole on a July day because we got a new study, a new point of view. It's already there. Now if you want to give the law college 25 grand for that, far be it from me to be able to stop the tide. But let's not mislead the people by telling them that for \$25,000 you're going to get a decision that says Sporehase doesn't mean a darned thing. It's not going to happen. Sporehase is very specific. Now it may turn over. Howard said one time we're going to reverse that decision. If you can do so, fine, have at

it, but let me tell you, ladies and gentlemen, the people of this country, the population of this country are going to get water. They are going to get it where it comes from, where the supply is at. And I have told you many times you'd better try to protect that supply and guard it and if it moves, you'd better try to get compensated for it rather than to have it moved for nothing. But 146 did not just consider the positive aspects of transfer of water, they looked at the other side. They looked at all sides and Jim Cook has said many times that the report is there. Read the report. If you have not...Sandy, have you read the report that was done by the Water Management Board? Senator Scofield, will you answer a question?

PRESIDENT: Senator Scofield, would you respond, please.

SENATOR SCOFIELD: I have read the report, Senator Schmit, and have followed up with Mr. Cook and after some further discussion even he was willing to admit that some of that information that they did as background is not packaged any way that a legislator could reasonably be expected to use it to make policy choices.

SENATOR SCHMIT: Well, I don't know, maybe Mr. Cook doesn't have the same high confidence in the intelligence of the Legislature that I have, but I think that it makes sense to me and I think it makes sense to most of us. But the National Conference of State Legislators, that we kick \$53,000 a year into, have done a number of studies and one of them says reallocating of western water, equity, efficiency in the role of legislation, enhancing water values, proposed legislation for western water use, there's a number of articles out there already. There are law review articles. There are pending court cases, there are other cases. I don't know of any national authority on water at the College of Law. Senator Lamb, is there a...would you yield to a question, please?

PRESIDENT: Senator Lamb, would you respond, please.

SENATOR SCHMIT: Well, he's not here. Does anyone know, is there a national authority on water law at the College of Law? No takers.

PRESIDENT: Senator Scofield wants to...

SENATOR SCHMIT: Maybe Senator Scofield.

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SENATOR SCOFIELD: Senator Schmit, I think that one of the recognized authorities at the College of Law for one would be Professor Harnsberger. I would think that Norm Thorson, I believe, if my memory serves me correctly, helped him co-author the book that is well respected in this country on water law. However, the issue we're looking at here is constitutional and the law college also has experts on constitutional issues and that's why we need not only to give this to the College of Law, but in fact give them enough money so they can draw on the diverse areas of expertise necessary.

PRESIDENT: One minute.

SENATOR SCHMIT: Senator Scofield, the College of Law, I don't know how they did this year in the Budget Committee, but it would appear to me that the University of Nebraska might well become the new sinking gardens of the City of Lincoln pretty soon based upon the allocations of funds they are getting. If they don't have the funds over there to provide this kind of an activity with all of the action and all the interest that has been voiced in this respect, then I don't know what they are researching. They ought to be doing some of those things with the money they get in the normal course of their appropriations. You don't need the money, you don't need the bill. Ladies and gentlemen, the work has been done, there will be more work done, but the College of Law, if they wanted to enhance their image, could take some of the money they have and the expertise they have and do some work on this, do some work on this without the bill. They don't need the bill. If you want to take the bill, spend the money, and be a... I guess I have no way to stop you, but it's unnecessary, unneeded and there isn't any reason for it except to salve the feelings of a few people. If it's worth that for 25,000, ladies and gentlemen, there are many places on this floor you can spend 25 grand.

PRESIDENT: Time. Senator Schellpeper is next, but may I introduce some guests in the north balcony of Senator Nelson. There are 62 fourth graders from Newell School in Grand Island and their teachers. Would you folks all please stand and be welcomed by the Legislature, teachers and students both. Thank you for visiting us today. Senator Schellpeper, please.

SENATOR SCHELLPEPER: I'll call the question.

PRESIDENT: The question has been called. Do I see five hands?

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I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator Schmit, would you like to close, please?

SENATOR SCHMIT: Mr. President, I have no further closing.

PRESIDENT: The question is, shall LB 710 be indefinitely postponed? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: 9 ayes, 22 nays, Mr. President, on the motion to indefinitely postpone.

PRESIDENT: The motion fails. Do you have anything else on the bill?

CLERK: Mr. President, Senator Schmit would move to amend. (Read Schmit amendment as it appears on page 1798 of the Legislative Journal.)

PRESIDENT: Just a moment, Senator Schmit. (Gavel.) Let's hold the conversation down, please, so we can hear the speakers. Thank you, Senator Schmit.

SENATOR SCHMIT: I'm not going to take a lot of time. I do believe that a bill ought to be reasonably accurate and honest if it's going to be passed by this Legislature. The language which I strike from the bill removes from the bill language which I deem to be inaccurate. It also removes the \$25,000. If you want another study, then you can use the bill as an encouragement to the College of Law to perform that study. You do not need the money and you do not...you should not contain inaccurate statements in the statute. That's all I have to say.

PRESIDENT: Thank you. Senator Korshoj, please, followed by Senator Scofield. Senator Scofield, please.

SENATOR SCOFIELD: Ladies and gentlemen, Senator Schmit doesn't seem to understand how faculties proceed to do research not only in the College of Law, but anyplace with graduate faculty that are as qualified as those folks are. They have numerous

opportunities to do research and it is unreasonable to expect those people to somehow take this out of their hides which seems to be what he is suggesting. That just simply isn't the way it is done, Senator Schmit. Many times I've been frustrated in the budget process and I've wished that there was some way that I could ask people to do things out of thin air, but it just simply cannot be done. And if there isn't the money there to do this, it simply isn't going to happen. As far as inaccuracies, there is some need to give some direction in terms of what we want. That is the purpose of this language. There is no inaccuracy in the statement and I would ask you to reject the Schmit amendment.

PRESIDENT: Thank you. Senator Schmit, would you like to close on your motion?

SENATOR SCHMIT: Senator Scofield, would you answer a question, please. You said...

PRESIDENT: Senator Scofield, please.

SENATOR SCHMIT: I believe you said that Mr. Thorson and Mr. Harnsberger wrote a book on water. Is that true?

SENATOR SCOFIELD: As far as I know. I've seen the book and I assume it's the same two people.

SENATOR SCHMIT: Okay.

PRESIDENT: Senator Schmit...

SENATOR SCHMIT: How is that financed, Senator Scofield?

PRESIDENT: Senator Schmit, just a moment again. (Gavel.) Please, let's hold it down. Thanks, Senator Schmit.

SENATOR SCHMIT: How was that book financed? Was there an appropriation for that book?

SENATOR SCOFIELD: I have no idea.

SENATOR SCHMIT: You've been on the Appropriations Committee for two years. Does anyone in this body from the Appropriations Committee know if there was an appropriation from the committee for the financing of that book?

PRESIDENT: Would you respond, Senator Scofield, please? Senator Schmit asked you a question.

SENATOR SCOFIELD: I believe I did. I said I have no idea.

SENATOR SCHMIT: Okay, Senator Warner, would you answer the question, please.

PRESIDENT: Senator Warner, please.

SENATOR SCHMIT: Senator Warner, do you know if there was a specific appropriation to Mr. Thorson and to Mr. Harnsberger or to the College of Law to finance the publication of that book?

SENATOR WARNER: I would not recall, Senator Schmit, if that was an appropriation or not. I would assume...I'd like to just get an answer to the question, I wouldn't know.

SENATOR SCHMIT: Mr. President and members, I believe the answer is obvious. There was no appropriation for the financing of that book. There doesn't need to be an appropriation. Two fine professors decide to put together a book. They are employees of the College of Law. They know what they're talking about. They put together a book. You can do the same thing here without the 25,000 and I can guarantee you that if it's a necessary piece of work, it will get done. If it's a popular piece of work, the people at the College of Law are capable of understanding public opinion and public interests and they will put it together and they will do it. If you just want to Santa Claus the College of Law for another 25,000, then you can vote against this amendment. But remember, ladies and gentlemen, maybe you're all going to get all of your little projects financed this year, I don't know, but most of you will be here long enough to find the time when you're not going to get 25,000 or 250,000 for some project you think is desirable. In this instance you do not need the money. You may have the bill. If you want the bill, fine. I don't think you need the bill, but you don't need the money and you ought to strike the inaccurate language. And I regret that language is in there and I resent the fact that there is an implication that the previous study didn't consider all aspects of the water transfers. I'm going to make one more comment. From my point of view we talk a lot about water management and a lot about water resources, about the great value of water, but we put very little money into the management

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of that resource. We're entering a dry period. The time will come on this floor when most of you will know and learn that we are too little and too late in the area of water management resource funds. But we're going to spend, we're going to spend money on a lot of other necessary items and I support most of them, but the development and the conservation of water as a resource is a long-range investment. You spend \$25,000 here to satisfy the egos of a few people, and I don't mean on this floor, when we do not have the courage and the conviction to spend the kind of money necessary to make a long-term commitment...

PRESIDENT: One minute.

SENATOR SCHMIT: ...to the conservation and development of a resource that is irreplaceable once it's lost. Ladies and gentlemen, I ask you to adopt the amendment.

PRESIDENT: Thank you. Senator Schmit was closing and the question is the adoption of the Schmit amendment. All those in favor vote aye, opposed nay. Senator Schmit.

SENATOR SCHMIT: (Response inaudible.)

PRESIDENT: Pardon me?

SENATOR SCHMIT: I want a record vote on that.

PRESIDENT: Okay, a record vote has been requested. Have you all voted? Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 1798-99 of the Legislative Journal.) 8 ayes, 20 nays, Mr. President, on adoption of the amendment.

PRESIDENT: The Schmit amendment fails. Anything else on the bill?

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

PRESIDENT: Senator Scofield, did you wish to discuss the advancement of the bill?

SENATOR SCOFIELD: Thank you, Mr. President, I would simply like the opportunity to respond. I can now answer the question that

Senator Schmit raised when he was asking how the book, the water law book that is currently held in high esteem in this state. I have in my hand here, Nebraska Water Law and Administration by Richard S. Harnsberger and Norman W. Thorson, and there is on page...on the preface a little note here. Preliminary research for this book was supported in part by the Agricultural and Water Research Fund of the University of Nebraska Foundation through the Nebraska Resources Center. I suspect that there was probably also some General Fund appropriation somewhere along the line although I can't say that given this information. But I think what that does is it does make the point that people do not concoct any kind of meaningful research out of thin air, that it does, in fact, take some financial resources behind it to accomplish it. This is an important issue. This requires the utmost in terms of examination, thorough analysis of our policy choices and let me reiterate. The purpose of this bill is not to rehash that territory that was covered in the study by 146. The purpose is to look specifically at the constitutional issues. This is really, today, in light of the Sporhase case, much more an interstate commerce clause issue even than it is a water issue. That's the purpose for the study, is to make sure that we know the answers to that, know how far, in fact, we can push the Sporhase decision. Not only will this particular study serve us well as legislators in terms of giving us information as far as what are the best policy choices; are our hands really tied or can we do a more aggressive job of protecting our groundwater resources, but I think it's not unlikely that this particular study, in fact, may be of some value around the nation, given the current level of interest in this subject and given in particular all the western states' interest in this. I urge you to advance the bill in behalf of the people of Nebraska who care about their water resources. Thank you.

PRESIDENT: Thank you. Senator Schmit, please.

SENATOR SCHMIT: Well, Mr. President and members, a few years ago this Legislature embarked upon a study which became known as the Syracuse Tax Study. I opposed that tax study and the appropriation for it because I said, first of all, you're going to have it done by some people out of the state and I didn't think they would do a credible job. But, secondly, I said we would not pay any attention to the study anyway, we'd embark upon our own course of action. Sure enough, we went ahead, against my recommendation, and we appropriated \$350,000. Well the study didn't progress as fast as we thought it should

progress apparently, but in 1987, prior to the time that the study was completed, this state started upon a more massive reassessment of tax policy than we had done in many, many years. When the early versions of the study came down it was apparent that the early versions refuted most of what we were doing on this floor. Well, Senator Vard Johnson, being very ambivalent and having been the prime proponent of the study and also the prime supporter of some of those new tax laws, took it upon himself, did not deny it, I accused him of it several times, to bring out the abridged version of the Syracuse study which then came down somewhat different than the preliminary version's, so we have the study. So what have we done with it? Absolutely nothing, absolutely nothing. We have \$350,000 we spent to do nothing. A couple of years ago, now a year and three months ago, the university medical school came to this body with a proposed \$29 million improvement plan for the medical school. I opposed that because I said we were not qualified to study the issue, to pass judgment on the issue. It was our responsibility to approve or disapprove the method of funding. Nonetheless, this body 30-3 voted to approve that proposal. So what happens? This year the medical school comes back again, only they have a slightly different version, 46 or \$47 million this one was going to cost and they said we want you to know, this is a totally new version. So I reminded you, you don't make any points or gather any friends or influence any people on this floor by reminding them of errors, but I said if we were right last year to approve the \$29 million study, we're wrong this year to approve this one. But again this year, on a vote of 30-3, we approved the project, not the financing, but the project, the concept. And at that time I cautioned the group because I said the Certificate of Need Committee would be influenced by what this Legislature did. Well, certificate of need on a very narrow vote, 4-3, said that the project couldn't be justified. I wonder what it would have been had we not put our stamp of approval on it, but we did that. Now again, don't make any friends by reminding you of that or the results. In the meantime, lo and behold, the university discovered, the medical school discovered that the College of Pharmacy was falling down, came as a great surprise to them. For some reason they didn't know it when they came in here with the proposal to rebuild the medical school. So then the Appropriations Committee very graciously comes through with two and a half or 2.6 million bucks to pay the second time for a building which did not perform properly the first time. Now I understand we're going to do a little bit of that same remedial work with the

greenhouses in this year's budget. Some of that is normal, necessary work. I'm not critical of the lack of judgment perhaps that resulted in the work of the greenhouses, I'm just pointing out, ladies and gentlemen...

PRESIDENT: One minute.

SENATOR SCHMIT: ...if you don't learn from your mistakes you're going to repeat them. We're going to spend \$25,000 for a job which probably would get done without it. If you really have a problem there, Senator Scofield, I think you need more than that, but I'll guarantee you that if I want to do so when that study comes back, I can embarrass you with it again and again and again. The bill is going to move, move with the money and I accept that. That's the process, but, ladies and gentlemen, the record is clear, has been clear, will be clear that it is an unnecessary expenditure and it should not be made. But to me the worst part of the bill is the inaccuracies in the drafting of the bill, not that the bill drafter did it wrong, I'm sure they did what they were told, but they convey the wrong impression. I oppose the appropriation, I oppose the bill, I think it's unnecessary and it is unfortunate.

PRESIDENT: Thank you. Senator Kristensen, please, followed by Senator Dierks.

SENATOR KRISTENSEN: Thank you, Mr. President. Senator Scofield asked me to give my opinion as to the need for a study and what sort of work that maybe the College of Law could provide. And I've got to tell you that I took water law out there and I think from my examination, I've been involved in several water law cases. The University of Nebraska does have some very recognizable experts in the area of water law. Although this study isn't strictly limited to water law, there is some very severe constitutional questions that have been raised by the Sporehase decision and it is sort of a benchmark and it's not just a benchmark for Nebraska, but it's a benchmark for the entire country. Whether it's worth the actual dollars and the expenditures in the terms of your priority, that's a decision you'll all have to make. I think my comments are related that we have very competent qualified people in the State of Nebraska to conduct a study that really created from a problem in this state and that's the commercial use of property and a property right of water. And I would urge the adoption of this bill. I think the study could be very helpful for us down the line to

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make some policy decisions about water and the use of water and what we're going to do ultimately with our most precious commodity and I would urge you to adopt this bill and move it on. Thank you.

PRESIDENT: Thank you. Senator Dierks, please, followed by Senator Schmit.

SENATOR DIERKS: Thank you, Mr. President and members of the body, Senator Schmit, you know you talked about being able to embarrass us with the results of this study. I think maybe it's awfully easy for us to become embarrassed in here. We do that many times to ourselves just by sticking our feet in our mouth, but I agree with you 110 percent about the use we made of the Syracuse Tax Study. I had misgivings about that before I ever came to this body when I heard we were going to hire an outfit from out of state to do this study for us and for that reason I think that one of the right moves in this bill is that we are hiring people from within the state to help us with this study and I have every confidence in our...in the people in our law school that they will be able to do an excellent job on that. Again, I'd like to just point out the fact that we have one of our most precious assets in this state at issue here and I believe that we need to take every effort that we can to guarantee the safety and the rightful use and the...or to guarantee against the misuse of this very valuable asset. I urge the body to advance this bill to Final Reading. Thank you.

PRESIDENT: Thank you. Senator Schmit, please.

SENATOR SCHMIT: Well, Senator Scofield, and Kristensen and Dierks and all the rest of you, to the extent that this little discussion has encouraged some additional interest in water, water conservation, water use, preservation, perhaps the bill is worth more than the \$25,000 it will cost. My deepest concern is that we provide lots of rhetoric, a lot of interest. Any politician worth his salt can make a tremendous speech on the tremendous benefits of water as a resource for this state. But this Legislature has not lived up to its responsibility when it comes to protecting that resource. And if you think you're going to do it with a \$25,000 study that says, well, shall we move it out or not, it's not going to make any difference. But I want to say this. The time is going to come when you can stand in one of these tall buildings around here that we build and you look toward the rivers and the river is going to be dry

and you're going to wish there had been something done that would have preserved some of that resource. Secondly, that unless you really face the issue of water transfers and face it unemotionally and face it honestly and tell the people the truth, not what they want to hear, but tell them the truth, the time will come when water will move unimpeded without reimbursement across state lines to other areas. And we can stand here and give all those pious speeches we want to, to a narrow audience and it's not going to reverse the flow. It's not going to change a thing. If I were the Denver Water Management Board today, as I've said before, I'd buy a piece of land in Nebraska and I'd start laying pipe and that all the screaming and all the shouting would not reverse that action. It's not going to do it and all of a sudden underground water from Nebraska will be going west and you're not going to be compensated for it. I, to the extent that this might, hopefully Sandy and Senator Lamb awaken in the people some reality, maybe it will do some good. I don't have much confidence. My deepest concern, my deepest concern is that it be an objective study, objective report, one which we can perhaps get some good out of. I hope that I have to stand up here a year from now and apologize to those introducers of the bill and say it is a good study. I would be...nothing would please me more. Thank you.

PRESIDENT: Senator Scofield, please.

SENATOR SCOFIELD: Thank you, Mr. President, I would simply rise and ask you to advance the bill. Senator Schmit is right about one thing and that is that there is a need for wide, even wider spread public discussion than we've had on this issue already and that's one of the reasons why this bill is here this year not just for the purposes of a discussion though, but I don't think you can have any meaningful discussion if you don't really know what your policy options are and I am convinced from my looking at this issue that we, in fact, do not know enough yet to know what our policy choices are in Nebraska in terms of the transfer of water. I don't think there's any need for any of us to panic and say Denver is going to come get our water tomorrow, but at some point, because of the value of this resource, we're going to have to make some difficult choices in this state and I want to personally be as well prepared as possible to be able to make those choices that best serve the interest of Nebraskans and best protect our water. And so I will accept your challenge, Senator Schmit, to embarrass me on this bill in the future, and if this is the most embarrassing thing I've ever

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done in my life, I've done pretty well. So I would ask you to advance the bill. Thank you.

PRESIDENT: Senator Elmer, please, followed by Senator Dierks.

SENATOR ELMER: Thank you, Mr. President. Just listening to Senator Schmit's comments about Denver made me think of this possibility. If Denver is not able to successfully complete its Two Forks Dam project on the South Platte River it's going to be looking for water a lot more quickly than it would otherwise. And we can't sit on our hands too long before we have some regulations in this state as to how water can be transferred and the necessary language put into statute that would regulate and protect these water supplies. And I do echo the need for people to be aware that this possibility exists and that we should protect ourselves to the greatest extent possible. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Dierks, please, followed by Senator Korshoj. Pardon me?

SENATOR DIERKS: Call the question.

PRESIDENT: The question has been called. Do I see five hands? I do, and the question is, shall debate cease? All those in favor vote aye, opposed nay. We're voting to cease debate. Record, Mr. Clerk, please.

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

PRESIDENT: Debate has ceased. Senator Scofield, would you like to close on the advancement of the bill?

SENATOR SCOFIELD: Thank you, Mr. President. I think I pretty much did my closing when I spoke the last time, so I would simply ask you to advance the bill. Thank you.

PRESIDENT: The question is the advancement of the bill. All those in favor vote aye, opposed nay. A machine vote has been requested. All in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: 27 ayes, 5 nays, Mr. President, on the advancement of LB 710.

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LB 247, 279, 646, 710
LR 80

PRESIDENT: LB 710 is advanced. LB 646. Anything for the record, Mr. Clerk?

CLERK: Mr. President, new resolution, LR 80 by Senator Bernard-Stevens. (Read brief description. See pages 1799-1800 of the Legislative Journal.) Will be referred to the Executive Board.

Senator Chizek has amendments to LB 279 to be printed. (See pages 1800-01 of the Legislative Journal.) That is all that I have, Mr. President.

PRESIDENT: Okay, LB 646.

CLERK: Mr. President, 646, Senator, I have E & R amendments pending.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 646.

PRESIDENT: You've heard the motion, all in favor say aye. Opposed nay. They are adopted.

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

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 646 as amended be advanced to E & R Final.

PRESIDENT: You've heard the motion, all in favor say aye. Opposed nay. It is advanced. LB 247.

CLERK: Mr. President, LB 247, the first item I have, Senator, are E & R amendments.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 247 be adopted.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. They are adopted.

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LB 78, 438, 438A, 646, 710, 812

call? Those in favor vote aye, opposed nay. Record.

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

SPEAKER BARRETT: The house is under call. Members, please record your presence. Those outside the Chamber, please return. Senator Bernard-Stevens, please check in. Senator Warner, please record your presence. Senator Schimek, please. Senator Lindsay. Senator Peterson, the house is under call. Roll call in regular order has been requested. Senator Baack, Senator Haberman, Senator Wesely, the house is under call. While we're waiting, Senator Crosby announces the following guests in the north balcony, 20 second graders from Park Elementary here in Lincoln with their teachers. Would you folks please stand up and wave. Thank you. We're glad you could be with us. Senators Baack and Haberman, the house is under call. Senator Withem, may we proceed.

SENATOR WITHEM: Is there any knowledge of where Senator Haberman is?

SPEAKER BARRETT: Not at this point. The scouts are out looking.

SENATOR WITHEM: Maybe Senator Goodrich knows where he's hiding. He seems to be...I think Senator Goodrich. Go ahead and call the roll, please.

SPEAKER BARRETT: Apparently he is now on his way, Senator Withem.

CLERK: (Roll call vote read. See pages 1897-98 of the Legislative Journal.) 20 ayes. 22 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: The motion fails. Anything for the record, Mr. Clerk?

CLERK: Mr. President, I do. Your Committee on Enrollment and Review...

SPEAKER BARRETT: The call is raised.

CLERK: ...has carefully examined and engrossed LB 78 and find the same correctly engrossed; LB 438; LB 438A; LB 646; LB 710,

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LB 705, 710

precedence. It is as simple as that. If the bill just talked about purchases from here on out, I'd be obviously supporting it. And as far as a particular piece of art, Senator Crosby, I agree with you totally. I think this is a...I'm very lucky that Nebraska has this, but whether or not Nebraska will keep this is not in question here. The purchase that was made, the purchase was made a few years ago knowingly at that time that a sales tax would have to be paid. And also, Senator Crosby, only a small fraction of the money that goes to the Arts Council, about.... roughly less than a third of it actually goes for operations, the other two-thirds goes to aid throughout the state to finance art programs. So it is not like that million...that \$1.1 million is just paying people. That is paying for a lot of art related programs across the state. I think the arguments have been fairly well laid out. Like I said, I think this is bad precedent. I'd urge the body to vote against LB 705E.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: It is withdrawn. Mr. Clerk.

CLERK: (Read LB 705 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 705 with the emergency clause attached become law? Those in favor vote aye, opposed vote nay. Have you all voted? Have you all voted? Thirty-three votes necessary. Have you all voted if you care to vote? Senator Lindsay.

SENATOR LINDSAY: I think... Oh.

SPEAKER BARRETT: Record please.

CLERK: (Read record vote as it appears on pages 2654-55 of the Legislative Journal.) 33 ayes, 14 nays, 2 present and not voting, Mr. President.

SPEAKER BARRETT: LB 705AE passes. LB 710.

CLERK: Mr. President, Senator Schmit, would move to return the bill for purposes of striking the enacting clause.

SPEAKER BARRETT: Senator Schmit, please.

SENATOR SCHMIT: Mr. President, I'm not going to take a lot of time but I just want to call your attention to the fact that this bill calls for an expenditure of \$25,000 to perform work that has already been done, to try to provide some funding for the College of Law, I believe, to write an opinion on water transfers. The work has been done. We don't need it. It is an unnecessary waste of money. It is easy to spend money when the bank is running over, but the time is going to come again when you are short of cash. I have seen a number of red votes up here this morning. This is \$25,000 down the tube, ladies and gentlemen. You absolutely don't need it and you ought to kill the bill. I now I ask your unanimous consent to withdraw the amendment.

SPEAKER BARRETT: Thank you. It is withdrawn. Mr. Clerk, would you read the bill.

CLERK: (Read LB 710 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is shall LB 710 become law? All in favor vote aye, opposed vote nay. Have you all voted? Please record.

CLERK: (Read record vote as it appears on pages 2655-56 of the Legislative Journal.) 34 ayes, 13 nays, 2 present and not voting, Mr. President.

SPEAKER BARRETT: LB 710 passes. LB 739.

CLERK: Mr. President, I have a motion. Senators McFarland and Hall would move to return the bill for purposes of striking the enacting clause.

SPEAKER BARRETT: Senator McFarland, please.

SENATOR MCFARLAND: Thank you, Mr. Speaker. Senator Hall and I have made a motion to strike the enacting clause on this bill for obvious reasons. If this were a bill that, in fact, paid back to the citizens and taxpayers of Nebraska the money that they paid in the tax increase under 773, I would fully support it. I would be in favor of it. I would argue on behalf of it. I might even sign on as a co-sponsor of it. The problem with this bill is that it does not give the money or the tax relief to the persons who paid the tax increase. It's plain and simple

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LB 84, 630, 640, 653, 653A, 683, 683A
705, 710, 739

we continue to raise those monies so we can operate state government at a healthy level. Even though we have expended additional dollars this year and, as many would like to say, gone hog wild, I don't believe we have. I think what the Legislature has done is prudently address each and every issue, whether it be the budget or capital construction, and made decisions and made decisions based on information that they had. And I think we made good decisions. I don't agree with them all. Many of you don't agree with certain decisions that we made. The fact of the matter is that we deliberated and debated those as a body. A majority of the body felt that those expenditures needed to be made. We made them. Now what we need to do is protect the base that brought us the ability to make those expenditures, protect that base, not just for today but on into the future. I would urge you very strongly to return LB 739 to strike the enacting clause because it is not a bill that I think at this point in time we need to pass. Should the revenues continue to flow in as they have in the past in some of our one-time expenditures, as in LB 84, and the capital construction budget go away, revenues continue to come in...

SPEAKER BARRETT: Time.

SENATOR HALL: ...maybe we need to address the issue of reducing that income tax bracket. But, at the least, if this should fail, I have an amendment up to strike Section 2 which would be the two credits which break new ground, as I said before, dealing with the issue of loss of the base and that I would hope at least the body would address. But today, at this moment, I would urge you to return this bill to Select File so the issue of 739 can basically go away and we can pay for the, I think, good public policy that we advanced over the last week. I would urge the return of the bill.

SPEAKER BARRETT: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and I do sign LB 630, LB 640, LB 653, LB 653A, LB 683 and LB 683A, LB 705 and LB 710. Discussion on the motion to return the bill to Select File offered by Senators McFarland and Hall. Senator Abboud, followed by Senators Wesely, Lamb, Nelson and Hefner.

SENATOR ABBODD: Mr. President, colleagues, I oppose any attempts to return this bill because I feel that any amendments that are attached to this bill at this late a date in the