

November 4, 1981

LR 4, 5  
LB 7

SENATOR CLARK: If not, the question before the House is the adoption of the second half of the divided question. Senator Cullan, did you want to close?

SENATOR CULLAN: Mr. President, Senator DeCamp I think had an approach that may be workable, just the reverse of that, and that would be to enact Section 3 but amend it so that it has an effect...it would be repealed perhaps at the end of next legislative session so that we wouldn't have something we believe is unconstitutional in the books for an unnecessary period of time. So I will work on that for Select File but for the meantime I would urge you to adopt this language which does make some technical corrections in the amendments and then, hopefully, we can retain the \$1.6 million that we would lose if we took Senator Schmit's proposal so I would urge you to adopt the amendment.

SENATOR CLARK: The question is the adoption of the second half of the divided question. All those in favor vote aye. All those opposed vote nay. Have you all voted? Once more, have you all voted? Record the vote.

CLERK: 25 ayes, 14 nays, Mr. President, on adoption of the second committee amendment.

SENATOR CLARK: The motion carried. It is passed. The Clerk wants to read some things in.

CLERK: Mr. President, your committee on Judiciary gives a report regarding confirmation hearing held. (See page 79 of the Legislative Journal.)

Mr. President, Senator Schmit would like to print amendments to LB 7. (See page 80 of the Legislative Journal.)

Mr. President, Senator DeCamp would like to print an amendment to LR 4. (See page 80 of the Legislative Journal.)

Mr. President, Senator Haberman offers explanation of vote.

Mr. President, a new resolution. (Read LR 5 as found on pages 80-81 of the Legislative Journal.) Pursuant to our rules, Mr. President, that will be laid over.

SENATOR CLARK: Next amendment.

CLERK: Mr. President, Senator Chambers now moves to amend the bill. (Read Chambers amendment as found on page 81 of the Legislative Journal.)

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature,

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SENATOR CLARK: Senator Labedz. Senator Dworak. The motion before the House is the indefinite postpone of LR 4. All those in favor vote aye. All those opposed vote nay. It takes 25 votes to kill it.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: (Read record vote as found on page 116 of the Legislative Journal.) 31 ayes, 9 nays, Mr. President, on the motion to indefinitely postpone the resolution.

SENATOR CLARK: The bill is withdrawn, killed, slain and will have a decent burial. The next resolution, please.

CLERK: Mr. President, LR 5 offered by Senator Burrows. LR 5 is found on page 80 of the Journal and reads as follows: (Read LR 5.)

SENATOR CLARK: Senator Burrows.

SENATOR BURROWS: Mr. Chairman, members of the body, this seems like a rather poor time to be entering a resolution but I am sure if the body can understand the situation that has developed and if I can do a good enough job of explaining it, that the body will overwhelmingly support this resolution. For the '81 cuts the regions have lost \$981 thousand. This is Title 20 funding. Now the situation of funding has not followed the court decree. I think the conflict that has arisen, I have no blame for the Legislature in what has happened, I have no blame for the Governor's office, but the court decree has accelerated the movement out of Beatrice to a point where it is shifting money to state funds because the Title 19 funds have stayed intact that are the primary source of funding for the Beatrice Developmental Center. Now what the bottom line that if more of these people are moved out, the waiting lists are going to grow on the community program and the bottom line is more people are going to be left without services. The federal government actually has engaged in two different games. The court has pushed a movement out of Beatrice while the federal funds have not followed them in the community programs. I hope I can explain that reasonably simple in that term. The money is just not moving over. The regions are not in a position presently to collect the Title 19 funds that are going to Beatrice. The requirements of the regions will have to include probably additional staffing at higher cost to potentially get Title 19 funds. The facilities will have upgraded requirements which will again cost additional funds and any way you spell it for the individuals

that come on out at the present time out of Beatrice, it is not even going to go on a one and one basis of increase in the waiting list. It is going to add a multiplier onto the waiting list in the programs. Recently the community programs are receiving more problems because those coming out of Beatrice at the present time are extremely high cost individuals for the communities to deal with. Most of the waiting lists are more moderately retarded that have graduated recently from school and are out of the educational programs. Now the shift is, these are the people that can be...more of them have the real potential of being helped unto their own with the original concept of the community program. I hope that Senator Warner will correct me if I have made any misleading statements as to the disposition of these funds because I want to clarify it from the standpoint of the state and I think the total situation has developed into a very serious situation by the time we are tight with budget to move people where we will lose federal funds and increase waiting lists by the directional movement of people out of the Beatrice State Developmental Center into the community programs and watch those waiting lists grow. I think we owe a commitment to attempt to get services to those waiting lists as soon as possible. It is not an issue, in my opinion, that is between the regions and Beatrice but an issue of providing the most services to the most people in a practical fashion for the State of Nebraska. I urge this resolution which would stop movement of people out of the Beatrice Developmental Center until these waiting lists are filled. I do not feel this is airtight, it is a resolution, that there will be any tremendous problems or any serious problems involved with moving like this and I feel we have very serious problems unless the Legislature comes in and show the state is going to take a rational view of how we are going to deal with the retarded with the best concerns of all the retarded and finances considered. I feel that the movement without regard for finances, the court was never brought into this. They don't have to deal with it, we do, and I think we ought to take a look at it now, make a commitment that we are looking to get a maximum of services for all concerned at a reasonable cost structure that will be afforded in future years. I think it is important that we pass this resolution at this time because there are approximately eighty scheduled to go out. Now the Legislature is not a part of the court decree. If any of you haven't found it, the resolution is on page 80 in the Journal. There was a handout put out yesterday as to the numbers as of June 1, the over 300 on the waiting list of the various regions and I think it is just imperative and I urge the body to support this resolution, pass it, and let the regions, the state, the Governor's office, all take a

look at this in planning it for the future. The Governor's office is not a part of this resolution. They were a part of the suit and we must operate independent of them. They did not instigate this resolution in any way. They are a part of the suit but we are free to express good common judgment in our resolution. Thank you.

SENATOR CLARK: Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, I hate to rise at this point in time to oppose my good friend Senator Burrows. I think his judgment in this matter is probably correct and if the state were free to do what the state wanted to do in this area, we would probably follow Senator Burrows' direction much more closely than is now the case. This is much too complicated an issue to be addressed in a resolution at eleven fifty-two on Friday morning when everyone is anxious to leave. It is a very serious matter, one which I think the Legislature will certainly address this year as we have every year through the appropriations process and through mental retardation legislation. I would prefer, of course, that we did not have the stricter guidelines that we do have as a result of the litigation on this issue but that is a fact of life. I think that the administration would not be free to follow the dictates of this resolution if they desired to because of the constraints placed upon them by the court and I think the administration and the Attorney General's office did a very good job in obtaining the agreement that we do have now. It is much better than we thought would be the case several months ago and several years ago. So I think this is too an important issue to address in a resolution. It is much too complicated to debate at this point in time. I would hope that Senator Burrows would withdraw the resolution and we can address this in the next session of the Legislature if that is Senator Burrows desire. But again, let's not move hastily on this important issue.

SENATOR CLARK: Senator Seick.

SENATOR SEICK: Mr. President and members of the body, I am going to support the Burrows resolution. I am an individual that is for the community based program but I can foresee a problem and I don't think this resolution is doing anything in telling anybody. It is just sort of setting that there is going to be a problem and let's be aware of it. It is not passing any laws. All it is is a resolution. It is just telling our people that there is a problem and let's be aware of it and come January 1st let's deal with it. Thank you.

SENATOR CLARK: Senator Kahle.

SENATOR KAHLE: Mr. President and members, I, too, hesitate to speak on this issue at this time but I think it is critical probably right now but it is going to be a lot more critical when we come back in January. We do a lot of things for our people, those that are poor and those that are in need and people that we are dealing with under these circumstances are those that certainly cannot help themselves, the unfortunates in our society and I think that we need to really look at this and I think the courts have been wrong in some of the decisions that they made. And I hope that we, the body, and with Senator Cullan's help can get some adjusting done. I think that too many people have been taken out of Beatrice too quickly. That is not the issue we are talking about this morning so I urge you to support the Burrows resolution so that we put some emphasis in this direction at least for the next session. Thank you.

SENATOR CLARK: Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker and members of the body, I concur with the remarks made by Senator Cullan which were remarks made in opposition to the resolution. Senator Cullan stated absolutely correctly that we are being asked to speak to an extraordinarily complex question and issue in a very short period of time without benefit of committee hearings and frankly without benefit of any comment or input from the Department of Public Institutions and from the community based retardation programs and the like and we are being asked to pass judgment on whether or not we will have funds available to meet the needs of those persons being served by the community based programs. We are being asked to pass judgment on whether or not we should discontinue the movement of approximately eighty individuals out of the Beatrice Center and we are being asked to pass judgment on issues that we do not have enough facts before us so that we can adequately pass judgment on those issues. Senator Burrows prepared a handout which I have on my desk and I assume that you have on your desk which I really do want to call to your attention because of its importance. He notes that there have been actual federal and state cuts I assume in the Title 20 Social Services Program for the remainder of this fiscal year with the remainder commencing October 1, 1981, and of course ending June 30, 1982, of \$1 million. \$1 million in lost monies to this state. He also notes that there are 304 individuals on waiting lists and by that he really means waiting lists established by the community based retardation programs. In the main, these are people who have never been in the Beatrice Center but who happen to be retarded individuals who are living at home with their parents or with other persons who need the kind of services that you and I have established and funded

with our community based retardation programs but can't get in because those programs at this point don't have adequate money. Now what we see is a further reduction in federal monies as well as some state monies to the support of the community based programs. You and I are going to have some Herculean tasks ahead of us during the 1982 legislative session in determining how much state monies we should put into the community based programs so that 304 individuals can be served, but I must admit as I have really felt all the way through this session, we are acting prematurely in affecting budget cuts and in affecting programatic changes. You and I need to wait to see how it all shakes out in terms of our own state revenues and in terms of our federal allocations. As you may well know Congress has yet to affix the appropriations. It has done the authorizations but not the appropriations for many of the Social Services programs that are now coming to us in the form of block grant monies. Given the fact that we don't have adequate information to even begin to take a full and complete and healthy and sound look at what the needs are for our retarded people and our handicapped people and our needy people, I personally think that we do act with too much haste in adopting Senator Burrows well-intended and well-meaning resolution. At this juncture I would oppose the resolution.

SENATOR CLARK: Senator Higgins.

SENATOR HIGGINS: Mr. Speaker, Senators, are we talking about passing a law or a resolution?

SENATOR CLARK: A resolution.

SENATOR HIGGINS: This is a resolution. A few minutes ago we were offered an amendment to a resolution saying, "let's tell the people to enforce the law, the Attorney General, the Highway Patrol, etc., etc." All this resolution says is, since we do say that they should provide community based residences for the mentally retarded. This is a statement of intent by the Legislature to say, "Get off your apathy and take care of the mentally retarded." I don't see anything wrong with a resolution doing this. We aren't going to change any laws with this resolution. We are just going to say, "Hey, what about those 300 people that we mandated by law some time ago that you will take care of?" Anybody scared to vote yes on a resolution that just says, "think about it, you people out there, that have been given this job. We, the Legislature, just want to tell you, 'get off your apathy and do the job.'" I can't see any reason to be afraid to sign or vote yes for this resolution. All the stuff that has gone down the line about lawsuits and that doesn't have a thing to do with this. You are

either saying you are going to go with the resolution or you are not but you are not going to change the law today. I would urge you to adopt this resolution of Senator Burrows. Thank you.

SENATOR CLARK: Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, I don't see any particular harm with the resolution but I just want to point out a couple or three things. There are a variety of problems we will be addressing in this area next session. There is no question about that. Distribution of funds between areas where the emphasis ought to be, there is a very practical problem that we are faced with, that the Title 20 funds that the regions now share apparently are being reduced if Congress finalizes things as it appears they might and the patients that would go out of Beatrice currently are funded with Title 19 funds, that they go to the base, community base. Currently they are not eligible but that may change in time as those regulations are developed and I presume that there will be minimal movement as a practical matter for a while in any event just under the sheer circumstances that exist. Two years ago in the appropriations bill we had new improvement money to add funds to the regions to assist in the backlog of patients they had. This year the emphasis of the new money was to assist in the movement of people from Beatrice to the regions and the court case is a factor in this by the way. That is not our making but it is a factor where it all fits in. But I guess I have no problem with voting for the resolution but solely because whatever is going to happen is going to be pretty well dictated by virtue of the funds that are available and, by the way, just so you all keep in mind, after what you will do tomorrow, what you did Wednesday, don't expect to have a lot of funds to pick all this up because they are not there.

SENATOR CLARK: Senator Burrows, do you wish to close, please?

SENATOR BURROWS: Yes, Mr. Chairman, members of the body, I don't feel that it is an earthshaking resolution but I think the problem that has been created by this Title 19 and Title 20 funding has become a rather serious one and the really thrust of the lawsuit went in an opposite direction of the federal funds because we have had open ended Title 19 funding at the Beatrice Developmental Center and those cuts have taken place and are to accelerate on the Title 20 funding of the community program and as Senator Warner expressed, we are not in the position to transfer



those Title 19 funds when a resident is transferred at this point so it will come out of state monies. It will increase the waiting list if the transfer is made or at least handicap the regions in picking up those additional people and it does not work on a one and one basis because when you move into state dollars with a limitation of our appropriation it will put a multiplier on or add on additional people that will go on the waiting list for the individuals that are transferred. Now this is not passing law for the next session or anything else but we've got to relook at the total concept in getting the best use of the federal funds and in the meantime if another 40 are shoved over, if this can prevent some of those, we will have more people getting services from the community programs and more people getting total services if they take those waiting lists first and don't make that transfer because we are going to lose temporarily, at least through the interim here until our laws are changed, funds by making that transfer, federal funds that would reduce the burden on the state and I think it is imperative that we voice an objection to this movement that is irresponsible financially for the state, to make those moves right at the immediate time and then look at it from the Legislature how we can best take care of all the retarded in the state in the upcoming session. It would cost us certainly under consideration and a total program to get services to all the people. These waiting lists have people that show some real potential of response in getting employment with a regional concept and I think it is imperative we just look at a common sense approach and the federal funding as well as the court. We are, as a legislative body, are independent of the court decree. The court decree did not spell out specific numbers as some of the original intents did. It is not directly affronting the court decree as long as we look out for the best interests of the individuals and at the present time there is some conflict between what the court was pushing for and the route the federal funds come under. And I think we have got to take a practical stance in solving this problem and this resolution advises that. It just requires, I think, or requests that in the immediate future they will follow a pattern that is best judgment to use the finances we are providing the retarded citizens of the state. I urge your adoption of the resolution. It is not going to create a whole lot of serious problems. I have checked with that. I can't see these resolving nor is it going to solve all of them but I think it points us in the right direction in looking at this from a rational basis. Thank you for your time.

SENATOR CLARK: The question before the House is the adoption of the resolution. All those in favor vote aye. All those



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opposed vote nay. Have you all voted? Record the vote.

CLERK: 26 ayes, 2 nays, Mr. President, to adopt LR 5.

SENATOR CLARK: The resolution passed. It is adopted.  
The next resolution.

CLERK: Mr. President, LR 6 found on page 91 of the Journal is offered by Senators Schmit, Cullan, Vard Johnson, Chambers, Wesely and Labedz. (Read LR 6.)

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Mr. President, the hour is late. I will not take much time. We discussed this issue very extensively through LB 7 the past few days. I believe the resolution is clear. It outlines the problems that exist with the present legislation on child support collection fees. I just want to emphasize once again that it appears to me that the principal reason for the imposition of a child support collection fee by the federal government was so that they would eventually be able to reduce their contribution to the ADC program to the state. If the federal government chooses to limit their contribution to the state there is a much more effective way of doing it. They can reduce that contribution from 75% to 65% or whatever they want to choose to limit it without adding to the burden of the work that is already being borne by the local clerks of the court and many other people at the county level. I would ask the adoption of the resolution.

SENATOR CLARK: Senator Higgins.

SENATOR HIGGINS: Mr. Speaker, Senators, Senator Schmit, would you yield to one question and that is all, just a question?

SENATOR SCHMIT: Yes, I will.

SENATOR HIGGINS: Basically is this resolution just asking the Attorney General to see about repealing this federal...?

SENATOR SCHMIT: Yes, it asks for an injunction and asks the Congress to seek the repeal of the law.

SENATOR HIGGINS: Do you think the injunction would in any way impair our receiving the federal funds?

SENATOR SCHMIT: No, in fact, Senator Higgins, if we were to get the injunction that would...ought to ensure the flow of the funds under such decision was determined finally.

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LB 8

SPEAKER MARVEL PRESIDING

DR. PALMER: Prayer offered.

SPEAKER MARVEL: Record your presence please. Record the vote.

CLERK: Quorum present, Mr. President.

SPEAKER MARVEL: Are there corrections to the Journal?

CLERK: I have no corrections, Mr. President.

SPEAKER MARVEL: Are there any items under number four?

CLERK: Mr. President, one more item, LR 2, 5, 6 are ready for your signature.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business, I am about to sign and do sign LR 2, LR 5, LR 6. Senator Koch, your light is on.

SENATOR KOCH: Mr. Speaker, a point of personal privilege.

SPEAKER MARVEL: Will you state the point to the Chair please.

SENATOR KOCH: Yes. Prior to the time of our voting on LB 8, I want to explain to this body, for the record, my vote. My vote is going to be negative, not because I do not realize the fiscal problems of this state but because I am still upset by the fact that we did not adopt the Warner amendment. Had we adopted that amendment I would have voted aye for LB 8, because that is the only way to face the future.

SPEAKER MARVEL: Will you all return to your seats so that we can proceed with Final Reading. Okay, there is a motion on the desk. The Clerk will read the motion.

CLERK: Mr. President, Senator Fowler would move to return LB 8 to Select File for specific amendment. That amendment being to strike the enacting clause.

SPEAKER MARVEL: Chair recognizes Senator Fowler.

SENATOR FOWLER: Mr. President, members of the Legislature,