SIXTY-FIFTH DAY - APRIL 17, 2003

LEGISLATIVE JOURNAL

NINETY-EIGHTH LEGISLATURE
FIRST SESSION

SIXTY-FIFTH DAY

Legislative Chamber, Lincoln, Nebraska
Thursday, April 17, 2003

PRAYER

The prayer was offered by Sister Norita Cooney, Alegent Health, Omaha.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senators Engel and Louden who were excused; and Senators Bourne, Brown, Landis, Maxwell, Price, Raikes, and Synowiecki who were excused until they arrive.

SPEAKER BROMM PRESIDING

CORRECTIONS FOR THE JOURNAL

The Journal for the sixty-fourth day was approved.

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of April 16, 2003, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

Deppe, Jonah May
League of Woman Voters of Nebraska

Dugan, Susie
PRIDE-Omaha, Inc.

Jewell, Jan
DeCamp Legal Services, P.C. (Withdrawn 04/14/2003)

Landes II, Terry L.
Apartment Association of Greater Omaha (Withdrawn 04/14/2003)

Remington, S. June
Insurance and Financial Advisors, National Association of (Withdrawn 04/15/2003)

REPORTS

The following reports were received by the Legislature:

Administrative Services, Department of
Public Official Bond reports of state employees and officers
Health and Human Services System
Office of the System Advocate Quarterly Report, January-March 2003
Property Assessment and Taxation, Department of
2002 Annual Report

UNANIMOUS CONSENT - Member Excused

Senator Brashear asked unanimous consent to be excused until he returns. No objections. So ordered.

MOTION - Approve Appointment

Senator Baker moved the adoption of the Transportation and Telecommunications Committee report for the confirmation of the following appointment found on page 1284: Motor Vehicle Industry Licensing Board - Bernard J. Slowik.

Voting in the affirmative, 31:

Aguilar	Connealy	Janssen	Pedersen, Dw.	Tyson
Baker	Cudaback	Jensen	Quandahl	Vrtiska
Bromm	Erdman	Johnson	Schimek	Wehrbein
Burling	Foley	Kremer	Schrock	
Byars	Friend	Kruse	Smith	
Chambers	Hartnett	Mines	Stuhr	
Combs	Hudkins	Mossey	Stuthman	

Voting in the negative, 0.

Present and not voting, 8:

Beutler	Jones	Pederson, D.	Redfield
Cunningham	McDonald	Preister	Thompson

Excused and not voting, 10:

Bourne	Brown	Landis	Maxwell	Raikes
Brashear	Engel	Louden	Price	Synowiecki

The appointment was confirmed with 31 ayes, 0 nays, 8 present and not voting, and 10 excused and not voting.

RESOLUTION

Pursuant to Rule 4, Sec. 5(b), LR 68 was adopted.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LR 68.

SELECT FILE

LEGISLATIVE BILL 494. Advanced to E & R for engrossment.

LEGISLATIVE BILL 464. E & R amendment, AM7105, printed separately and referred to on page 1286, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 480. Advanced to E & R for engrossment.

LEGISLATIVE BILL 481. E & R amendment, AM7104, found on page 1286, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 521. Advanced to E & R for engrossment.

LEGISLATIVE BILL 349. E & R amendment, AM7106, found on page 1286, was adopted.

Senator Foley offered the following amendment:
AM1408

(Amendments to AM0399)

1. Strike section 1 and insert the following new section:

"Section 1. Section 49-1449, Revised Statutes Supplement, 2002, is amended to read:

49-1449. <u>(1)</u> Each committee shall file a statement of organization with the commission. ~~Such~~ <u>Except as provided in subsection (2) of this section, such</u> statement of organization shall be filed within ten days after a committee is formed. The

9 commission shall maintain a statement of organization filed by a
10 committee until notified of the committee's dissolution. Any
11 person who fails to file with the commission a statement of
12 organization required by this ~~section~~ subsection shall pay to the
13 commission a late filing fee of twenty-five dollars for each day
14 the statement remains not filed in violation of this ~~section~~
15 subsection, not to exceed seven hundred fifty dollars.
16 (2) If the committee is formed within thirty days prior
17 to an election for which the committee exists, the statement of
18 organization shall be filed within two business days after the
19 committee if formed. Any person who fails to file with the
20 commission a statement of organization required by this subsection
21 shall pay to the commission a late filing fee of one hundred
22 dollars for each day the statement remains not filed in violation
23 of this subsection, not to exceed one thousand dollars.".

The Foley amendment was adopted with 31 ayes, 0 nays, 9 present and not voting, and 9 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 498. Advanced to E & R for engrossment.
LEGISLATIVE BILL 548. Advanced to E & R for engrossment.

LEGISLATIVE BILL 307. E & R amendment, AM7107, found on page 1286, was adopted.

Senator Beutler offered the following amendment:
AM1409
(Amendments to Standing Committee amendments, AM0472)
1 1. On page 2, strike beginning with the comma in line 9
2 through the comma in line 10.

SENATOR SCHIMEK PRESIDING

The Beutler amendment was adopted with 26 ayes, 0 nays, 15 present and not voting, and 8 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 149. Advanced to E & R for engrossment.
LEGISLATIVE BILL 510. Advanced to E & R for engrossment.
LEGISLATIVE BILL 707. Advanced to E & R for engrossment.

LEGISLATIVE BILL 701. E & R amendment, AM7109, found on page 1301, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 200. Advanced to E & R for engrossment.
LEGISLATIVE BILL 235. Advanced to E & R for engrossment.

LEGISLATIVE BILL 476. Senator Beutler offered the following amendment:
AM1403
1. On page 5, strike beginning with "The" in line 27 through line 28 and show as stricken.
2. On page 6, strike line 1 and show as stricken; and in lines 14 through 16 strike the new matter.

SPEAKER BROMM PRESIDING

The Beutler amendment was adopted with 30 ayes, 0 nays, 11 present and not voting, and 8 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 97. E & R amendment, AM7108, found on page 1302, was adopted.

Senator Beutler offered the following amendment:
AM1410
1. On page 3, line 18, after the period insert "An abutting property shall not be determined to have primary access if such abutting property has an existing garage and such garage is not accessible without altering or relocating such garage.".

The Beutler amendment was adopted with 26 ayes, 0 nays, 15 present and not voting, and 8 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 258. Advanced to E & R for engrossment.
LEGISLATIVE BILL 354. Advanced to E & R for engrossment.
LEGISLATIVE BILL 610. Advanced to E & R for engrossment.
LEGISLATIVE BILL 118. Advanced to E & R for engrossment.

LEGISLATIVE BILL 444. E & R amendment, AM7111, found on page 1302, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 197. E & R amendment, AM7086, found on page 914, was adopted.

Advanced to E & R for engrossment.

Senator Janssen asked unanimous consent to be excused until he returns. No objections. So ordered.

LEGISLATIVE BILL 667. E & R amendment, AM7091, printed separately and referred to on page 1075, was adopted.

Senator Hartnett withdrew his pending amendment, AM1118, found on page 1130.

Senator Jensen renewed his pending amendment, AM1127, found on page 1225.

The Jensen amendment was adopted with 30 ayes, 0 nays, 14 present and not voting, and 5 excused and not voting.

Senator Aguilar asked unanimous consent to be excused until he returns. No objections. So ordered.

Senator Jensen offered the following amendment:
AM1407

(Amendments to E & R amendments, AM7091)

1. Insert the following section:

"Sec. 11. Section 71-5185, Revised Statutes Supplement, 2002, is amended to read:

71-5185. (1) No patient data received or recorded by an emergency medical service or an out-of-hospital emergency care provider shall be divulged, made public, or released by an emergency medical service or an out-of-hospital emergency care provider, except that patient data may be released to the receiving health care facility, to the department for ~~statistical~~ public health purposes, ~~or~~ upon the written authorization of the patient who is the subject of the record, or as otherwise permitted by law. For purposes of this section, patient data means any data received or recorded as part of the records maintenance requirements of the Emergency Medical Services Act.

(2) Patient data received by the department shall be confidential with release only ~~(1)~~ (a) in aggregate data reports created by the department on a periodic basis or at the request of an individual or ~~(2)~~ (b) as case-specific data to approved researchers for specific research projects. Approved researchers shall maintain the confidentiality of the data, and researchers shall be approved in the same manner as described in section 81-666. Aggregate reports shall be public documents. Emergency-medical-service-specific data and out-of-hospital-emergency-care-provider-specific data shall be released only upon the written authorization of the service or the provider who is the subject of the record.

(3) No civil or criminal liability of any kind or

character for damages or other relief or penalty shall arise or be enforced against any person or organization by reason of having provided patient data pursuant to this section.".

2. On page 2, line 8, after "facilities" insert "or to any person"; and in line 20 strike the new matter.

3. On page 12, lines 25 and 26, strike both occurrences of "exactly".

4. On page 14, strike lines 23 through 25 and insert "prescription the phrase "no drug product selection", "dispense as written", "brand medically necessary", or "no generic substitution" or the notation "N.D.P.S.", "D.A.W.", or "B.M.N." or words or".

5. On page 15, line 4, after the first "or" insert "designated".

6. On page 24, line 8, after the last comma insert "71-5185,".

7. Renumber the remaining sections accordingly.

The Jensen amendment was adopted with 31 ayes, 0 nays, 12 present and not voting, and 6 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 667A. Advanced to E & R for engrossment.

LEGISLATIVE BILL 267. Senator Burling renewed his pending amendment, AM1249, found on page 1235.

SENATOR CUDABACK PRESIDING

Senator Byars asked unanimous consent to be excused until he returns. No objections. So ordered.

Senator Chambers offered the following amendment to the Burling pending amendment:
FA1320
Amend AM1249
1. In line 5 strike "five" and insert "nine".

Senator Chambers withdrew his amendment.

Senator Burling withdrew his amendment.

Senator Brashear renewed his pending amendment, AM1237, found on page 1218.

The Brashear amendment was adopted with 30 ayes, 0 nays, 15 present and not voting, and 4 excused and not voting.

Senator Baker withdrew his pending amendment, AM1281, printed

separately and referred to on page 1235.

Advanced to E & R for engrossment.

SELECT COMMITTEE REPORTS
Enrollment and Review

LEGISLATIVE BILL 454. Placed on Select File as amended.
E & R amendment to LB 454:
AM7110

1. Strike the original sections and all amendments thereto and insert the following new sections:

"Section 1. The Legislature finds and declares that drug use contributes to crime in Nebraska, costs millions of dollars in lost productivity, and contributes to the burden placed upon law enforcement, court, and correction systems in Nebraska.

The Legislature also finds and declares that drug court programs are effective in reducing recidivism of persons who participate in and complete drug court programs. The Legislature recognizes that a drug court program offers a person accused of drug offenses an alternative to traditional criminal justice or juvenile justice proceedings.

Sec. 2. Drug court programs shall be subject to rules which shall be promulgated by the Supreme Court for procedures to be implemented in the administration of such programs.".

2. On page 1, strike beginning with "courts" in line 1 through line 4 and insert "drug court programs; to state findings; and to provide for court rules relating to administration of drug court programs.".

LEGISLATIVE BILL 435. Placed on Select File as amended.
E & R amendment to LB 435:
AM7112

1. Strike the original sections and all amendments thereto and insert the following new sections:

"Section 1. Section 48-1203, Reissue Revised Statutes of Nebraska, is amended to read:

48-1203. (1) Except as otherwise provided in this section and section 48-1203.01, every employer shall pay to each of his or her employees wages at the minimum rate of ~~four dollars and twenty-five cents per hour through August 31, 1997, and~~ five dollars and fifteen cents per hour ~~on and after September 1, 1997~~ <u>through September 30, 2003, five dollars and forty-five cents per hour on and after October 1, 2003, through March 31, 2004, and five dollars and seventy-five cents per hour on and after April 1, 2004</u>.

(2) For persons compensated by way of gratuities such as waitresses, waiters, hotel bellhops, porters, and shoeshine persons, the employer shall pay wages at the minimum rate of two dollars and thirteen cents per hour, plus all gratuities given to

them for services rendered. The sum of wages and gratuities received by each person compensated by way of gratuities shall equal or exceed the minimum wage rate provided in subsection (1) of this section. In determining whether or not the individual is compensated by way of gratuities, the burden of proof shall be upon the employer.

(3) Any employer employing student-learners as part of a bona fide vocational training program shall pay such student-learners' wages at a rate of at least seventy-five percent of the minimum wage rate which would otherwise be applicable.

Sec. 3. Original section 48-1203, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 4. Since an emergency exists, this act takes effect when passed and approved according to law.".

(Signed) Ray Mossey, Chairperson

AMENDMENTS - Print in Journal

Senator Thompson filed the following amendment to LB 303:
AM1366

(Amendments to E & R amendments, AM7100)

1. On page 18, line 20, after "Vehicles" insert "on an annual basis".

Senator Byars filed the following amendment to LB 303:
AM1365

(Amendments to E & R amendments, AM7100)

1. On page 17, strike lines 11 through 15.

Senators Tyson, Engel, Cunningham, and Connealy filed the following amendment to LB 540:
AM1286

(Amendments to Standing Committee amendments, AM1287)

1. Insert the following new section:

"Sec. 11. Section 85-1517, Reissue Revised Statutes of Nebraska, is amended to read:

85-1517. (1) The board may certify to the county board of equalization of each county within the community college area a tax levy not to exceed ~~seven cents for fiscal year 1998-99 and fiscal year 1999-00 and~~ six cents ~~for fiscal year 2000-01 and all subsequent fiscal years,~~ on each one hundred dollars on the taxable valuation of all property subject to the levy within the community college area, uniform throughout such area, for the purpose of supporting operating expenditures of the community college area.

(2)(a) In addition to the levy provided in subsection (1) of this section, the board may certify to the county board of equalization of each county within the community college area a tax levy of not to exceed one cent on each one hundred dollars on the

taxable valuation of all property within the community college area, uniform throughout such area, for the purpose of establishing a capital improvement fund and bond sinking fund as provided in section 85-1515.

(b) In addition to the levy provided in subdivision (a) of this subsection, the board may also certify to the county board of equalization of each county within the community college area a tax levy on each one hundred dollars on the taxable valuation of all property within the community college area, uniform throughout such area, in the amount which will produce funds only in the amount necessary to pay for funding accessibility barrier elimination project costs and abatement of environmental hazards as such terms are defined in section 79-10,110. Such tax levy shall not be so certified unless approved by an affirmative vote of a majority of the board taken at a public meeting of the board following notice and a hearing. The board shall give at least seven days' notice of such public hearing and shall publish such notice once in a newspaper of general circulation in the area to be affected by the increase.

(c) In addition to the levy provided in subsection (1) of this section, the board of any community college area whose valuation per reported aid equivalent student was less than eighty-two percent of the average of all community colleges for fiscal year 1997-98 may also certify to the county board of equalization of each county within the community college area a tax levy up to an additional one cent for fiscal year 2003-04, one and one-half cents for 2004-05, two cents for 2005-06 and two and one-half cents for 2006-07, on each one hundred dollars on the taxable valuation of all property within the community college area, uniform throughout such area. Such tax levy shall not be so certified unless approved by an affirmative vote of a three-fourths of the board taken at a public meeting of the board following notice and a hearing. The board shall give at least seven days' notice of such public hearing and shall publish such notice once in a newspaper of general circulation in the area to be affected by the increase.

(3) The levy provided by subdivision (2)(a) of this section may be exceeded by that amount necessary to retire the general obligation bonds assumed by the community college area or issued pursuant to section 85-1515 according to the terms of such bonds or for any obligation pursuant to section 85-1535 entered into prior to January 1, 1997.

(4) Such tax shall be levied and assessed in the same manner as other property taxes and entered on the books of the county treasurer. The proceeds of such tax, as collected, shall be remitted to the treasurer of the board not less frequently than once each month.".

2. On page 5, line 24, after the new matter insert ", except that any community college whose valuation per reported aid

equivalent student was less than eighty-two percent of the average of all community colleges for fiscal year 1997-98 may levy up to an additional one cent for fiscal year 2003-04, one and one-half cents for 2004-05, two cents for 2005-06, and two and one-half cents for 2006-07 upon a three-fourths majority vote of the board".

3. On page 33, line 16, strike "section" and insert "sections 85-1517 and".

4. Renumber the remaining sections accordingly.

BILL ON FIRST READING

The following bill was read for the first time by title:

LEGISLATIVE BILL 303A. Introduced by Smith, 48.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 303, Ninety-eighth Legislature, First Session, 2003; and to declare an emergency.

NOTICE OF COMMITTEE HEARING

General Affairs

Room 1510

Friday, April 25, 2003 8:00 a.m.

Edwin C. Bergstrasser - State Electrical Board

(Signed) Ray Janssen, Chairperson

SELECT FILE

LEGISLATIVE BILL 439. Senator Beutler renewed the Beutler et al. pending amendment, AM1384, printed separately and referred to on page 1304.

Senator Hudkins offered the following amendment to the Beutler et al. pending amendment:

AM1401

(Amendments to AM1384)

1. Insert the following new sections:

"Sec. 16. Section 81-1101, Reissue Revised Statutes of Nebraska, is amended to read:

81-1101. The purposes of sections 11-119, 81-106, 81-1101 to 81-1118, 81-1121, 81-1170.01, 81-1170.02, and 84-304 and section 34 of this act are to:

(1) Provide for the development and maintenance of a modern system of budgetary, inventory, and financial accounting;

(2) Provide for development and maintenance of such modern and economical methods and systems for record keeping, accounting, expenditure planning and control as may be possible

through timely adoption of modern technological developments;

(3) Provide for centralized direction of services and service agencies;

(4) Assure the development and operation of organizational and procedural innovations as may be expected to provide acceptable internal control of the handling and processing of public funds; and

(5) Focus responsibility for execution of the financial policies of this state on the chief executive and provide assistants having the necessary technical skills for the achievement of that end.

Sec. 17. Section 81-1102, Reissue Revised Statutes of Nebraska, is amended to read:

81-1102. For purposes of sections 11-119, 81-106, 81-1101 to 81-1118, 81-1121, 81-1170.01, 81-1170.02, and 84-304 <u>and section 34 of this act</u>, unless the context otherwise requires:

(1) Gender with reference to the masculine or feminine gender shall be construed to apply to either or both genders;

(2) Executive budget shall mean the budget proposed by the Governor to the Legislature as the basis of appropriations for the operation of and capital outlay by state government during the period covered by such budget;

(3) Approved budget shall mean the executive or Governor's budget as modified by appropriations actions of the Legislature;

(4) Budgetary allotments shall mean the plan of expenditures, by program, subprogram, activity, or object of expenditure under the approved budget for monthly or other applicable periods of time within each fiscal year, to which a department or agency may be held during such period of time within the fiscal year;

(5) Accrual system shall mean the recording of revenue when earned and the recording of expenditures as soon as they result in liabilities, notwithstanding the fact that the receipt of the revenue or payment of the expenditure may take place, in whole or in part, in another accounting period;

(6) Double entry system shall mean a system of bookkeeping which requires for every entry made to the debit side of an account or accounts an entry for a corresponding amount or amounts to the credit side of another account or accounts resulting in a self-balancing accounting system;

(7) Disbursement shall mean payment from the state treasury;

(8) Expenditure shall mean, when an accrual system has been established, total liability incurred by contract, purchase order, or payroll commitments or as otherwise provided by law, whether or not related disbursement has been made from the state treasury, and shall mean, until an accrual system has been established, disbursements from the state treasury;

(9) Revenue shall mean, when an accrual system has been established, additions to assets which do not increase any liability or represent the recovery of an expenditure or disbursement or any part thereof or the cancellation of liabilities without a corresponding increase in other liabilities or a decrease in assets. Until an accrual system has been established, this term shall mean additions to cash in the state treasury or for deposit in the state treasury only;

(10) Receipts shall mean cash received, unless otherwise qualified;

(11) Budgetary accounting shall mean a system of accounts designed to reflect budget operations and conditions such as estimated revenue, appropriations, and encumbrances as distinct from proprietary accounts designed to show the status of the assets, liabilities, and surplus of the state and its departments and agencies;

(12) Encumbrances shall mean charges to appropriation accounts to reflect obligations for which a part of the appropriation is reserved and which shall cease to be encumbrances when paid or when an actual liability is established in a proprietary account;

(13) Financing agreement shall mean any bond, lease-purchase obligation, installment sales contract, or similar financial arrangement, for a period greater than one year, which is entered into by the state or any agency, board, or commission thereof, not including the University of Nebraska or state colleges, in accordance with the Constitution of Nebraska and statutes of this state, relating to capital construction, real property acquisition, and personal property acquisition;

(14) Proprietary account shall mean those accounts designed to show actual financial position and operations such as actual assets, liabilities, surplus, revenue, and expenditures, as distinguished from budgetary accounts;

(15) Program shall mean a major operation of the state government directed toward the achievement of a definite legal objective and which, in most instances, could be carried on independently of other major operations of the state as defined and described in the accounting and budgeting manuals on file in the office of the Director of Administrative Services;

(16) Subprogram shall mean one or more operations of a department or agency of the state designed jointly to accomplish a major program objective as defined in the accounting and budgeting manuals on file in the office of the Director of Administrative Services;

(17) Activity shall mean one or more operations of a department or agency of the state designed jointly to accomplish the objective of a subprogram to which it is related as defined in the accounting and budgeting manual on file in the office of the Director of Administrative Services;

(18) Staffing pattern shall mean the number of positions in each class and the specific classes of positions as may be authorized for each department or agency for such department or agency programs, subprograms, and activities;

(19) Approved project shall mean any acquisition of land or buildings, any construction or major remodeling of new or newly acquired buildings or structures or of existing state-owned buildings or structures, excluding state highways or state roads or aeronautical projects, or any additions to buildings or structures of land owned by the state or its departments or agencies for which an appropriation or other act of the Legislature makes provision;

(20) Machine time shall mean the hours or fractions thereof of operation of each component of a machine data processing system together with the hours or fractions thereof of machine operator time for each such component devoted to the production of a report or tabulation or the processing of data necessary to such production and shall also include a proportional reflection of the hours or fractions thereof of supervisory time so that all costs of operation of the information management services division may be reflected in billings to benefiting departments or agencies;

(21) Budget request shall mean the complete recitation, on forms prescribed by the budget division and in the manner prescribed by such division, of the operating and construction funds requests of a department or agency for the biennium next following the then current biennium;

(22) Department shall mean the Department of Administrative Services; and

(23) Director shall mean the Director of Administrative Services.

Sec. 19. Section 81-1108, Revised Statutes Supplement, 2002, is amended to read:

81-1108. The Department of Administrative Services shall fulfill the functions in the administration of state government of fiscal control, of centralizing services, of personnel services, and of risk management. There shall be separate divisions within the department to assist in fulfilling these functions. The divisions shall be the accounting division and the budget division in the area of fiscal control, the information management services division, materiel division, state building division, and division of communications in the area of centralized services, the personnel division and the Division of Employee Relations in the area of personnel services, and the risk management and state claims division in the area of risk management. The Director of Administrative Services shall appoint a separate administrator as head of each division other than the Division of Employee Relations. The director shall have the responsibility and authority for directing and coordinating the programs and activities of the several divisions and shall be empowered to remove the administrators of any of the several divisions other

than the Chief Negotiator at his or her discretion. The director shall have the power to delegate authority for administration of sections 81-1101 to 81-1189 and 81-1301 to 81-1391 and section 34 of this act and the Risk Management Program to any of the division heads as he or she may deem appropriate except as otherwise provided by law.

Sec. 24. Section 81-1108.22, Reissue Revised Statutes of Nebraska, is amended to read:

81-1108.22. (1) The division shall have the responsibility of providing office space in leased and state-owned buildings in the proximity of the State Capitol and in other locations.

(2) When any board, agency, commission, or department of the state government not otherwise specifically authorized by law desires to use funds available for the purpose of renting office space outside of the State Capitol, it shall submit a request to the Director of Administrative Services accompanied by a certificate from the Committee on Building Maintenance that there is no state-owned property which is adequate or which through cost-effective renovation, as determined by the division, could be made adequate to meet the needs of the board, agency, commission, or department. If the director approves the lease, the terms and location shall be approved by the director and the administrator in writing and the leases shall be entered into and administered by the administrator on behalf of the board, agency, commission, or department. A copy of all such lease contracts shall be kept on file by the state building division and shall be open to inspection by the Legislature and the public during normal business hours.

(3) The administrator shall develop a system of charges to cover basic rental, maintenance, renovations, and operation of such leased and owned properties. The charges to state agencies, boards, commissions, or departments of state government shall be paid from funds available for the purpose of renting space on a regular basis and placed, as applicable, in the State Building Revolving Fund~~, which fund is hereby created,~~ and the State Building Renewal Assessment Fund. The administrator shall make payments for basic rentals, renovations, and maintenance and operational costs of all leased and owned buildings from the State Building Revolving Fund, except for expenses relating to security as provided by the Nebraska State Patrol on state-owned or leased buildings and grounds in Lincoln, Nebraska.

(4) The charges for such leased and owned properties shall only be adjusted by the administrator on July 1. Prior to any adjustment in the system of charges, the Department of Administrative Services, on or before December 1 of the year preceding the effective date of such adjustment, shall provide written notification to the Committee on Building Maintenance, the Clerk of the Legislature, and the Legislative Fiscal Analyst of the proposed adjustment to the system of charges.

(5) Commencing on April 18, 1992, all leases of real property entered into by any state agency, board, commission, or department shall be subject to this section. Leases held by a state agency, board, commission, or department on such date shall be valid until the lease contract is terminated or is subject to renewal. The division shall monitor all such leases and determine when the lease is subject to renewal. Once the determination is made, the division shall cancel the lease as of the renewal date and shall treat the need of the agency, board, commission, or department as an original request for space and subject to this section. This subsection shall not apply to (a) state-owned facilities to be rented to state agencies or other parties by the University of Nebraska, the Nebraska state colleges, the Department of Aeronautics, the Department of Roads, and the Board of Educational Lands and Funds, (b) facilities to be leased for use by the University of Nebraska, the Nebraska state colleges, and the Board of Educational Lands and Funds, (c) facilities to be leased for nonoffice use by the Department of Roads, or (d) facilities controlled by the State Department of Education, which were formerly controlled by the Nebraska School for the Visually Handicapped, to be rented to state agencies or other parties by the department.

Sec. 33. Section 81-1109, Reissue Revised Statutes of Nebraska, is amended to read:

81-1109. The Director of Administrative Services shall be responsible to the Governor for provision of technical assistance, advice, and information concerning the financial and administrative operations of all agencies of the state, for provision of technical assistance and advice on the preparation of the Governor's budget, otherwise referred to in sections 11-119, 81-106, 81-1101 to 81-1118, 81-1121, 81-1170.01, 81-1170.02, and 84-304 <u>and section 34 of this act</u> as the executive budget, and for administration of the approved budget within the limits of appropriations provided except as otherwise provided by law. He or she shall be responsible to the Governor for the provision of current reports of the financial condition of the state and each of its departments and agencies and for the provision of timely recommendations for dealing with financial, management, and organizational problems affecting the administration of the business of the state and its departments and agencies.

Sec. 34. <u>The State Building Revolving Fund is created. The fund shall be administered by the State Building Administrator. The fund shall consist of rental charges and other receipts collected pursuant to contractual agreements between the state building division and other entities as authorized by law. The fund shall be used to support the operations of the state building division as provided by law. That portion of rental revenue collected from state-owned or leased buildings and grounds in Lincoln, Nebraska, relating to security assessments shall be</u>

18 administratively transferred from the State Building Revolving Fund
19 to the Nebraska State Patrol Cash Fund on a periodic basis. Any
20 money in the State Building Revolving Fund available for investment
21 shall be invested by the state investment officer pursuant to the
22 Nebraska Capital Expansion Act and the Nebraska State Fund
23 Investment Act.
24 Sec. 36. Sections 16, 17, 19, 24, 33, 34, and 38 of this
25 act become operative on July 1, 2003. The other sections of this
26 act become operative on their effective date.
27 Sec. 38. Original sections 81-1101, 81-1102, 81-1108.22,
1 and 81-1109, Reissue Revised Statutes of Nebraska, and section
2 81-1108, Revised Statutes Supplement, 2002, are repealed.".
3 2. On page 33, line 9, strike "To" and insert "The
4 Nebraska State Patrol shall".
5 3. Renumber the remaining sections and correct internal
6 references accordingly.

Senator Bourne asked unanimous consent to be excused until he returns. No objections. So ordered.

Pending.

AMENDMENTS - Print in Journal

Senator Jensen filed the following amendment to LB 724:
AM1337
(Amendments to Standing Committee amendments, AM1031)
1 1. On page 4, line 18, strike the second "and" and
2 insert "but continue to"; and strike beginning with "based" in line
3 20 through "department" in line 21.
4 2. On page 5, line 17, strike "administrative and
5 clinical officer for" and after "health" insert "officer".

Senator Hartnett filed the following amendment to LB 249:
AM1405
1 1. On page 2, strike beginning with "A" in line 16
2 through line 28.

SELECT FILE

LEGISLATIVE BILL 439. Senator Wehrbein asked unanimous consent to bracket until April 24, 2003. No objections. So ordered.

Senator Stuthman asked unanimous consent to be excused. No objections. So ordered.

LEGISLATIVE BILL 265. E & R amendment, AM7097, found on page 1138, was adopted.

Senator Chambers offered the following motion:
Recommit to the Judiciary Committee.

Senators Aguilar, Beutler, Brashear, Byars, Cunningham, Jones, Kruse, McDonald, Dw. Pedersen, and Vrtiska asked unanimous consent to be excused. No objections. So ordered.

SPEAKER BROMM PRESIDING

Pending.

STANDING COMMITTEE REPORT
Banking, Commerce and Insurance

LEGISLATIVE BILL 747. Placed on General File as amended.
Standing Committee amendment to LB 747:
AM1356

1. Strike original sections 1 to 4 and insert the following new sections:

"Section 1. Section 44-1978, Reissue Revised Statutes of Nebraska, is amended to read:

44-1978. Sections 44-1978 to 44-19,105 and section 2 of this act shall be known and may be cited as the Title Insurers Act.

Sec. 2. On or after January 1, 2004, when it appears from the records of the register of deeds that (1) the parcel of real estate may be the result of a subdivision of a larger parcel, which subdivision may not have been in compliance with a state statute or local ordinance or resolution governing subdivision of land and (2) no evidence of compliance with such statute, ordinance, or resolution appears in the records of the register of deeds, a title insurer shall:

(a) Issue a policy endorsement affirmatively insuring the insured owner against loss sustained in the event the conveyance to the insured owner of the land described in the policy is a violation of any state statute or local ordinance or resolution governing subdivision of land in effect at the date of the policy;

(b) Issue an owner's title insurance policy that provides equivalent coverage; or

(c) Obtain and file of record evidence of compliance with all state statutes and local ordinances and resolutions governing the subdivision of the parcel of land being insured.

This section applies to owner-occupied one to four family residential real estate.

Sec. 3. Section 44-1984, Revised Statutes Supplement, 2002, is amended to read:

44-1984. (1) No insurer that transacts any line of business other than title insurance shall be eligible for the issuance or renewal of a certificate of authority to transact the business of title insurance in this state nor shall title insurance

be transacted, underwritten, or issued by any insurer transacting or authorized to transact any other line of business.

(2)(a) Notwithstanding subsection (1) of this section, and to the extent such coverage is lawful within this state, a title insurer ~~shall~~ is expressly authorized to issue closing or settlement protection ~~covering~~ to a proposed insured upon request if the title insurer issues a title insurance commitment or title insurance policy. Such closing or settlement protection shall conform to the terms of coverage and form of instrument as required by the director and ~~shall~~ may indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer's named title insurance agent:

(i) Theft of settlement funds; and

(ii) Failure to comply with written closing instructions by the proposed insured when agreed to by the title insurance agent relating to title insurance coverage.

(b) The director may prescribe or approve a required charge for providing the coverage.

(c) A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.

Sec. 4. Section 44-1993, Reissue Revised Statutes of Nebraska, is amended to read:

44-1993. (1) A title insurer shall not accept title insurance business from a title insurance agent unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, when both parties share responsibility for a particular function, specifies the division of responsibilities.

(2) For each title insurance agent under contract with a title insurer, the title insurer shall have on file a statement of financial condition of each title insurance agent as of the end of the previous calendar year setting forth an income statement of title insurance business done during the preceding year and a balance sheet showing the condition of its affairs as of the prior December 31 certified by the title insurance agent as being a true and accurate representation of the title insurance agent's financial condition. Attorneys actively engaged in the practice of law, other than that related to title insurance business, are exempt from the requirements of this subsection.

(3) A title insurer shall, at least annually, conduct an onsite review of the underwriting, claims, and escrow practices of the title insurance agent which shall include a review of the title insurance agent's title insurance policy form inventory and processing operations. If the title insurance agent does not maintain separate financial institution or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance agent.

(4) Within thirty days after executing or terminating a contract with a title insurance agent, a title insurer shall provide written notification of the appointment or termination and the reason for termination to the director. Notices of appointment of a title insurance agent shall be made on a form prescribed or approved by the director.

(5) A title insurer shall maintain an inventory of all title insurance policy forms or title insurance policy numbers allocated to each title insurance agent.

(6) A title insurer shall have on file proof that each title insurance agent is licensed by this state.

(7) A title insurer shall establish the underwriting guidelines and, when applicable, limitations on title claims settlement authority to be incorporated into contracts with its title insurance agents.

(8)(a) A title insurer is liable for the defalcation, conversion, or misappropriation by a title insurance agent appointed by or under written contract with such title insurer of escrow, settlement, closing, or security deposit funds handled by such title insurance agent in contemplation of or in conjunction with the issuance of a title insurance commitment or title insurance policy by such title insurer. However, if no such title insurance commitment or title insurance policy was issued, each title insurer which appointed or maintained a written contract with such title insurance agent at the time of the discovery of the defalcation, conversion, or misappropriation shares in the liability for the defalcation, conversion, or misappropriation in the same proportion that the premium remitted to the title insurer by such title insurance agent during the twelve-month period immediately preceding the date of the discovery of the defalcation, conversion, or misappropriation bears to the total premium remitted to all title insurers by such title insurance agent during the twelve-month period immediately preceding the date of the discovery of the defalcation, conversion, or misappropriation.

(b) For purposes of this subsection, title insurance agent includes (i) a person with whom a title insurer maintains a title insurance agency agreement and (ii) an employer or employee of a title insurance agent or of a person with whom a title insurer maintains a title insurance agency agreement.

Sec. 5. Section 44-19,106, Reissue Revised Statutes of Nebraska, is amended to read:

44-19,106. Sections 44-19,106 to 44-19,123 and section 7 of this act shall be known and may be cited as the Title Insurance Agent Act.

Sec. 6. Section 44-19,116, Revised Statutes Supplement, 2002, is amended to read:

44-19,116. (1)(a) A title insurance agent may operate as an escrow, security, settlement, or closing agent subject to the requirements of subdivisions (b) through ~~(e)~~ (f) of this

26 subsection.
27 (b) All funds deposited with the title insurance agent in
1 connection with an escrow, settlement, closing, or security deposit
2 shall be submitted for collection to or deposited in a separate
3 fiduciary trust account or accounts in a qualified financial
4 institution no later than the close of the next business day in
5 accordance with the following requirements:
6 (i) The funds shall be the property of the person or
7 persons entitled to them under the provisions of the escrow,
8 settlement, security deposit, or closing agreement and shall be
9 segregated for each depository by escrow, settlement, security
10 deposit, or closing in the records of the title insurance agent in
11 a manner that permits the funds to be identified on an individual
12 basis; and
13 (ii) The funds shall be applied only in accordance with
14 the terms of the individual instructions or agreements under which
15 the funds were accepted.
16 (c) Funds held in an escrow account shall be disbursed
17 only pursuant to a written instruction or agreement specifying how
18 and to whom such funds may be disbursed.
19 (d) Funds held in a security deposit account shall be
20 disbursed only pursuant to a written agreement specifying:
21 (i) What actions the indemnitor shall take to satisfy his
22 or her obligation under the agreement;
23 (ii) The duties of the title insurance agent with respect
24 to disposition of the funds held, including a requirement to
25 maintain evidence of the disposition of the title exception before
26 any balance may be paid over to the depositing party or his or her
27 designee; and
1 (iii) Any other provisions the director may require.
2 (e)(i) Disbursements may be made out of an escrow,
3 settlement, or closing account only if funds in an amount at least
4 equal to the disbursement have first been received and if the funds
5 received are in one of the following forms:
6 (A) Lawful money of the United States;
7 (B) Wired funds when unconditionally held by the title
8 insurance agent;
9 (C) Cashier's checks, certified checks, bank money
10 orders, or teller's checks issued by a federally insured financial
11 institution and unconditionally held by the title insurance agent;
12 and
13 (D) United States treasury checks, federal reserve bank
14 checks, federal home loan bank checks, and State of Nebraska
15 warrants.
16 (ii) For purposes of this subdivision, federally insured
17 financial institution means an institution in which monetary
18 deposits are insured by the Federal Deposit Insurance Corporation
19 or National Credit Union Administration.
20 <u>(f) Before a title insurance agent performs escrow,</u>

21 security, settlement, or closing services that facilitate an
22 exchange under section 1031 of the Internal Revenue Code, the owner
23 of the funds to be deposited with the title agent shall receive
24 from the title insurance agent a written disclosure, on a separate
25 paper with no other information on the paper, which states that:
26 (i) Such services performed by a title insurance agent
27 are not regulated by the Department of Banking and Finance, the
1 Department of Insurance, or any other agency of the State of
2 Nebraska or by any agency of the United States Government;
3 (ii) The safety and security of such funds is not
4 guaranteed by any agency of the State of Nebraska or of the United
5 States Government or otherwise protected by law; and
6 (iii) The owner of such funds should satisfy himself or
7 herself as to the safety and security of such funds.
8 (2) ~~On and after January 1, 2004, every title insurance~~
9 ~~agent shall have an annual audit made of its escrow, settlement,~~
10 ~~closing, and security deposit accounts, conducted by a certified~~
11 ~~public accountant on a calendar year basis at its expense within~~
12 ~~ninety days after the close of the previous calendar year. The~~
13 ~~title insurance agent shall provide a copy of the audit report to~~
14 ~~each title insurer which it represents. The director may adopt and~~
15 ~~promulgate rules and regulations setting forth the minimum~~
16 ~~threshold level at which an audit would be required, the standards~~
17 ~~of audit, and the form of audit report required. The director may~~
18 ~~also require a title insurance agent to provide a copy of its audit~~
19 ~~report to the director. Title insurance agents who are attorneys~~
20 ~~and who issue title insurance policies as part of their legal~~
21 ~~representation of clients are exempt from the requirements of this~~
22 ~~subsection. However, the title insurer may, at its expense,~~
23 ~~conduct or cause to be conducted an annual audit of the escrow,~~
24 ~~settlement, closing, and security deposit accounts of the attorney.~~
25 ~~Attorneys who are exclusively in the business of title insurance~~
26 ~~are not exempt from the requirements of this subsection.~~
27 ~~(3)~~ If the title insurance agent is appointed by two or
1 more title insurers and maintains fiduciary trust accounts in
2 connection with providing escrow, closing, or settlement services,
3 the title insurance agent shall allow each title insurer ~~reasonable~~
4 access to the accounts and any or all of the supporting account
5 information in order to ascertain the safety and security of the
6 funds held by the title insurance agent.
7 ~~(4)~~ (3) Nothing in the Title Insurance Agent Act shall be
8 deemed to prohibit the recording of documents prior to the time
9 funds are available for disbursement with respect to a transaction
10 if all parties consent to the transaction in writing.
11 ~~(5)~~ (4) Nothing in this section is intended to amend,
12 alter, or supersede other sections of the act or the laws of this
13 state or the United States regarding an escrow holder's duties and
14 obligations.
15 ~~(6)~~ (5) The director may prescribe a standard agreement

for escrow, settlement, closing, or security deposit funds.

Sec. 7. Whenever the director has reasonable cause to believe that a title insurance agent is violating the Title Insurance Agent Act or any rules and regulations adopted and promulgated thereunder, the director may, without notice, and before a hearing, issue a summary cease and desist order. At the same time the order is issued, the director shall serve notice to the title insurance agent of the reasons for such order and that the title insurance agent may request a hearing in writing within ten business days after receipt of the order. If a hearing is requested, the director shall schedule a hearing within ten business days after receipt of the request. The hearing shall be conducted in accordance with the Administrative Procedure Act. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until modified or vacated by the director. Any title insurance agent aggrieved by a final order of the director may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act. In the event of noncompliance with a summary cease and desist order, the director may cause a complaint to be filed in the district court to enforce the order.

Sec. 8. Original sections 44-1978, 44-1993, and 44-19,106, Reissue Revised Statutes of Nebraska, and sections 44-1984 and 44-19,116, Revised Statutes Supplement, 2002, are repealed.".

2. Renumber the remaining section accordingly.

(Signed) Mark Quandahl, Chairperson

AMENDMENTS - Print in Journal

Senator Price filed the following amendment to LB 303:

AM1364

(Amendments to E & R amendments, AM7100)

1. On page 17, line 4, after the last comma insert "or"; and strike beginning with the comma in line 5 through "handlebar" in line 6.

Senators Bromm, Hartnett, and Mines filed the following amendment to LB 249:

AM1418

(Amendments to Standing Committee amendments, AM0931)

1. Strike amendment 2.

2. Insert the following new section:

"Section 1. Section 79-235, Reissue Revised Statutes of Nebraska, is amended to read:

79-235. For purposes of all duties, entitlements, and rights established by law, including special education as provided in section 79-1127, except as provided in section 79-241, option

students shall be treated as resident students of the option school district. The option student may request a particular school building, but the building assignment of the option student shall be determined by the option school district. Option students shall be treated similarly as other students who enroll in a Nebraska high school after the student has either attended another Nebraska high school or participated in varsity extracurricular activities sponsored by another Nebraska high school. For purposes of this section, varsity extracurricular activities means the principal team or group that represents a high school in interscholastic competition.".

3. On page 1, line 1, strike "original section 2" and insert "the original sections".

4. On page 6, line 11, after "Original" insert "section 79-235, Reissue Revised Statutes of Nebraska, and" and strike "79-237,".

5. Renumber the remaining sections and correct internal references accordingly.

6. Renumber the remaining amendment accordingly.

VISITORS

Visitors to the Chamber were 18 eleventh-grade students and teachers from Heinsberg, Germany; 9 fourth-grade students and teacher from Coleridge; Flora Salto from Mexico City and Greg Beam from Lincoln; Thomas and Maggie Morehouse from Lincoln; 60 fourth-grade students and teachers from La Vista West Elementary School, La Vista; 85 fourth-grade students and teacher from Ackerman Elementary School, Omaha; Senator Dw. Pedersen's wife, Poe, daughter and son-in-law, Michaela and Emanuel Jackson, and his 4 grandchildren; and 65 fourth-grade students and teachers from G. Stanley Hall Elementary School, La Vista.

The Doctor of the Day was Dr. Dale Michels from Lincoln.

ADJOURNMENT

At 1:36 p.m., on a motion by Senator Cudaback, the Legislature adjourned until 9:00 a.m., Tuesday, April 22, 2003.

Patrick J. O'Donnell
Clerk of the Legislature