

January 20, 1981

LB 389-433

SPEAKER MARVEL: Senator Higgins.

SENATOR HIGGINS: Mr. Chairman and Senator Chambers, I merely want to state the fact that your very presence here and the fact that we are listening to you is a contradiction of your remarks that you do not have freedom. Thank you, Mr. President.

SPEAKER MARVEL: Senator Burrows.

SENATOR BURROWS: Mr. Speaker, members of the body, I would like to request permission we lay over the resolution until the hostages are in the air.

SPEAKER MARVEL: Any objection? If not, so ordered. We will go to item #6 now, introduction of bills.

CLERK: Mr. President, new bills. (Read by title LB 389-432. See pages 271-280 of the Legislative Journal.)

SENATOR CLARK PRESIDING

SENATOR CLARK: Could I have your attention just a moment, please? The AP has reported that the American hostages will fly out of Iran in the next thirty minutes. (applause).

CLERK: (Read by title LB 433. See pages 280-281.)

SENATOR CLARK: Senator Nichol, for what purpose do you arise?

SENATOR NICHOL: Mr. Chairman, members of the Legislature, I wanted to say something but I don't want to say it if we have urgent business to do. This will take about two or three minutes.

SENATOR CLARK: Continue, we don't have any business right now.

SENATOR NICHOL: Okay, Senator Marsh has a bill in having to do with mammals and I wanted to tell you the story of the three mammals if I may. May I do that, sir?

SENATOR CLARK: Go right ahead if it is funny.

SENATOR NICHOL: Well, I don't know about that but once upon a time there were three mammals who lived happily in Mammalary Land. There was a papa mammal that we called Pappy and mama mammal that we called Mama and baby mammal we called Babble and the reason we called baby mammal Babble was because he talked a lot and asked embarrassing questions.

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of mine, who chide me constantly wondering what kind of a record are we trying to set. The only record we are trying to set is fairness and I would suggest to you that we have with 245, we have had substantial amount of debate and I would also try to get your cooperation to debate this bill until noon and then we will come back and start on General File priority bills. If we can not do this, ladies and gentlemen, what it amounts to is that this Legislature is simply going to go downhill and there will be many of you whose priorities will not be touched. Okay what is the next item on LB 245, Mr. Clerk?

CLERK: Mr. President, if I may read some matters in before that. Very quickly, Senator Schmit, Johnson would like to print amendments to LB 167; Senator Wesely to LB 44. (See pages 1211-1211 of the Journal.)

Your committee on Public Health and Welfare reports LB 378 to General File; 499 General File with amendments; 270 General File with amendments; 212 with amendments; 404 General File with amendments; 522 General File with amendments, all signed, Senator Cullan. (See pages 1212-1218 of the Journal.)

Mr. President, the next amendment I have is from Senator DeCamp and that amendment is found on page 1145 of the Journal.

SENATOR DeCAMP: Mr. President, members of the Legislature, it appeared to me and several others that the real stumbling block on resolving the issue of the vets school and which way we go had to do with the issue of federal funds and whether we were just going to have an indefinite forever date on this and so the purpose of this amendment was to, so to speak, "fish or cut bait," make a decision one way or another on whether we were going to have the vets school and of course that decision was contingent as has been stated many times on what happens at the federal level. So the purpose of this amendment was and is to force that issue. The second purpose of the amendment was to say, if we do not get the federal funds, then we want to use this money for another purpose, some other agricultural purpose. And so I had the money funneled off into the Beef Science Building as of a certain date so that we would not have to fight that issue again. However, it is my understanding that Senator Schmit, Kahle, Lamb, those interested in the vets school have now resolved, so to speak, the issue of the "fish or cut bait" issue which is the principal stumbling block in this thing and they have a separate amendment with a separate date. It is a little more delayed. I am perfectly willing to go along with that since, as I say, that is the big

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LB 44, 74, 87, 113, 271, 298,
327, 328, 331, 404, 478, 486,
252, 241, 483

not going to be built for a variety of reasons, environmental costs, eminent domain and many other reasons. You start talking about building a project and immediately you have a whole group of people that rise up in arms to it. We all know that, but yet it is nice to stand up on the floor and make glowing speeches about how we need to store more water. But now when we are talking about an issue where we might be able to save some of that water in the State of Nebraska although it might not be in your area, it might not be in your basin, you might have to drive a couple hundred miles to go fish in it, suddenly you don't want to do that and you want to put language in the statutes that I assure you is going to prohibit it from happening. I suggest that reasonable people that are of conservative nature should agree with me to remove the language in lines 13 and 14.

SPEAKER MARVEL: Okay, the motion is on the second half of the Vickers amendment, is the adoption of that amendment. All those in favor vote aye, opposed vote no. Have you all voted? Senator Vickers, where are you? Oh, there you are. Eight are excused, Senator Vickers.

SENATOR VICKERS: Record the vote. Oh, make it...I want a record vote.

SPEAKER MARVEL: Okay, record.

CLERK: (Read the record vote as found on page 1519 of the Legislative Journal.) 10 ayes, 23 nays, Mr. President, on adoption of the amendment.

SPEAKER MARVEL: The Clerk has some items to read in.

CLERK: Your Enrolling Clerk has presented to the Governor LB 483.

I have a communication from the Governor addressed to the Clerk. (Read communication regarding the signing of LBs 44, 74, 87, 271 and 483 as found on pages 1520 and 1521 of the Legislative Journal.)

Mr. President, Senator Fowler would like to print amendments to LB 404. (See pages 1521 and 1522 of the Journal.)

Your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 241 and find the same correctly engrossed; 298, 327, 328, 486, 113, and 331 and 478, all correctly engrossed, Mr. President. (See pages 1524 and 1525 of the Legislative Journal.)

RECESS

SPEAKER MARVEL: Will you please record your presence while I introduce some guests to the Unicameral. From Senator Goodrich's district 23 students from the eighth grade, St. Joan of Arc, Omaha, Nebraska. Their teachers are Mrs. Marilyn Rochford, Mrs. Betty Morrison and Mrs. Rita Macaulay. You should be in the North balcony. Will you raise your hands so we can see where you are? Welcome to the Unicameral. From Senator Goll's district, 15 students from the ninth through the twelfth grade from Lyons Public School, Lyons, Nebraska, Mr. Floyd Brown and Mr. Dick Stevens, teachers, in the North balcony. Will you hold up your hands so we can see where you are? Welcome to the Unicameral. And underneath the South balcony as guests of Senator Labedz, Wolfgang Fischer of Munich, West Germany. Okay, we are under item number six. LB 404, Mr. Clerk.

CLERK: Mr. President, LB 404 was introduced by Senators Fowler, DeCamp, Rummery, Maresh and Marvel. (Read.) The bill was first read on January 20 of this year. It was referred to the Public Health and Welfare Committee for hearing. The bill was advanced to General File. I do have committee amendments pending by the Public Health and Welfare Committee, Mr. President.

SPEAKER MARVEL: Senator Wesely.

SENATOR WESELY: Mr. Speaker, members of the Legislature, the Public Health and Welfare Committee did hold a hearing on this legislation. It is similar to LB 665 which was introduced last year by Senator Powers. An interim study was held by Senator Fowler and other members of a special committee and that resulted in LB 404. We did, through the committee, amend the bill substantially and I think what I will do is refer you to the bill book and the committee statement and go through those one by one and try and explain for you what the committee tried to accomplish with the amendments. I think I can say first off that the attempt was to limit the focus of the bill, to limit the expenditures of the bill and I think you will see as we go through that that is indeed the intent of these amendments. First off, the first amendment by the committee is that the requirement that statewide services be available by 1986 is deleted. That is to say that presently in the state of Nebraska the aging services only cover a portion of the state. It does not cover the entire state and we, as part of our attempt to keep the cost down, took out the requirement that all areas of the state would be served by these aging services. Presently, again, a number of areas of the

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state do not have any aging services and this would take out the requirement that they start to develop those in the next five years. The next change provides for definitions for area program plan, community aging services, Senior Service Center. Those were just to clarify what those were intended to mean. The next change was the planning and service areas for aging services will be the same as for mental health, mental retardation and alcoholism service regions. What we are trying to do there is not have any duplication, to try and use the same region areas. We are essentially talking about the same social service type of an area and so we felt that there was no need to have different regions for different services. We could use the same regions for the same types of social program services that we have so aging would match the same areas that we now are serving mental health, mental retardation and alcoholism. The area Agency on Aging will be proposed by elected officials. It is not much change. The state-federal match to local match is changed from eighty-four to sixteen, to eighty-four to twenty-five. Now what we are trying to do again is parallel what we are already doing with other social services. We are going to give them the same regions as these other social services. We are going to give them the same match essentially as these other services so that the locals will be, I think, familiar with the same types of state/local areas and matching formulas so that we don't have duplication and that there is a lot of similarity between the different social services we provide in this state. The next change is the items which can comprise local match are modified. That is a small change and the director of each area Agency on Aging will be selected from a list submitted by the governing board for each region to the State Commission on Aging. What we were trying to accomplish here is deal with the problem that we have found in other regions in the state. What we found, there was a controversy out west in the Panhandle with an area Agency on Aging. There was a bill by Senator Nichol which would have taken the State Agency on Aging and placed it under the Governor. We killed that bill and in lieu of that, recognizing the problem that Senator Nichol identified, said the better thing to do is to have these local area Agency on Aging directors have some accountability to the State Aging Agency and that feeling was that that would provide the oversight that we needed to take care of that problem. So that is the purpose of that amendment. I think that pretty well summarizes the different changes we make. In summary, what we are trying to do again is to limit the cost of the program, to try and better parallel the present social service regions and matching formulas. We are trying to have greater accountability of these area Agency on Aging heads to the state Agency on Aging and I

think basically do some other changes that are minor to make the bill a little more understandable and that is the changes that the committee has proposed. I would move their adoption.

SPEAKER MARVEL: The motion is the adoption of the amendments... Okay, Senator Fowler, I recognize you.

CLERK: Mr. President, Senator Fowler moves to amend the committee amendments and the Fowler amendment is on page 1521 of the Journal.

SENATOR FOWLER: Mr. President, I present these amendments as Chairman of the Interim Study Committee that developed LB 404 and Senator Cullan authorized me to indicate that as chairman of the Health and Welfare Committee my amendments to his committee amendments are acceptable and that with the adoption of those amendments I would agree then to the committee amendments. The committee amendments as a whole scale back the scope of LB 404 as Senator Wesely said, limit it in many areas and eliminate a certain deadline in timetable for accomplishment of the goals, leaving more control with the Legislature and with the area agencies. There were two objections to the committee amendments, very strong objections from people working with senior citizen programs. One is that currently we have eight area Agencies on Aging. Senator Cullan proposed on the Health and Welfare amendments merged those into six, creating a certain amount of consternation in southeast Nebraska and central Nebraska where some programs did not wish to be merged together. My amendments split those programs back out that we have the eight existing programs, therefore, southeast Nebraska would not have to merge its program with Lincoln and in the western part of the state or central part, two programs would not have to merge. The boundaries would still be the same as the six Human Service areas but in two of the Human Service areas there would be two area Agencies on Aging as is the current pattern. The second concern with the Health and Welfare Committee's amendment was the suggestion that the state director hire the local Area Agency director and the feeling was and I think, I handed out a letter from Jack Mills, county officials, that if we are going to have area boards the area boards should have the final determination as to who is going to run the area program. So as a compromise we developed that the state shall develop criteria, qualifications for the area directors, that there shall be state evaluations of the services at the area, strong state oversight but there still would be local control as far as the final hiring. This compromise is acceptable to Senator Cullan and to the County Officials Association and I think with my amendments to the committee amendments we strike a balance as

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far as the power between the area agencies and the State Commission on Aging. We prevent this merger that I know in particular in Senator Maresh's area has some people upset and with those then I would be willing to accept Senator Cullan's amendments which do scale back LB 404 from the original concept. So I would move for adoption of my amendments to Senator Cullan or to the Public Health Committee amendments and then I would certainly support the Public Health's amendments.

SPEAKER MARVEL: Senator Maresh, do you want to speak to the amendments to the bill?

SENATOR MARESH: Yes. Mr. Speaker, I hope you vote for the Fowler amendments. This has been worked out to dispel the opposition in my area and I would have to take my name off of the bill and vote against the bill if these amendments are not adopted because people want local control. They want the local boards to choose their director and they do not want to do away with the Beatrice office. So I hope that you vote to adopt the Fowler amendment to the committee amendment.

SPEAKER MARVEL: Senator Dworak.

SENATOR DWORAK: Mr. Speaker, I have a couple of questions. I would like to start with Senator Maresh, one of the introducers of the bill. Senator Maresh, you said that the Beatrice office was going to be eliminated if we do not accept the Fowler amendment?

SENATOR MARESH: That is the way I understood that we would be under the Lincoln office and there would be no need for the Beatrice office and there was a lot of concern in that.

SENATOR DWORAK: What other office would be eliminated, Senator Maresh?

SENATOR MARESH: One in central Nebraska. I don't know which ones would there be. Senator Fowler I think could better answer that. It is in Region III, I believe, yes. We are in Region V and it would be in Region III.

SENATOR DWORAK: I guess I want to know what offices would be eliminated if we did not accept your amendment, Senator Fowler.

SENATOR FOWLER: Okay, in southeast Nebraska the Human Service region in southeast Nebraska is divided between two area agencies, one based out of Beatrice, one based out of Lincoln. In the central part of the state there

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are two area agencies and I can't remember the exact titles of them but they would be merged. North Platte is one of them and I believe Kearney is the other one. Those two would be merged into an area and the current eight districts have been worked out. Previously they matched the six Human Service Regions but they are in two of those regions then subdivided into smaller regions and that is the way the program has been working and it seems to be the acceptable way to continue.

SENATOR DWORAK: Thank you.

SPEAKER MARVEL: Senator Haberman. Senator Nichol. Senator Wesely.

SENATOR WESELY: Mr. Speaker, these two amendments offered by Senator Fowler, I think are agreeable and I would support them. The first is essentially a grandfather clause for the two regions that now have two area Agency on Aging programs. Essentially the concept that we were trying to do with these amendments is to say that we would break down to the present six regions in the state and have one governing board for them. The problem in Senator Maresh's case would be that we have two area Agency on Aging programs already in place with boards and this would say that one of those boards would have to go and then one would serve the entire region. It does not mean that necessarily you would lose any of the services or offices. It would mean though that only one governing board would make decisions for that region but since we already have two cases where they seem to be functioning well and there does not seem to be perhaps a need to merge them, the thought is, well, let's in those two instances allow them to continue and have a case where there are two governing boards instead of one in this particular region for aging services and I don't think that is a particularly harmful thing to do and of course if there are problems we can always deal with those at a later date. The other item about the appointing of the local area Agency on Aging director, the concerns I expressed before about the Panhandle situation are indeed concerns that we do have but it does make sense that perhaps the local area agency board ought to be the one to decide who runs that area agency and that perhaps state oversight will be strong enough through this bill to provide the extra strength that we need to make sure that they do the job right. Again, I would emphasize that the Public Health Committee has taken regional service systems as a high priority for study this interim and we will be looking at mental health, mental retardation, alcoholism and aging services under the regional systems that we have developed. There have been problems in other areas. We are trying to deal with those

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and perhaps, as Senator Fowler is suggesting here, we should pretty well use the model we have now and then look at other alternatives later and not try and change things overnight. So I think probably both of his amendments are good steps to take and do improve on the committee amendments at this time.

SPEAKER MARVEL: Senator Fowler, do you want to close on your amendment. No close. The question is the adoption of the Fowler amendments. All those in favor of that motion vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: 17 ayes, 4 nays, Mr. President, on the motion to adopt the Fowler amendments.

SPEAKER MARVEL: The motion is carried. The Fowler amendment is adopted. Now before we go to the next item, in the North balcony from Senator Chronister's district, it is my privilege to introduce 14 students, fifth through eighth grades, District 1-R, Clarkson, Nebraska, Mrs. Jean Ernesti, teacher, Mrs. June Tresnak, teacher, in the North balcony. Will you hold up your hands so we can see where you are. Welcome to the Unicameral. Senator Wesely, are you going to present the committee amendments as amended?

SENATOR WESELY: Yes. Mr. Speaker, I guess we are ready to go ahead with the adoption of the committee amendments and with the changes Senator Fowler has I think this bill is in good shape. With the changes the committee has adopted you are going to have a lower cost and I think a very reasonable program that will serve our older citizens in this state. It is strongly supported by our older citizens and I think it is a step we should be taking. The committee did spend a lot of time trying to make sure that it was in the scale and scope that we could afford and I think the bill with the committee amendments certainly is in that range and should be supported, so strongly support the committee amendments, urge their adoption and move their adoption.

SPEAKER MARVEL: Senator Maresh, do you want to speak to... Senator Dworak, do you wish to speak to the...on the bill. Senator Nichol.

SENATOR NICHOL: Mr. Chairman, Senator Wesely, have you explained the amendments or are they going to be explained along with the bill or what?

SENATOR WESELY: I went through them one by one. Would you like me to go through them again?

SENATOR NICHOL: No. What are the amendments that are left in?

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Are those going to be explained with the bill or what?

SENATOR WESELY: Well, if you want to give me a couple of minutes, I can go through them again but I did explain them earlier. Would you like me to again? Do you want me to explain them again?

SENATOR NICHOL: No.

SENATOR WESELY: Okay.

SPEAKER MARVEL: Okay, before we go to the next speaker, underneath the South balcony from Long Beach, California, Irene Warnke, a sister of Senator Remmers and Alma Warnke from Lincoln. Will you please stand so we may welcome you. Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, Senator Wesely, will you yield to a question, please? To be sure that I am in order I will have to ask a question. Do the amendments have anything to do with or do they change the fiscal impact or the fiscal statement?

SENATOR WESELY: Yes, I think they substantially change it. That was their intent.

SENATOR HABERMAN: Then I will ask my question. I wanted to verify that first. I read in the fiscal impact a minimum of 2 million dollars up. It all depends on which one you read. Does this mean in addition to what it costs now or does this mean that is what it is going to cost to continue the program?

SENATOR WESELY: Okay, the basic change in the fiscal impact is a change in the local match from eighty-four to seventy-five and then the locals will pick up more and then we changed some of the, what is provided for there. That is going to save a lot of money to the state and have the locals pick up more and also the real big change is that we don't require that all areas not now served would have to be served in five years. That is really the big impact down the road.

SENATOR HABERMAN: Okay, you explained to me that the locals are going to pick up more money. My question is this. Does this increase the cost of the program the 2 million dollars? Does it increase it or doesn't increase it?

SENATOR WESELY: No, I don't think it would increase it.

SENATOR HABERMAN: It does not increase the cost of the program.

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SENATOR WESELY: These amendments? Certainly not. Oh, oh, okay, from what we now have? Is that what you are saying? The present services for the aging versus the aging services, yes, it will cost more money.

SENATOR HABERMAN: How much more? What the fiscal sheet shows? Two million?

SENATOR WESELY: It should...I think you are talking more in the range of a million instead of two.

SENATOR HABERMAN: But let's talk the 2 million because that is what the fiscal sheet shows.

SENATOR WESELY: Mmm, hmm.

SENATOR HABERMAN: Okay, now, what are we and what are the people involved in the program going to receive for the 2 million additional dollars?

SENATOR WESELY: Well, first off, if you would have kept the bill as it was you would have had services where they are not now and I think you are also going to expand some of those services in the areas that are now served but I think Senator Fowler could better answer that. If you don't mind, I will have him answer it.

SENATOR FOWLER: Senator Haberman, the 2 million dollar fiscal note would be 2 million dollars in addition to what is being spent now in terms of state, federal and local money. Currently community aging services are receiving about 9 million dollars across the state, 6 million of that federal, \$400,000 state, 2.6 million of that is local contribution. Okay, LB 404 in its original form said that these services shall be across the state by 1986, in five years, and that the match shall be 86% state and federal and 14% local. All right, what the Health and Welfare Committee has done and the 2 million dollar impact is based on the original 404. So adding 2 million dollars to the 9.3 million should have extended all these services statewide as was the estimate. Okay, now since the bill no longer mandates that, the control on the final cost will be with the Legislature. We will decide what to appropriate. We will not be under any mandate to extend services. I suppose that we could decide not to increase our share at all. I would hope that that would not be the case. I would hope that, in fact, some additional resources. I think when Senator Wesely says that the cost to the state has been cut in half, I think that would be accurate so that we are reducing it but the current funds that are spent now for these types of services across the state is 9.3 million.

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SENATOR HABERMAN: Okay so that I understand it then, the cost is going to go up 2 and the cost to the local government is going to go up a percent also. Is that correct?

SENATOR FOWLER: If there are going to be any additional services, obviously there are going to have to be additional costs.

SENATOR HABERMAN: Thank you very much.

SPEAKER MARVEL: Senator Cope.

SENATOR COPE: Mr. President, members, a question of Senator Fowler.

SENATOR FOWLER: Yes.

SENATOR COPE: Senator Fowler, and maybe the amendments have changed this but on what would be page one of the fiscal notes it says 84% of the cost to providing services in the area as I understand the state will do that, and that will be federal funds plus the balance in general funds. If sufficient state funds are not available to pay the entire 84% then general funds will be prorated among the areas. Now did the amendments do anything with that part of it?

SENATOR FOWLER: The amendment changes the match. The Public Health and Welfare Committee reduced the state and federal's share down to 75% and increased the local contribution plus tightened up the definitions of what the local contribution would be so that it shifted the basis. It still allows that if there is not full funding from the state, we can prorate our share across the area agencies. So if we choose not to appropriate the necessary match then the programs, the aid to the area agencies would be scaled back.

SENATOR COPE: In other words, the 75% then is not mandatory.

SENATOR FOWLER: It is the goal and if we do not fully fund that then the bill provides for proration.

SENATOR COPE: And this is agreeable with the local government as I understand in this letter from Jack Mills. Is that correct?

SENATOR FOWLER: Yes, the county, if these amendments are adopted, the county officials will support the bill. They supported the bill in the original form. They were concerned about the committee amendments, not with regards to the funding but some other things. My amendments to the committee

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amendments reestablishes the support of the County Officials Association for the bill.

SENATOR COPE: Let's use the example, say federal funds are cut down to 25%. We think we can't afford the 50% from the state and we allocate 25%. Then we would be short 25% but that would be prorated....

SENATOR FOWLER: Correct.

SENATOR COPE: ...so that the state wouldn't be in an obligated manner.

SENATOR FOWLER: Correct.

SENATOR COPE: Okay, thank you.

SPEAKER MARVEL: Senator Wesely, do you wish to be recognized?

SENATOR WESELY: I think we have discussed this quite a bit but just briefly, this is not a mandate for any services at this point. That was eliminated with the committee amendments. So we are not talking about mandating services so we are not talking about mandating extra cost. What we are trying to do is set up a mechanism that I think is a necessary one to allow for the state to step into the area of services to the aging which we are not now presently involved in. We are talking about 9 million and some dollars spent in this state, I think federal monies right now, to serve the aging and the state only puts up about \$400,000. Well times are changing and evidently at some point the state will have to play a role in terms of funding but that is not necessarily the case at this time. What we are doing with this bill and what the committee wanted to emphasize and that is why we would have the amendments as we have them is that we want to set up the mechanism for us to move when we decide to move in this area. But we don't necessarily through this bill take that step. So, for instance, I think we absolutely should pass this bill and I think it is in a good form at this point but if you are concerned about the cost involved, why the A bill is the point at which you can stop that funding and the support for those services but I think the bill itself certainly has got to have support because it sets up a proper mechanism. We talk about the match situation, from 84 to 16% which is now the federal-local match. We go to 75-25 and that 75% becomes a federal-state match and the 25% for the locals becomes not just soft monies which is now the case but it becomes a lot more hard, firm local support for the program. So I think it is much more fiscally prudent to do that at this point. I think that one thing ought to be mentioned is that by taking out the requirement for services

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in those areas not now served, we are talking about thirty some counties which don't have aging services, that with the bill in its introduced form would have required that those areas now provide some services but we took that out so that is a big expense that is not in there at this point and the bill is, I think, very fiscally sound and the state needs to do this because we don't have a mechanism and this bill does set up a mechanism and has a structure and a form in which we can fill in as we see fit the needs for aging services in the state.

SPEAKER MARVEL: Senator Warner.

SENATOR WARNER: I have a question of Senator Wesely or any member I guess of the Public Health Committee that could help me. As I understand the bill, the bill establishes a commission appointed by the Governor who in turn hires, selects a director...

SENATOR WESELY: Mmm, hmm.

SENATOR WARNER: ...and I was wondering if the committee, since it advanced from the committee, the bill that was passed this morning, 249, which this seems to be the direct opposite direction, if there was a rationale why this should be a commission type of agency and would it not be more consistent if we amended the bill in a like fashion as we did on 249 so that the director was appointed by the Governor? The commission could be advisory as apparently most of the body felt was appropriate for Health Department and I am wondering if you discussed it and if there is some rationale. And I had an amendment prepared to do this so it could be more formally addressed but it is not ready so I will just raise the question this way.

SENATOR WESELY: That is a good question, Senator Warner. Yes, it was discussed in committee because we also had a bill from Senator Nichol which would have done exactly what you just mentioned. It would have placed a Commission on Aging underneath the Governor. We did not do that with this bill for a couple of reasons and we did kill Senator Nichol's bill for those same reasons. Number one, the Governor did not support that recommendation at this point. He did not want to see the Commission on Aging placed under his direct control and allowing him the appointment powers this year this session whereas he did support the Department of Health bill. The other thing was that we were concerned about the timing because of the controversy out in the Panhandle and what looked like retribution possibly. We decided this would not be a good session to pursue that issue and we were looking

at an interim study anyway on mental health, mental retardation and alcoholism service programs by our regional structure and so we thought we would incorporate then after hopefully this bill was passed the aging regional structure and combine them all and look at how the regions were functioning and how oversight was provided and it is quite possible that next year the committee may come in with a recommendation in this area but it just was felt that this session was not the right time, that this bill should be used as a vehicle to set up the proper structure to have a system in the state for aging services which we really do not have now. It is totally a federal-local system. The state has played a very minor role at this point and needs to have a more defined role and I hope that answers your question but that is kind of the basis of our decision, not to do that with this bill this year.

SPEAKER MARVEL: Senator Kahle.

SENATOR KAHLE: Mr. Speaker, members, the more we talk about this I guess the more confused I get as to what is really happening and I am concerned of course about the handout that Senator Fowler handed out that evidently has the sanction of the county officials. But it looks to me like we are again perhaps not mandating a program but pushing a program on to the communities and asking the counties to pick up a much larger proportion of the funding without the state binding themselves to a great lot more and I don't know if this is correct or not. Senator Wesely, would you want to comment on that?

SENATOR WESELY: Well actually that is not the case. We are trying to set up a mechanism where the state can come in and provide some assistance that presently we do not provide at all. I mean we have \$400,000 out of 9 million dollars that we are spending on aging services and so this is a mechanism that the locals will have to pick up some more but we anticipate the state will have to pick up some more. The whole question is the federal role and we anticipate the federal role to diminish of course and to play less of a support position and so as a result the locals will have to pick up a little more but so will the state in time, not through this bill as it is. If the A bill is passed in addition to the legislation that we are now talking about then the state would start to play a role but we are just setting up the mechanism for us to help out a bit.

SENATOR KAHLE: But aren't you saying that if the state puts in more money, the counties have to put in the 25%?

SENATOR WESELY: Well even if the state did not put in the

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money, the match formula would be 75% federal-state, 25% locals. See what we are trying to do, again, Senator Kahle, was that is the present match usually found in our present service systems, alcoholism, what have you. They usually have a 25-75 match so we were just trying to parallel what we already had and if we are going to go to a state-local regional system like those other service systems, the feeling was to parallel what those others had done and that is why we changed it.

SENATOR KAHLE: But isn't the mix now 86-14?

SENATOR WESELY: 84-16, yes.

SENATOR KAHLE: All right, backwards. So you are putting a bigger load on the counties?

SENATOR WESELY: Excuse me, Senator Kahle, that is what the bill had originally proposed, an 84-16 and the committee said no, we should go 75-25 to parallel.

SENATOR KAHLE: Well I am certainly not against these programs that we have for the elderly but I have a feeling that we are trying to shove more of the cost onto the counties without the state being involved that much more and it is the same old story. They can't help themselves but we could and with the 7% lid on I don't know where they are going to get the extra money. Does that mean the program will not start? I guess he is gone from his mike but this is my concern. I have a feeling that whenever you start a program or increase a program, that if we had a percentage in the beginning, it should be kept that way and we not load the counties down with more of the percentage and then as the state decides to increase or the federal decides to increase and they have no other alternative but to provide that money. And I am afraid that what we are doing here is cluttering up this whole situation and that...if I understand it right now and I don't know where any of the people that are supposed to know the answers are around right now but some counties are not contributing to many of these programs and the programs are still being provided to them and I am not sure that this would be the case under this bill or not but when somebody else speaks maybe they can answer that question for me. Thank you.

SPEAKER MARVEL: Before we go to Senator Nichol, is Senator Vickers in the room? He had a guest that was supposed to be introduced, Kristi Kammerer from Republican City, Nebraska. She was originally underneath the...are you still there? There you are. Welcome to the Unicameral. Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, I think we should wake up and have a look at this bill. Senator Warner brought to your attention 249 which did go in the opposite direction. Now we have been talking the last ten, fifteen minutes about a mechanism. What would we mean by a mechanism? That means, state, we are going to tell you counties what you are going to do. I have been in that position before and as brought out a minute ago, what are you going to do with the 7% lid when you jump this amount from an 84-16% or 86-14, whichever it is, and it has been stated both ways, when we say to the county, you have been paying 14 or 16% and now you do pay 25%? Secondly, this mechanism can say to the counties who have not wished to have these programs, you are now going to have this program. Now let's touch a little bit on the mechanism as we set up the commission. At the first part of this year when we were having a problem in the western end of the state I went to the Governor and said, Governor, why can't we do anything? He said, I can't do anything because my hands are tied. The members of the commission have been appointed and they run the show and the Governor could not do anything and this, to me, seems like this tightens up this mechanism as we are talking about so that the state has absolute control and when the federal funds go down, we, the state say, no, we are going to keep these programs up and state, we are not going to necessarily fund that A program as we were talking about a minute ago but, counties, you are going to pick up that other ten or fifteen or twelve percent, whatever it is. Now, Senator Wesely and Senator Fowler, if this is not true then get up and say it is not true. Let's say whether we are going to fund those A bills. Up until a couple of years ago we would put bills across over there. Then we wouldn't fund the A bill and people out in the state would think we had done a great thing but we didn't put any money where our mouth was so nothing happened. We do not do that any more. When we put a bill over there we put the A bill right with it and if this Legislature is going to pay a certain amount, then let's say we are going to pay it. If we are going to say, county, we are seeing that you pay the amount, then let's say it here on the floor that we are telling counties, you are going to pay it. If, we, the Legislature, intend to pay this deficit that we are talking about that may be coming from the federal, then let's say it on this floor. Let's make it a part of the record that we are mandating, counties, you are going to pay that or we are saying, no, counties, we the Legislature are going to make up this deficit. Let's say it the way it is, Senators Wesely and Fowler. Let's not namby-pamby and talk about mechanisms and things of this nature which don't really mean much. The last thing, if we do have a 7% lid, if we keep it, where is the county going to get it? If they are going to get it some

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where, let's tell them where they are going to get it but if not, let's say, Legislature, we are going to fund this. County, we are not demanding that you go on a program that you cannot get around because of the lid. Let's face the music the way it is and say it the way it is.

SPEAKER MARVEL: Senator Fowler.

SENATOR FOWLER: Mr. President, members of the Legislature, we have kind of gotten ourselves in the situation that we often do where we try and explain the committee amendments before we explain the bill and for that I apologize for not having explained the bill so that you can see the scope of that and then fit the committee amendments into that. First of all, the funding formula. The 86-14% is not currently mandated. We are not asking counties, the committee, the Health and Welfare Committee is not asking counties to pick up any additional cost. The interim study committee proposed a funding formula for the first time. I think what this Legislature has to realize and what we did not explain is, that there are, and I am sure that you are aware of it, aging services already across the state run by area Agencies on Aging. There is a 9 million dollar program across the state. There is almost no state law governing that program. So when Senator Wesely and Senator Cullan discussed the need for a mechanism, what they are saying is, we are spending 9 million dollars without any sort of legislative control, without any sort of real definition and so that is why Senator Cullan is supporting LB 404, because he sees the need and the Health and Welfare Committee saw the need to write into state law some sort of framework. Now the question then is, what should that framework be and that is the question the interim study committee tried to address. Now when we set up and propose something, we proposed a very high state match and a very low county match. It would have actually probably been a reduction in the amount of money that counties were spending for area programs. The Health and Welfare Committee with these amendments are saying, go back to the current relationship, have the county pick up a little more of the cost as they are now and reduce the amount that the state is picking up. So what the committee amendments are doing is restoring basically the funding ratio that exists now. Now there is nothing in state law that requires any state participation. There is a very small federal requirement. What LB 404 will do and the reason the county officials support LB 404 is for the first time the state will become a full partner in Aging Services and state resources will be available. So for those who are concerned about the ability of counties to conduct these programs, 404 with the committee amendments does not add to the county burden from its current level. Even with the committee amendments it does not add to the county burden.

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What it does do is require that the state be involved in the funding formula. Now the second thing that 404 did is that originally it did mandate services and it did mandate services statewide by 1986. That was taken out of the bill or would be taken out of the bill if the committee amendments are adopted. If the committee amendments are not adopted, 404 will, in fact, be a mandate for state and local government to provide these services across the state by 1986. Senator Cullan and the Health and Welfare Committee scaled back 404 considerably when they struck the section that there shall be services and in so doing there no longer is a mandate in 404 for services statewide by 1986. So with the committee amendments, 404 sets up a structure for a program that is in existence, a program that is now using 9 million dollars in state, local and federal government. It establishes a role for state participation which does not exist now. It does not increase significantly county participation but it does not decrease county participation with the committee amendments and the original bill did, in fact, reduce some of the share to counties. So the committee amendments are, in fact, a scaling back of LB 404. They reduce the fiscal impact both to state and local government and they maintain essentially the current funding relationship between federal dollars and local dollars and do require state participation. Now when the study committee on 404 had hearings across the state and we had five hearings, what we discovered is a major inequity in the State of Nebraska. We found that there were some counties that would have a complete range of community services for the elderly, a community like Lincoln, for example. We would find other counties where there were little or no services and why is that? It is because the state has not moved in as a partner in these programs and LB 404 sets up a mechanism for that partnership. But with the committee amendments it does not mandate or require services by a certain date and so with adoption of the committee amendments LB 404 is scaled back considerably. We would not have statewide services across the state by 1986 and in so doing the committee amendments reduce the 2 million dollar estimated fiscal impact of LB 404. And again, I apologize for not having explained the bill before we discussed the committee amendments and I hope that maybe that clarifies some of the questions that people have. The reason the County Officials Association are supporting LB 404 and did testify for 404 at the hearing is that they see the need for the state to be written into this partnership so that we can provide community services for the elderly. I think that the committee amendments should be adopted. It does not go as far as I had originally hoped 404 would do but I think they are a realistic approach, given the fiscal situation that we

face now at the state, local and federal level and with the committee amendments 404 becomes primarily an agreement, a working out of the relationships between the state and the local governments with regards to these services. It is a partnership that has never been put in writing, never been put in state law and Senator Cullan feels the need to do so. For this reason, with these amendments, he would be supportive of LB 404.

SPEAKER MARVEL: Senator Wesely, do you wish to close on the committee amendments and then we will go to those who wish to speak...go ahead.

SENATOR WESELY: Mr. Speaker, I'm sorry, I don't think this was explained as well as it could be and I apologize for that. I think that a lot of the controversy came from the match and the formula and all that. What we were trying to do is for the first time, with the committee amendments, come up with a match that the state could participate in. Now they don't have any sort of mechanism at all to participate but that does not mean they have to. It just means that they could and there would be a formula there to follow if they wanted to. You should also keep in mind, Senator Kahle asked some questions on local match. One example, I just talked to somebody from an area Agency on Aging. They put in about 34% and the federal money comes in and puts in the rest of the amount and out of that 34% they said that 30% came from the elderly themselves, that they were contributing in a small way to help support some of these programs and that it added up to a substantial amount of the cost. So this match that we talked about isn't really local counties putting in tax dollars as much as it is older people chipping in a little bit to help out with these services and that is all we are talking about. They are already doing it. The system we have now is the money comes in from the federal government. It goes to the state Agency on Aging. They distribute it to the local area Agency on Agings. Then they use that money and supplement it as best they can without any sort of match formula. They put in what they can. The elderly contribute a little bit, maybe some local county money but not too much and then that is essentially the way it goes. Under this system we again will get the federal money as a start. Then the state would decide how much we wanted to mix in and that would account for whatever 75% would be and the locals would contribute the 25% which is essentially about what they are putting in now, maybe more in some cases. So it is not really a greater burden on the counties. I doubt if you will see any increase in local tax support because as I said, the elderly are contributing a major proportion of that local match. All we are doing is putting in that extra element that if the state wants to put in some money they can and that is a choice we will

have to make but that option is not there now and we are just trying to realize the fact that the state does have a responsibility for providing aging services in some ways and that we ought to have the opportunity to consider that possibility. Also keep in mind the committee amendments do eliminate the requirement that all areas of the state have these services and limits the scope of the bill to those that now are in existence.

SPEAKER MARVEL: Senator Wesely was closing on the committee amendments. So the question now is, shall the committee amendments be adopted? All those in favor of that motion vote aye, opposed vote no. You are now voting on the committee amendments. Then we shall go to the bill as a whole, if there is still a whole bill. Have you all voted? Record.

CLERK: 25 ayes, 4 nays, Mr. President, on adoption of the committee amendments.

SPEAKER MARVEL: The motion is carried. The committee amendment is adopted. Okay, Senator Fowler, do you wish to discuss the bill?

SENATOR FOWLER: Mr. President, we have, I guess, kind of discussed the bill but maybe in the reverse order. The interim study that I chaired and that Senator Maresh and Rummery and DeCamp and Marvel and others served on, was created because last year Senator Powers of Omaha introduced a bill, LB 665, that was to try and establish in state law some sort of framework for the provision of what is known as Community Aging Services. We had hearings in five communities. We had it in Norfolk, North Platte, Hastings, Lincoln and Omaha and there were certain things that I think were important points that led to the development and introduction of LB 404. One of the first points and one that we heard repeated over and over again is that some parts of Nebraska have these services and other parts do not. Some communities have a senior diner program, others would like to have them but do not. Some communities have a transportation program for their elderly, others do not and would very much like to. So that there are some thirty counties across the state in which there are not services and sixty in which they are. The services are primarily in urban concentrated areas and the rural areas where there are a large percentage of elderly people and many times do not have the services. So one of the things that we felt should be done with LB 404 is to try and provide an encouragement for services. Now originally the bill mandated services. With the committee amendments that mandate is backed off and basically the extension of services will

depend on the development of area plans. Each area agency would develop a plan as to how it would extend services and maintain its current services. It would then be up to the State Commission on Aging and to the Legislature as to whether or not to fund those increases. If the funds are not provided then they would be prorated back and we would then expect that the counties would not extend the services because they would not have the resources. Point number one that came across is, some parts of Nebraska have services, others do not but would like to have them. Point number two was that we already have, as I say, services and it is about a 9 million dollar program. But if you were to look in state law as to the definition of the Commission on Aging, all you would find is a short description of an advisory group to the Governor that really does not have the sorts of powers that it is now exercising and there is no mention of area agencies or any of the framework that is established to provide services. Therefore, we felt that it was time to set up, as Senator Wesely described it, a mechanism, an agreement, a partnership, a contract between all the participants as to what responsibility is theirs, what responsibility is ours. And so, LB 404 tries to balance the local desires for control with the state desire for quality and to try and balance the funding so that it is an equal partnership. The third point that came across time and time again is that not having these services, not having these services can be more expensive than having the services. That may seem strange in a way but there is testimony given throughout the state that oftentimes the only alternative to these types of services is a nursing home and that twenty-four hour institutional care is far more expensive than partial provision of a meal, of transportation that would enable someone to stay in their own home. There is testimony from a person in Madison, Nebraska, who runs a nursing care facility and she said, I have seen a difference in the people that we have been asked to admit to the nursing homes since congregate meals came to Madison. I no longer have families coming to me saying they have a loved one who has become confused and listless and they do not have a physical reason for placement. In the past those people could no longer stay in the home. Since congregate meals this is not happening. Congregate meals, senior diner programs, made it possible for several people to stay at home longer and to leave our beds at the nursing home for those who really need them and are actually ill. At the Hastings hearing, George Clayton of Grand Island has testified and he has worked at these programs a long time. He indicates that, if we can get these people out and keep them involved in our programs by nutrition on wheels and keep them in their own homes where they belong, why, from a financial standpoint we know we are going to save money.

Now I know that there may be some concern about just how much the costs are versus nursing homes and this. Now I am not saying that people should not be placed in nursing homes. There are many times that that is the only alternative but the third point that we discovered in our hearings is that oftentimes there is no alternative in a community and, therefore, the more expensive choice is made. Now the State of Nebraska increase as far as nursing home costs between '79-'80 and '80-'81, the cost of our share of the nursing home portion of Medicaid was from 13 million this year to almost 17 million next year. That is a 4 million dollar increase in one year because people are in nursing homes. The increase in the cost to the county, and I think Senator Kahle with LB 39 recognizes the cost to a county of Medicaid and nursing home care, is an additional 1.9 million dollars. Through LB 404 we can provide an alternative to keep people in the community in their home at a lower cost. If the state is increasing 7 million this year in nursing home costs and if the counties are increasing 2 million, that is a 9 million dollar increase in one year. If we can keep some of those people in their community for the cost of LB 404, then we have saved money for the state and local government. It is for that reason again, that county officials, conservative local officials came and said, we have seen a difference in our community. People do not have to be placed in nursing homes unnecessarily. It is saving us money. That is why we support these services. That is why we would ask you to join with us in providing. Those are the conclusions of our hearing, those three points. It is because of that that LB 404 was drafted and presented. It has been scaled back from the original concept but even in its current form it does establish something that is long overdue and that is a statement of policy and an explanation of the relationship between the local government, the state government and the federal government as far as provision of these services. Most of the counties that do not have services are outside of the urban areas across the state. 404 is designed to extend those services out to those communities but there no longer is a mandated date so the pace, the control will rest with us and the local areas as to how and when to extend those services. I would be glad to answer any questions on LB 404. I am sure that other members of the study committee will also be willing to discuss what they saw at the hearings across the state.

SPEAKER MARVEL: Senator Maresh, do you wish to speak to the bill?

SENATOR MARESH: Yes, Mr. Speaker. I was a part of this study committee and we found that there were needs that are not met and I think this will carry out the goals that are written in

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the law. We will try to carry these out. The Legislature will try to carry out its goals. I think the attitude of the senior citizens has a lot to do with their well-being. If they are happy they will live longer and they will be able to live in their own homes and they will be able to get these services that are provided at home such as a handy man to repair their, put on their storm windows, repair broken latches and things like that, mow their lawn and any handy man service that needs to be done. Meals on wheels is a very important thing for those to be able to stay in their own homes. I don't think we want to take these people from their homes to a nursing home and drain them from their resources and eventually have them on welfare. I think we can keep them in their homes by providing these necessary services. Home health nurse is a service that I have been interested in for many years for a nurse to come to the home, take blood pressure and make sure that...in other words to practice preventive medicine, to keep these people from getting sick, to catch an illness that is coming and not allow it to get worse and a handibus is real important to these people. I have an aunt that is coming 89 years old and she is able to be on her own in her own home because she has a Handi-Bus come to her door and take her shopping and get her groceries and keep her to being on her own in her own home. I think another service that we need to look at is phone reassurance where there are people that call these senior citizens to check up on them, that they haven't fallen and that they are okay, that they are not down on the floor or something like that. So I think there are a lot of services that could be provided if we only had the means to do it and I think this is the means to establish goals and work towards those goals to be accomplished. So I hope that we can get this bill advanced to E & R and eventually passed. I know it may cost some money but so does welfare when you get these people in the nursing homes and get them drained from their resources. I think this is something we should work to keep them in their own homes so they won't lose their last...their life savings and be eventually on welfare. I hope that we can advance this bill to E & R and eventually pass it. Thank you.

SPEAKER MARVEL: Senator Dworak.

SENATOR DWORAK: Mr. Speaker and colleagues, I listened very closely to the explanation of the committee amendments by Senator Fowler and Senator Wesely and I listened very closely to the explanation of the bill by Senator Fowler and, quite frankly, I really don't know where we are. I have heard positions now that this was going to increase local input but lower local costs. I don't know whether we are increasing that local match which is eventually property tax or

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whether we are, in fact, mandating that the state pick up a larger portion. Now it cannot be both ways. It has to be one way or the other. Either we are going to be dipping into the general fund and sending more money back to local subdivisions of government through the sales and income tax vehicle or we are going to reduce that flow and increase local property tax. Now I still don't know exactly what we are going to do. It almost appears to me like we are creating a system very similar to that that we have created with the regions in serving the mentally retarded and I think that system leaves a lot to be desired. I do not know whether the regions have control or whether the state has control or whether the state should have more control or whether the regions should become more autonomous. I hear Senator Fowler tell me that this bill really is a local control bill and everything depends upon these local-regional groups. They are going to do the planning and what have you. I hear Senator Fowler tell me that the county officials now can support this bill because now they have more authority and more control than they had previously but then I read section 10 of the bill as to the duties of the Commission and the Commission is a state agency. The Commission is appointed by the Governor but the Commission shall study, survey and assess the needs of the state's older population. That is not local control. That is the Commission which is appointed by the Governor and they are the ones that are going to tell us and they are going to tell the local subdivisions of government what those needs are and what needs to be funded. I also see that they are to establish and appoint the membership of a state advisory panel on aging to advise the Commission on the development of the state plan. Well now I would like to know if I am going to appoint an advisor myself to advise me whether I am going to appoint somebody with a neutral, with a free rein to give me advice or whether I am going to appoint somebody to merely rubber stamp what decisions I make. I think we had better take a very close look at this. When you look at the powers and authority we are resting in that agency I cannot see how we are enhancing local control. I cannot see how we can argue, sit here on the floor and argue, that many areas of the state now do not have services and that they are demanding these services. So what we are going to do is enhance local control so they can get those services. They have that control and that authority right now. If, in fact, they want those services, they would implement them. They do not need this vehicle to originate and provide local services. I think what they are really telling us is that we are going to have the state, through the Commission, tell those local districts what services they need and what services they want. We are saying local

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districts, you cannot make this assessment yourself. We will assess this on the state level. I frankly think that 2 million dollars that we are looking at in the fiscal statement is small potatoes. I think if there ever was the traditional, and to use an old worn out bromide, that if there was ever a classic example of a foot in the door situation, this is it. Sure, they have taken away the 1986 mandatory date through the committee amendments. That was probably, and I really can't say exactly other than the fact that I am sure that that was very politically unacceptable to most people in this body, but I think by taking that 1986 date out, the fact that it was in there initially indicates to me that sometime in the future and it could even be sooner than 1986, we are going to come back with a mandatory provision of these services. I think it was a temporary retreat and that that retreat will be short-lived and we will see in the very near future where the mandatory date comes back in and comes back in strong. I also note that this bill came out of committee with a bare scant majority, 4-3. I think some of those senators opposing this particular concept in committee that heard the testimony, that had studied it, have an obligation and a responsibility to tell us on the floor some of the concerns they have about this particular measure. I hear over and over that Senator Cullan is supporting this bill but I do not hear anything from Senator Cullan. I hear over and over that the county officials are supporting this bill. I don't see Jack Mills anywhere around. He has not talked to me. I hear the Governor is neutral on it. I do not see him or any of his staff commenting on it. I am very concerned. I agree with Senator Warner's observation, that it appears the absolute direct opposition to what we did this morning with the Department of Health...

SPEAKER MARVEL: Your time is up.

SENATOR DWORAK: ...where we put power under the Governor and here we seem to be hiding or disguising power.

SPEAKER MARVEL: Senator Nichol.

SENATOR NICHOL: Mr. President, members of the Legislature, just a couple of points in passing. Senator Wesely said a little bit ago that the elderly paid 30%. That figure I doubt. All right, secondly, did you notice again when the bill was explained, nothing was said as to what percentage the state is going to pick up. That has carefully, carefully been avoided. Nobody has said how much this Legislature is going to commit themselves for. We are not saying anything about what we are going to do. Another thing, Senator Maresh pointed out six or seven things that some

people wanted. Senator Maresh, there isn't one thing you pointed out that any county that wants it, can't have now. They can have all of those services the way it is now. I suggest what this Commission on Aging is attempting to do is to promote an empire, oh, that is a terrible word. That is terrible. We should not say that. What they are attempting to do is make it so they can tighter control what happens. We have thirty counties that have asked not to be included in this. Now we are having a mechanism so they can have it. They have always had that mechanism. Don't you think anything else. If they want it, they can have it now and, lastly, this is absolutely contrary to what the Governor has been saying and the Task Force has been saying. Now all of a sudden here is one commission that says, we are different. We know how to run this better than the Governor. We, the commission, we can set the examples. We will tell you how to do it. I think we ought to have another look at this thing.

SPEAKER MARVEL: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, I, too, wish to call to the attention of Senator Maresh, we just passed a bill for handibuses just a few weeks ago to take care of that problem. Senator Fowler says that the rural areas do not have these programs and they want them. I come from a rural area. I have nine counties and we have all of the programs, meals on wheels, home health services because the people got together and told the county board they wanted them. So they put them in and I agree wholeheartedly with Senator Nichol's, under the present situation, if they want them they can get them. It behooves me and I feel good in my heart for Senator Fowler for worrying about us out in the rural areas. He has said that the urban areas, the eastern part of the state is taken care of but he is concerned about us and I thank him for that. It makes me feel warm inside but, Senator Fowler, I would like to say that we will take care of ourselves on this issue because if we want these programs, we will vote them in and we will let the county pay for them. And again, I will say the same thing and I hate to be repetitive of what Senator Nichol says, how much is the state going to pay, when and where? The program is working. We are just trying to increase it. So I am going to have to oppose 404 and I have not received a bundle of mail in favor of it. I received one letter and it was not from my district. It was from the eastern part of the state for some reason. So I won't take any more time but I ask that you do not vote to advance 404. Thank you, Mr. President.

SENATOR NICHOL PRESIDING

SENATOR NICHOL: Senator Vickers.

SENATOR VICKERS: Mr. Chairman and members, I wonder if Senator Fowler, I don't see him here now, if he would respond to a question. There he is. Senator Fowler, in your explanation of the bill, if I caught it correctly, you are saying that if the funds are not available that the department will not be able to, even though the language says they can promulgate rules and regulations regarding the minimum standards and so forth, they would not really be able to force a local area to instigate an aging area that perhaps did not have one right now. Is that correct?

SENATOR FOWLER: Senator Vickers, the process is that an area board and area agency develops an area plan and they submit that plan with the fiscal impact to the State Commission on Aging. The State Commission reviews that against certain criteria and will approve or reject that plan. That process essentially goes on now in the federal planning process that the area has to develop an area plan for the use of the federal dollars. The bill does not really change that relationship and the determination is at the local level as far as the services and the rate. Okay, then the Commission on Aging submits a request to the Legislature and the Governor. It goes through the budget process. If we do not fully fund that request at this level then it is prorated back to the area and the money then is sent to the area. Does that kind of explain....?

SENATOR VICKERS: In other words, before an area...if an area decides they want to instigate a program, it has to be brought up on the local area basis first. Is that correct?

SENATOR FOWLER: Right. It has to be part of a plan, an area plan developed by that area and that is significantly different than some of the other human service programs where there is an automatic matching formula, where they do not have to say exactly how they are going to spend the money. If they raise so much, we send them so much. In 404 we require the areas to think about how they are going to use the money and devise a scheme, a plan, a program that they submit to the state so that you could pick up a document that says, In your district there would be these senior diner programs if we fund the program. So you know what the dollars are supposed to go for. Senator Dworak talks about problems with accountability. 404 recognizes that by saying that before we give you money, you tell us what your plan is. So you would have a specific thing in front of you that could tell you in detail what services would be in your area for that money.

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SENATOR VICKERS: Is 404, Senator Fowler, then, in fact, mirroring the federal guidelines to some degree as far as putting it into Nebraska statutes, some of the guidelines that the federal government requires right now? Is that correct?

SENATOR FOWLER: It is close to the federal process. The budget cycle is different because the state budget cycle is different. It requires a little more advance planning than the current system does. It requires to think a little further ahead than the federal funding formula and I think that is sound.

SENATOR VICKERS: Okay then, if the federal government would withdraw more funds next year or the following year, then we would have to make the decision on the state level as to whether to fund the program called for under 404 and the control over that funding and the control over those agencies as far as minimum standards and so forth are concerned would be with the state agency. Right?

SENATOR FOWLER: We would establish a minimum standards. They would write a plan. We would decide whether to fund it.

SENATOR VICKERS: Okay. Thank you, Senator Fowler. I am going to support LB 404. There are some areas in my district that have done a very good job in providing senior citizens services and I think it is important that those services be provided on the local level with the assistance from the state as much as possible. Having had a father that spent a good many years in a rest home....

SENATOR NICHOL: Half a minute.

SENATOR VICKERS: ...I can tell you it is much cheaper to put a few dollars from the state or the local level into the types of programs that we have out there in some areas of the State of Nebraska right now than it is to force those people to go into a rest home type situation. Plus the fact it is much more...it is much better for the individuals. They feel much better about themselves and I think we should allow our senior citizens to keep as much dignity in their later years as possible. I would support LB 404 for those reasons.

SENATOR NICHOL: Senator Higgins.

SENATOR HIGGINS: Mr. Speaker and members of the Senate, I did not get all my mail together but somebody is misspeaking

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and saying that they are not hearing from anybody, the crying need for this bill. Remember, I am from the 9th Legislative District in Omaha. Here is a postcard. Senator Higgins, it is from Fairbury, Nebraska. Dear Senator, will you please try to support LB 404, et cetera, et cetera. It is signed, Hilda Gaston. Here is one from Alma, Nebraska. Senator Marge Higgins, Dear Madam, please, we elderly people wish the bill LB 404 would pass. Mr. and Mrs. Clarence Wolf. That is Alma, Nebraska. Senator Marge Higgins, in regard to LB 404, I am a senior citizen and a taxpayer. I certainly hope that we will keep our senior buses just as we have in the past. Sincerely, Alma Pohlmann or something, Deshler, Nebraska. These are towns I have never heard of. Oh, I am sorry, I am sorry. Oh, that is in your district. (Noisy background voices.)

SENATOR NICHOL: Let's have some order, please.

SENATOR HIGGINS: Let's see, Douglas, Nebraska. Anybody here represent Douglas, Nebraska? Senator Marge Higgins, I am interested in LB 404. I feel the establishment of a statewide network of community aging services is vital to our senior citizens. Sincerely, Esther McPherson, Mrs. Waldo, from Douglas, Nebraska. Here is a phone call, Paul LeWorthy from Lincoln urges your support on getting LB 404 advanced to the floor. Dear Mrs. Higgins, Marge, we the participants at First Baptist Nutrition site would like for you to know we support your efforts and concern for the elderly. We are especially concerned about the bill, LB 404 for services for the elderly. This is my hometown. This is my district, unsolicited. This is signed by sixty-five signatures. These are all here for you to look at. Here is a card, Senator Marge Higgins. this is from Fairbury, Nebraska. Dear Senator, I would like very much for you to support LB 404 as it is the old way that the aging people of Fairbury or Jefferson County have a way of going to doctors, senior diners, medicine, et cetera, yours truly, Mrs. Hilda Gaston. Add another Mrs. Hilda Gaston, 904 4th Street, Fairbury. Ms. Marge Higgins, Senator, I call your attention to LB 404 and urge you to support this bill. L.J. Motycka, Norfolk, Nebraska. That is Senator Peterson's district. Here is a postcard. Dear Senator, with reference to accomplishing the aims of LB 404, never underestimate the power of a woman as I am looking to you for a strategy and strength. After all, President Reagan is 70 so he should listen to you when you make an appeal for the elderly. This one is signed, Edith Kelly Miller. There is no address. It is someplace in Omaha. I don't know if it is my district. It is just Omaha. Mrs. M. Higgins, please support LB 404, signed Doris Sachs, 2903 Mormon, Omaha. That is nowhere near my district. Here is one from another one of Senator Richard Peterson's constituents, 907 So. 3rd Street,

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Norfolk, Nebraska. To the members of the Public Health and Welfare Committee and it is signed, Edna D. Wiese, asking, please vote for LB 404. Here is one from Harry E. Mead, 506 No. 11th, Norfolk, Nebraska, same thing. LB 404 is of prime importance to the Nebraska Commission on Aging and senior citizens because many of the state's oldest persons do not have aging programs.

SENATOR NICHOL: One minute.

SENATOR HIGGINS: Postcard, I would like to see LB 404 passed, Elizabeth Sharkey, Beatrice, Nebraska. Senator Higgins, this is from Comstock, Nebraska, we ask that you support LB 404. Mr. and Mrs. Merl F. Henderson, Comstock, why are your constituents writing to me?

SENATOR NICHOL: Half a minute.

SENATOR HIGGINS: I am not easy. Here is another one to the Public Health and Welfare from the silver-haired Unicameral and they represent people clear across the state, saying, please vote for LB 404. And another one from the Blue River's area Agency on Aging asking us to support LB 404. I mean, these are not lobbyists. These are your constituents that are writing to me saying, pass LB 404.

SENATOR NICHOL: Time is up.

SENATOR HIGGINS: Thank you, Senator.

SENATOR NICHOL: Senator Fowler.

SENATOR FOWLER: I will wait for closing so someone else can speak.

SENATOR NICHOL: Senator Maresh. Senator Sieck.

SENATOR SIECK: Mr. President, members of the body, I have just a few comments to make here. We initiated a program for meals on wheels in Polk County this past year and a Center for the people of Polk County in Stromsburg which is part of my district. This has been an excellent program and the people themselves are financing the biggest share of their program and they are providing meals on wheels for the total of Polk County and this is the type of program that we are talking about with 404. I do feel in the long run it is going to save money instead of costing money. We may spend 2 million dollars but we may save 10 million dollars down the road and we are helping those people remain in their homes like Senator Vickers mentioned. To me that is very important, to allow them to have the

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services that they could get in the large cities but out there in the country these services are not available today and they would be available with a program of this type. So I heartily endorse 404.

SENATOR NICHOL: Senator Wiitala.

SENATOR WIITALA: Mr. Speaker, I respectfully call for the question.

SENATOR NICHOL: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay.

ASSISTANT CLERK: Senator Nichol voting aye.

SENATOR NICHOL: Have you all voted? We are voting on ceasing debate. Record, please.

CLERK: 26 ayes, 1 nay to cease debate, Mr. President.

SENATOR NICHOL: Debate has ceased. Senator Fowler, did you wish to close, please?

SENATOR FOWLER: Mr. Chairman, I am closing in behalf of all the members of the interim study committee that traveled across the state, Senator Maresh, Senator DeCamp, Senator Rumery, Senator Marvel. We had these hearings and again, I would just reiterate quickly that LB 404 is a followup to what was presented there. And it is that there are services but that we need to write into law the relationships between the different parties in these services. LB 404 pretty well strikes a balance I think between local control and state oversight so that services can meet local needs, but we can have the assurance at the legislative level that we are getting the quality that our money should get. So there is a balance there. As far as the fiscal impact, with the committee amendments the final control on that rests with the Legislature. It is in our hands. There is no mandate of services by a certain date. That has been removed so the funding is up to us. I would reiterate again that just in one year in our state budget that we are considering the amount of money that we are spending on nursing home cost is increasing 4 million and the amount that we expect counties currently to pick up under Medicaid for nursing home costs is going to increase 2 million. So you can see that already several million dollars every year going to nursing home costs. As several senators have pointed out and as was pointed out across the state time and time again, some of those nursing home placements are

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inappropriate. If there was a community alternative, there could be a cheaper alternative and a more fulfilling alternative for those individuals. So LB 404 does, I believe, in the long term reduce that cost while enhancing quality of life. It provides some additional resources, a mechanism for additional resources if the Legislature chooses to provide them to extend services to other parts of the state. For those reasons, those of us on the interim study committee felt that LB 404, either in its original form or now as scaled back by the Public Health and Welfare Committee, 404 is an important step for low cost services for the elderly of Nebraska. I would move that it be advanced.

SENATOR NICHOL: We are voting on the advancement of LB 404. All those in favor vote aye, opposed nay. Have you all voted? We are voting on the advancement of LB 404. Record please.

CLERK: 25 ayes, 11 nays on the motion to advance the bill, Mr. President.

SENATOR NICHOL: The bill is advanced. We will next take up LB 522.

CLERK: Mr. President, if I may right before that, Senator Koch would like to print amendments to LB 562. (See page 1611.)

Your committee on Miscellaneous Subjects gives notice of public hearing for Thursday, May 7.

Mr. President, LB 522 was introduced by Senator Vard Johnson. (Read.) The bill was read on January 20, referred to Public Health and Welfare. The bill was referred to General File. There are committee amendments pending by the Public Health and Welfare Committee, Mr. President.

SENATOR NICHOL: Senator Wesely.

SENATOR WESELY: Thank you, Mr. President, members of the Legislature, I am going to explain the committee amendments to LB 522. They are substantial amendments and I think substantially improve the bill as a result. I will go through them one by one. You can look on your committee statement again to find exactly what I am referring to but I will explain them in detail as I go through them. First off, we change the effective date of the proposal from July 1 of 1982 to July 1 of 1983. This is to allow for a greater deal of time to effectuate the change. What we are talking about with this legislation is going from a county welfare system in conjunction with the state to a total state system so that the counties no longer would have a joint role with the state. The state would take over that

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LB 35, 213, 257, 284,
384, 404

PRESIDENT LUEDTKE PRESIDING

REVEREND ELIZABETH BEAMS: (Prayer offered.)

PRESIDENT: Roll call. While we are waiting for you to register your presence, the Chair would like to introduce from Senator Dworak's District 19 seventh and eighth grade students and ten adults from District 84, Platte County, Platte Center, Nebraska, Mrs. Esther Mohnsen, teacher. They are up here in the North balcony. Would you welcome the seventh and eighth graders from Platte Center. Welcome to your Legislature. Would all of you who are here register your presence so we can start the day, please? Record the presence, Mr. Clerk.

CLERK: There is a quorum present, Mr. President.

PRESIDENT: A quorum being present, are there any corrections to the Journal.

CLERK: I have no corrections, Mr. President.

PRESIDENT: All right, the Journal will stand as published. Any messages, reports or announcements.

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 404 and recommend that same be placed on Select File with amendments; LB 213 Select file with amendments. (Signed) Senator Kilgarin, Chair.

Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 35 and find the same correctly engrossed; 257 correctly engrossed; 284 correctly reengrossed; 384 correctly engrossed. (Signed) Senator Kilgarin, Chair.

Mr. President, I have leases supplied to us from the Department of Administrative Services, State Building Division, pursuant to statutory provision. They will be on file in my office.

And finally, Mr. President, LR 62 and 65 are ready for your signature.

PRESIDENT: While the Legislature is in session and capable of doing business, I propose to sign and I do sign LR 62 and LR 65. We are ready then for agenda item #4 on gubernatorial appointments, ready for the first committee, Miscellaneous Subjects, and as I understand, Senator Barrett, you

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because on General File there had been a question which I indicated that at that time I would answer. Now Senator Haberman asked me....

SENATOR CLARK: I had to do it this way because there was nothing before the House to talk on.

SENATOR LANDIS: This is....the question that was asked of me by Senator Haberman was the expected cost of an involuntary commitment under this law and how much counties could be expected to absorb by the way of costs. Terry Ryan in the legislative fiscal analyst staff has given me information based on the cost estimates of the Douglas County officials and previous commitments that they have gone through. Their expectation is that the cost to the county would be roughly \$675, and the cost to the state roughly \$450. This is based on the cost of expert witnesses, the cost of bailiffs, the cost of clerical staff, county attorney time and the like. Finally, I should just read a paragraph that says, "According to the Department of Public Institutions, in the last two years five individuals were committed by the courts to the Beatrice State Development Center." That is five in two years. I had indicated twenty-five in five years. So this indicates the procedure is not used often. Assuming that this is an average, the annual cost to all counties for the current commitment process would be \$1,688 per year, and the cost to the state \$1,125 per year. The total fiscal impact then divided between state and county would be roughly \$2,700...\$800.

SENATOR CLARK: The question is the advancement of 499. All those in favor say aye. Opposed nay. The bill is advanced. LB 404.

CLERK: Mr. President, LB 404, there are E & R amendments to the bill.

SENATOR CLARK: E & R amendments?

CLERK: Yes, sir.

SENATOR CLARK: Go ahead.

SENATOR KILGARIN: I move we adopt the E & R amendments to LB 404.

SENATOR CLARK: You heard the motion. All those in favor say aye. Opposed no. The amendments are adopted. Anything further on the bill?

CLERK: Yes, sir. Mr. President, Senator Warner now moves

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to amend the bill. It is found on page 1614 of the Journal, Request 2347.

SENATOR CLARK: Whose....Senator Warner.

SENATOR WARNER: Mr. President and members of the Legislature, this amendment proposes an amendment which I inquired at the General File discussion whether or not the committee had considered it. What the proposed amendment does is places the Commission in the same role as we enacted legislation affecting the Department of Health, which the Director of the agency would become an appointment by the Governor with the Commission being advisory in nature. I offered the amendment prior because prior to the session I had come to the conclusion that it was probably unlikely that very many Commissions as was proposed in some legislation later withdrawn would be enacted. But it seemed to me that in the future at least that it perhaps was well to maintain a direct line of authority to the elected officials as Commissions are established or as Commissions have major changes made in some of their responsibilities. So what the amendment does is quite long but it does one thing and one thing only despite its length, and that is that it places this agency in the similar role to what was done as far as the organization of the agency is concerned with the Department of Health and the Director would be appointed directly then and the Commission would be advisory. And it is offered purely as a policy issue which seems to me that is a legitimate issue to address and that this perhaps is the more desirable route to go not only in this Commission but any others that are formed hereafter or for that matter any that have significant changes made in their responsibilities or expansion of their responsibilities. I think the average citizen looks to the Governor for complaints and...the office of Governor...and it seems to me that that responsibility for the operation of a variety of these agencies ought to be placed there. This amendment will result in that effect. There will be a second amendment if this one is adopted because of an amendment that was made on the floor to the bill on General File to make that portion consistent with what I am offering now, but other than that there is no need for any other amendment that I am aware of.

SENATOR CLARK: There is an amendment on the desk to the Warner amendment.

CLERK: Mr. President, Senator Cullan will move to amend the Warner amendment found on page 1614, Section 7, page 7, line 21...(Read the Cullan amendment as found on page 1888 of the Legislative Journal.)

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SENATOR CLARK: Senator Cullan.

SENATOR CULLAN: Mr. President, I am not sure that this amendment is technically correct but I would assure that the bill drafter and Enrollment and Review can clean up the technical part of it if that is appropriate. The purpose of this amendment is to make the effective date of the transition from the Commission to a department in January of 1983. First of all, let me say that I support Senator Warner's philosophy a hundred percent. I do agree that the Commission on Aging should be responsible directly to the Governor, and I do support that philosophy. The Public Health and Welfare Committee did consider a bill that would have done nothing but make the Director of the Commission on Aging appointed by the Governor and we did reject that bill because the Commission is....the way that the Aging services are delivered in the state is now on a regional basis and we want to I guess at this point in time, at least pending a study of the Public Health and Welfare Committee, continue to deliver those services in that fashion. There have been, and Senator Nichol and Senator Clark and others can tell you that there have been tremendous problems with the delivery of Aging services throughout the State of Nebraska in recent times, and so we are trying through LB 404 to tighten up the relationship between the Commission, the state and between those areas. And there are many restrictions upon the way those areas operate in LB 404 and I think we are very much clarifying the state's authority in this regard. Back to the amendment, to the Warner amendment, however, the reason that I am proposing that this transition occur in January of 1983 is that that is when there, of course, is a potential change of administration. The gubernatorial elections are coming up. I am, of course, confident that the Thone administration will be reinstated, but I think it is more appropriate to make that change at the beginning of a four-year term for the Governor rather than now. The additional reason that we did not make that change with the Department of Health is that the Governor indicated he wanted to retain the current administration with the Department of Health. But we could get in a position where we would have two Directors in a very short period of time and that would not be good for the delivery of Aging services. And so I think this amendment is appropriate for that reason. This amendment is similar to one that Senator Vard Johnson put on LB 522. I think the philosophy is a good one, and I think it will make for a much smoother transition from the current system to the proposed system. And so for that reason I would ask you to adopt this amendment. I think Senator Warner's basic amendment is a good one, and I support

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the philosophy of having these individuals responsible to the Governor. For that reason I would ask you to adopt my amendment to the Warner amendment and then adopt the Warner amendment in its entirety.

SENATOR CLARK: Senator Marsh.

SENATOR MARSH: Mr. Speaker and members of the Legislature, Senator Cullan, was this heard in public hearing, either your amendment to Senator Warner's, or Senator Warner's amendment?

SENATOR CULLAN: Excuse me. Yes, Senator Marsh, LB...I believe the number was 295 sponsored by Senator Nichol would have placed the Commission on Aging under the auspices of the Governor's office. That bill did have a public hearing and the committee rejected that bill, but for many other reasons. So the concept of placing the Department of Aging...or the Commission on Aging under the Governor was heard before the Public Health and Welfare Committee.

SENATOR MARSH: We have just 13 days remaining. Thank you very much, Senator Cullan. We have just 13 days remaining in this legislative session. When this aspect was not heard on LB 404, I have real hesitancy without passing on the value of the proposed amendment. If it can be postponed until 1983, I feel it would be much better to bring that as a separate bill next year, have it heard where the public has an opportunity to respond to this element rather than slide it in at the very last minute. I do not feel this is the kind of amendment we should be asking at the Select File stage of debate. I am not in support of the amendment to the amendment, but I will be voting for the amendment to the amendment for, at least, there could be some discussion of it next year. With the proposed amendment which Senator Warner presented for us, it would not go into effect in 1983 but rather sooner. So even though I am not in favor of Senator Cullan's amendment, I will be voting for it. I will not be voting for Senator Warner's amendment.

SENATOR CLARK: Senator Haberman.

SENATOR HABERMAN: Mr. President and members of the Legislature, I am opposing Senator Cullan's amendment as I don't believe his reasoning holds water, and if it does he would have used the same reasoning on the Department of Health. He would have wanted to wait until January of 1983 for that also. This doesn't even fit in with the fiscal cycle of the code agencies or the Department of

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Aging. If we feel that this should be a code agency and under the Governor, let's do it, let's do it now. I am sure that there will not be any wholesale wipeout of any employees or any big changes or anything like this, as nobody is vindictive. Any Governor is not going to see that the aged are not taken care of in the best manner. They are going to look out after them politically if nothing else, so we don't have to fear who is the Governor or who is the legislators. The Commission is going to stay and it is going to be advisory. So I see no need to wait until January of '83, and I say if we are going to do this which I feel we should do, I support the Warner amendment. I ask you to vote against delaying it for whatever reason. Thank you, Mr. President.

SENATOR CLARK: Senator Fowler.

SENATOR FOWLER: Mr. President and members of the Legislature, I am in similar position to Senator Marsh. I will support Senator Cullan's amendment as Chairman of the Health and Welfare Committee, his amendment to Senator Warner's amendment to delay this transition from a Commission to an advisory committee, at least one fiscal year and in Senator Cullan's amendment a little longer. In the interim study that we had that led to LB 404 one of the facts that came out was that there is a good deal of satisfaction with the Commission and the Commissioners. A lot of senior citizens stepped forward and testified on behalf of the people who had been appointed by Governor Exxon and Governor Thone to the Commission on Aging, and the Commission on Aging is existing in statutes already but its powers are limited and, in fact, what the Commission is doing due to the arrival of federal money is far more than what the statute originally called for, and that is one reason 404 was brought in. Now if a transition should be made from the Commission form to something like a code agency, I think that there should be a transition time to do that. For that reason I find that Senator Cullan's proposal which, as I understand it and I hope Senator Cullan clarifies this, it would put 404 into effect at the normal operative date. But the changes that Senator Warner proposes to move to a committee, an advisory committee from the appointed Commission, now the membership would be the same but the powers certainly would be different, and the fact this would be a code agency it would not take effect until January, 1983. The rest of 404 would go into effect, the planning process, the involvement of the local area agencies on Aging in terms of developing an area plan would begin on the normal operative date. I would support Senator Cullan's amendment. I think that

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the testimony that we heard in the interim study that we had justifies a certain delay in this area, and I think that Senator Cullan and the Health and Welfare Committee can use this opportunity to take a second look at the issue and look at the change. But if there needs to be a date for a transition, I would suggest that rather than some date this coming September with the operative date of the bill that we delay it as Senator Cullan suggests. So I support Senator Cullan's amendment to the Warner amendment.

SENATOR CLARK: Senator Carsten. Senator Rumery, on the Cullan amendment. Senator Nichol, on the Cullan amendment.

SENATOR NICHOL: Mr. Chairman and members of the Legislature, this was at a hearing and I am opposed to the Cullan amendment and for the Warner amendment. The reason for it is simple. When this thing comes to a hearing, it is easy for the Commission on Aging members to fan out and get a few members of the Aging to come flying in and say, oh, we are going to lose our Aging programs. We don't want to lose our Aging program. It isn't explained to them what really happens. Last fall we had a problem out in the Panhandle, couldn't get solved. What was happening? Weren't paying the bills. I think I mentioned it on the floor. Couldn't get the bills paid. Raised heck with the Commission on Aging boss man. No solution. Raised heck with the Governor. He said he can't do anything, it's in the hands of the Commission. The Commissioners wouldn't listen to you. There wasn't anybody to put your finger on, you couldn't. And I submit to you that within the next few days you are going to get in a lot of lobbying from the elderly suggesting that you support the Cullan amendment and oppose the Warner amendment. It is easy for those in power to foist it onto the rest of us whether it is true or not. And I kind of feel sorry for the aging sitting out there believing what they are fed. So I think it is high time that we get that Director under the direct supervision of the Governor so we can at least put our finger on somebody to say, let's get something done rather than sitting here unable to be doing anything. I oppose the Cullan amendment.

SENATOR CLARK: Senator Labedz.

SENATOR LABEDZ: Thank you, Mr. Chairman. I support Senator Cullan's amendment. In the past, oh I would say four or five days, I have spoken to a lot of the elderly and several people from the nutrition sites and they are very anxious for LB 404 to be advanced and be passed this session.

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They are also opposed at this time, and I would have to talk to them about 1983, but I know at the time I talked to them they were opposed with the Commission on Aging going directly under the Governor. So I would oppose Senator Warner's amendment if we don't get the date of 1983, which is Senator Cullan's amendment. And I urge the members of the body to adopt the amendment and make it effective in 1983 rather immediately because as Senator Nichol says, you are going to get a lot of mail, a lot of calls and whatnot because they are expecting LB 404 to be advanced without any amendments and without being put under the direction of the Governor. Thank you.

SENATOR CLARK: Senator Warner, did you want to talk on the Cullan amendment?

SENATOR WARNER: Mr. President, just to state that the suggestion was made to me and I gave some consideration to it. I finally decided that if the change, in fact, is going to be made, then it just as well be done in the bill and done at the effective date ninety days after the session. It would be true that we would have to add an A bill to make that transition take place. At the time there would be no additional funding, just taking the funding that is in the appropriation bill now which by that time would have been signed or vetoed, whatever the Governor was going to do with it for that agency and the A bill would merely reflect transition properly. But I think that if, as I understand the bill, that there will be the development of some state plan for the aging, some other responsibilities that could well be for naught or at least certainly would be very difficult to have any firm action if the possibility was there that the responsibility for that agency's operation was going to change at some future few months. I assume it would be argued over again as well. And again my sole reason for offering it is those who have strongly taken the position of direct line responsibility ought to be in existence at the level of state government, the Governor ought to be the one placed...the office of Governor should be placed in that responsible position, then it seems to me that if that policy is right in 1983, there is every reason to presume it is right in 1982 and I would think it ought to be right in 1981 as well. So I would move...I would suggest the Cullan amendment not be adopted.

SENATOR CLARK: Senator Cullan, do you want to close?

SENATOR CULLAN: Mr. President and members of the Legislature, I would simply like to make it clear to the membership of the Legislature exactly what the amendment is. As

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Senator Fowler did say, what the amendment does is delays the date of the transition from a Commission on Aging to a Department of Aging to January 15, 1983. The effective date of the bill is still the same and that would be, I believe, sometime in September. The reason for the change is that there is, of course, the potential for a change of administrations in January of 1983 and it would be unfortunate and disruptive to the programs if we would have two or possibly even three directors appointed in a very short period of time. And for that reason I think that the philosophy that Senator Warner is trying to accomplish will be accomplished in 1983 but we will ensure that the program will not be disrupted in the meantime by the political process. For that reason I do urge you to support my amendment to the Warner amendment. I am very pleased that Senator Warner is coming up with the philosophy that was embodied in 249 and that philosophy is attaching to other agencies but I think it would be simply a smoother transition if we adopt the 1983 effective date. Thank you.

SENATOR CLARK: The question is the adoption of the Culllan amendment. All those in favor vote aye. All those opposed vote nay. It takes 25 votes.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Once more, have you all voted? Record the vote.

CLERK: 16 ayes, 23 nays, Mr. President.

SENATOR CLARK: The amendment failed. Now we are on Senator Warner's amendment. Would you clear the board, please. We are on Senator Warner's amendment. Senator Carsten, did you want to talk on Senator Warner's?

SENATOR CARSTEN: Mr. President and members, I will only ask Senator Warner a question if I may and see if my interpretation of his amendment is correct. Senator Warner, under your amendment do I interpret that to mean there is a performance and audit review the same as we do with other agencies by your committee in the appropriation process? Is that correct?

SENATOR WARNER: Well, that is correct, Senator Carsten, but that would be true with or without this amendment. This amendment does not in any way affect the appropriation review process of the Legislature.

SENATOR CARSTEN: All right. Okay, the performance and audit

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then would still go on regardless whether your amendment is there or not. Thank you.

SENATOR CLARK: Senator Fowler.

SENATOR FOWLER: Mr. President, I would have to oppose the Warner amendment since the Cullan amendment was rejected. I think that the transition that Senator Warner calls for in 404 is too abrupt and too soon. Again I would reiterate in the hearings that we had across the state in Omaha, in Lincoln, in Norfolk, in North Platte and Hastings, several concerns were expressed, a desire for a writing into the statute of a current structure for delivery of Aging services, a desire for greater state participation and involvement in community Aging services. But there was not expressed at those hearings the desire for the Aging services to fall as a code agency. I think Senator Cullan has indicated that the Health and Welfare Committee is going to look at the regional structure and the regional system with regards to human services over the next interim. I think that Senator Cullan and the Health and Welfare Committee should be given a chance to take a look and see if there is a demand for the Warner amendment. But based on the interim study that I chaired, that I participated in, based on the testimony that was given at the hearings, particularly in Omaha, there was quite a large turnout when there had been a rumor generated I think in response to a possible recommendation of the Governor's Task Force. There was a good deal of people who turned out and said they did not want Welfare to come under direct control of the Governor. They did not want the Aging services to come under the direct control of the Governor. And I think that that sentiment was strongly expressed there in Omaha and at no place can I recall that there was a strong demand for the change that Senator Warner proposes. I was willing to give Senator Cullan the opportunity with his amendment to study this question further and to look at the structure. But I do think that Senator Warner's amendment is premature and I think that 404 should be left in its current form without the Warner amendment.

SENATOR CLARK: Senator Haberman.

SENATOR HABERMAN: Mr. President and members of the Legislature, I rise to support the Warner amendment, and I would like to call to the attention of the body that with the adoption of the Warner amendment you have one person that is very sensitive to the wishes of the Legislature and to the wishes of the voters that you can go to, and the buck

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can't be passed. You won't be going to a bureaucracy. You will be going to one person, the Governor of the state be he Democrat or Republican. He is going to be responsible as to what happens to the Commission of the Aging. Are they being taken care of? Is it growing? Is it being run properly? The Silverhaired Unicameral and everybody else will have one person to go to and one person responsible and I feel that this is very important. It takes the bureaucracy end of it clear out. We can still have our study on the directors and on the Senior Citizens Board. My input from my senior citizens has been that it's like a flock of quail. We really are just kind of floundering around and be he....and we would like to have somebody that is on top and is responsible. Before I say, please vote for it, I would like to make a correction that this person who is directly responsible be he or she is the Governor of the State of Nebraska and I ask you to support the amendment, be it he or she. Thank you very much.

SENATOR CLARK: No displays from now on, Senator Haberman.
Senator Koch.

SENATOR KOCH: Mr. Chairman and members of the body, I get somewhat discouraged by our actions because we have had very few problems with this Commission. We have had maybe one isolated incident that Senator Nichol talked about. But why do we want to take this drastic action and suddenly believe that by a patronage job that we are going to get a better director, that the Commission that serves the people we are talking about will be any more effective. Occasionally as I watch politics I am rather amused by the fact that each party has its patronage committee, so when these nice cushy jobs come around that you reward certain people for good and faithful service rather than for their ability to administer a program that this body appropriates money for the purpose of carrying out the role and mission. If this body is serious about this, then I think it properly should go through a public hearing and then we make a determination. But until that time, I am not willing to say that the Governor can solve all the problems simply because he can appoint people to take over the Executive Director's position when the Commission might hire an individual who has demonstrated the qualifications. It always reminds me of an issue I had before me once on a hearing. It was on a parole board member. Our law says that before you appoint a member to the State Parole Board, you shall be of judicious temperament. That means that almost anyone walking the streets of Nebraska could be a member of the Parole Board and yet we all know that person should have the

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qualifications of equal to in many cases of that of a judge because they are indeed judging on the continued incarceration of an individual or the freedom of an individual. That is their knowledge and I think it is appropriate here, and simply because we have had an isolated case of where possibly an agency wasn't as efficient as it should be, I don't think that we should panic and suddenly say that we are going to solve the problem forever by this action. And as much as I dislike going against my good friend, Senator Warner, I think that too often we are going to place too much power on the Executive and then oftentimes we will sit around and wonder why. I think presently the system is working and it should be kept in that position until we have further evidence that there is reason to change. I oppose the Warner amendment.

SENATOR CLARK: Senator Sieck.

SENATOR SIECK: Mr. President and members of the body, I also am going to oppose the Warner amendment. I do feel the Commission on Aging is working and I know by experience in my own district. We finally got the County Commissioners to agree and they are wholeheartedly supporting the agency in the Polk County area, and I think this is the way it should work. And this is just a....the Commission on Aging is just in its infancy, and I feel that let us try it out, let's see whether they can do the job, and I am sure that they can. And if you get it in the political field, and this is what is very dangerous as far as I am concerned. Just because there was a problem in a certain area of the state, this problem could have been whether it would have been with the Governor or whether it would not. I think that is immaterial. I feel the agency is working and let's get with it and let it work. Thank you.

SENATOR CLARK: Senator Lamb.

SENATOR LAMB: Mr. President and members, I rise to support the Warner amendment. I will admit that I have not had any problems with this agency but some other agencies in our regional concept seems to leave something to be desired in that nobody really has control. We have had problems in the Mental Retardation regions. You really don't have a final authority. You have 21 board members, and that is a difficult situation to establish responsibility. I think Senator Warner's amendment is an improvement to the bill. I hope you adopt it.

SENATOR CLARK: Senator Warner, do you wish to close?

SENATOR WARNER: Mr. President, again, I would agree with

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those who have said that there was no demand for change. I am not aware of a demand for change and that was not the reason that I offered it. And I can understand the concern that people may develop because they are concerned that any change somehow or other might change programs. Well I don't think either of those concerns are necessary. I offered the amendment again for the sole reason as a matter of state policy that some elected official probably ought to be responsible for a program that is as significant as the programs are for the Aging in the State of Nebraska. And that proper office to be responsible if the service is good or bad, that proper responsibility ought to be with the office of elected Governor. There is no other intent or reason for the amendment other than that very broad policy issue of organization, the same which the majority of this body felt was appropriate for another agency of government. And I offer it at this point because there are significant changes for a potential expansion here when you look at the federal funding changing that may come down the line which is again going to require state government to look at this whole area of service to a significant group of people in our state and again I think that responsibility ought to be placed with the elected officials which in this case would be the Legislature and the Governor, both in terms of programs and for funding. So I would ask that the amendment be adopted.

SENATOR CLARK: The question before the House is the adoption of the Warner amendment. All those in favor vote aye, opposed nay.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted on the Warner amendment? Have you all voted? Have you all voted? Senator Warner.

SENATOR WARNER: How many are absent, Mr. President?

SENATOR CLARK: Four, I think. Yes, four.

SENATOR WARNER: Well, I guess I would have to ask for a Call of the House and for a vote then.

SENATOR CLARK: Call of the House has been requested.

SENATOR WARNER: I'll ask for a roll call vote and be done with it maybe, or call ins for a couple minutes.

SENATOR CLARK: All those in favor of a Call of the House vote aye, opposed nay. Record the vote.

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CLERK: 18 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All legislators will return to their seats and check in, please. Senator Warner, do you want to accept call ins?

CLERK: Senator Hefner voting yes.

SENATOR CLARK: Announce the vote.

CLERK: 25 ayes, 13 nays, Mr. President.

SENATOR CLARK: The motion is adopted. Is there anything else on the bill?

CLERK: Mr. President, Senator Warner has a second amendment to the bill.

SENATOR CLARK: Senator Warner.

SENATOR WARNER: Mr. President, as I indicated in the opening that there was a second amendment which amended an amendment that was adopted on the floor in General File which was not included in the original one I filed with the Clerk, and all this one does is correctly amends what was done on General File to also reflect the provisions contained in the first amendment. So I would move its adoption. It would make it consistent then.

SENATOR CLARK: Is there any discussion on the Warner amendment. If not, all those in favor vote aye. All those opposed vote nay.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Record the vote.

CLERK: 32 ayes, 0 nays, Mr. President, on adoption of the second Warner amendment.

SENATOR CLARK: The motion is adopted. Anything else on the bill?

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

SENATOR CLARK: Senator Kilgarin, do you want to move the bill?

SENATOR KILGARIN: I move we advance LB 404 to E & R for Engrossment.

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LR 171 - 179
LB 3, 12, 257A, 404

SENATOR CLARK: The motion is to advance 404. All those in favor say aye. All those opposed. The bill is advanced. The Clerk wants to read some things in.

CLERK: Mr. President, study resolutions. LR 171 by Senators Schmit, Wiitala, Wagner, Maresh, Remmers, calls for a study to provide a review of the effects of a corporate structure of farm ownership and the economic and sociological impacts of such a structure on the surrounding community, the agricultural sector, and the general economy of the state. LR 172 offered by the Ag and Environment Committee. The purpose and intent of the resolution is to provide for an interim study of the practices and operations of various Natural Resources Districts and their impacts and inter-relationships with agricultural and environmental issues in the state. LR 173 by Senators Maresh and Kahle, the purpose being to provide for an interim study of the cases and effects of the rising incidence of pseudorabies among swine in Nebraska. LR 174 by Senator Newell calls for a study of the state and federal highway systems and the effect of these systems on the growth and development of the metropolitan areas in the state. LR 175 by Senator Newell, the purpose being to study the problem of deteriorated areas of Nebraska cities and villages and to analyze the sufficiency of our present community development laws. LR 176 by Senator Newell. The purpose of the resolution is to study the effect of the present tax structure on community development and of tax incentives to encourage redevelopment of substandard areas in our cities and villages. LR 177 offered by Senator Newell, the purpose being to study the effects on the tax base and revenue collection in nearby incorporated municipalities of Sanitary and Improvement Districts bondings and assessments. LR 178 by the Public Works Committee. The purpose of the study is to examine the issues related to the management, conservation, and beneficial uses of Nebraska's water resources. LR 179 by Senator Beutler, the purpose being to consider soil erosion as it relates to water quality problems. (See pages 1889 through 1894 of the Legislative Journal.)

Mr. President, new A bill, LB 257A, introduced by Senator Fowler. (Read title to LB 257A for the first time as found on page 1895 of the Legislative Journal.)

Mr. President, Senator Wiitala would like to print amendments to LB 3 in the Legislative Journal. (See page 1895 of the Journal.) That is all that I have.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Okay, the next bill is LB 12.

May 14, 1981

LR 182, 183
LB 3, 273, 346, 404, 46

Mr. President, Senator Beutler would like to add his name as cointroducer to Request 2392 as an amendment to LB 3.

Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 273 and find the same correctly engrossed; 346, correctly engrossed; 404, correctly engrossed. And I have an Attorney General's Opinion addressed to Senator Haberman regarding LB 46. (See pages 2030 through 2033 of the Legislative Journal.)

Mr. President, two new resolutions. LR 182 offered by Senator Cope and 46 other members. (Read LR 182 as found on page 2034 of the Legislative Journal.) Mr. President, LB 183 introduced by Senators Higgins, Labedz and the membership. (Read LR 183 as found on page 2034 and 2035 of the Legislative Journal.)

SPEAKER MARVEL: Now is she....will Mrs. DeCamp please come forward so we can wish her the best. There you are.

MRS. DeCAMP: I thank you very much.

SPEAKER MARVEL: Your speeches are a little shorter than your husband's. Senator Haberman, would you like to recess? Yes, he has already recessed....will you tell him to recess us until 1:30.

SENATOR HABERMAN: I move we recess until 1:30, Mr. President.

SPEAKER MARVEL: All those in favor of that motion say aye. Opposed no. The motion is carried. We are recessed until 1:30.

Edited by:

Marilyn J. Zank
Marilyn J. Zank

May 18, 1981

LR 185
LB 70, 99, 134, 146, 250,
404, 466, 497, 543.

SENATOR SCHMIT: Mr. President, I move the bill be readvanced to Final Reading.

PRESIDENT: Motion to readvance to Final Reading. All those in favor signify by saying aye. Opposed nay. The bill is advanced to Final Reading and we are on Final Reading on LB 543, Mr. Clerk.

CLERK: (Read LB 543 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 543 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on page 2071 of the Legislative Journal.) 40 ayes, 4 nays, 5 present and not voting, Mr. President.

PRESIDENT: LB 543 passes with the emergency clause attached. The Chair recognizes Speaker Marvel since it's noon, high noon.

SPEAKER MARVEL: Well, I have got some figures here but I will wait until after lunch and I move that we recess until about 1:20.

PRESIDENT: All right. The Clerk has some matters to read in real quickly and then I will call that motion.

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports that they have carefully examined and engrossed LB 466 and find the same correctly engrossed. (See page 2072 of the Legislative Journal.)

Communication from the Governor addressed to the Clerk regarding LB 70, 99, 146 and 250. (See page 2072 of the Legislative Journal.)

Mr. President, I have a Reference Report referring a gubernatorial appointment to the Public Health and Welfare Committee for confirmation hearing. (See page 2071 of the Legislative Journal.)

Mr. President, new resolution, LR 185, offered by the Speaker. (Read LR 185 as found on page 2073 of the Legislative Journal.)

Mr. President, Senator DeCamp would like to print amendments to LB 497; Senator DeCamp to 134; and Senator Warner to 404. (See pages 2073 and 2074 of the Journal.) That is all that I have.

May 21, 1981

LR 181, 182, 185, 186, 187
LB 12, 273, 404

SPEAKER MARVEL PRESIDING

REV. MYRON J. PLESKAC: (Prayer offered.)

SENATOR NICHOL PRESIDING

SENATOR NICHOL: Would you record in please so we can get on with the show? Record please.

CLERK: There is a quorum present, Mr. President.

SENATOR NICHOL: Let's go to item #3 please.

CLERK: Mr. President, I have a Rules Committee report offered by Senator Wesely for the Legislature's consideration.

Mr. President, Senator Schmit would like to print amendments to LB 404.

Mr. President, I have a message from the Governor. (Read. See pages 2166 and 2167, Legislative Journal. Re: LB 12.)

SENATOR NICHOL: We are ready for #4 and we will go into Final Reading, LB 273 with the emergency clause.

CLERK: Mr. President, Legislative Resolutions 181, 182, 185, 186 and 187 are ready for your signature.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business, I am about to sign and do sign LR 181, LR 182, LR 185, LR 187. Okay we are ready for item #4, Final Reading. The Clerk will read LB 273 with the emergency clause attached.

CLERK: Mr. President, I have a motion on the desk. Mr. President, Senator Vickers moves to return LB 273 to Select File for specific amendment. The amendment reads as follows: (Read Vickers amendment found on page 2167, Legislative Journal.)

SPEAKER MARVEL: Senator Vickers.

SENATOR VICKERS: Yes, would you read that again, Pat. I want to make sure I have got the right lines here.

CLERK: (Reread amendment.)

May 29, 1981

LB 318, 321, 344, 389, 389A, 401

PRESIDENT: LB 321 passes without the emergency clause attached. Messages may be read in at this time.

CLERK: Mr. President, I have two veto messages from the Governor. (Read veto messages from the Governor Re. LB 389A and 389. See pages 2403-2404 of the Legislative Journal.)

Mr. President, I have a second veto message addressed to Dear Mr. President and Senators: (Read. Re. LB 318.)

Mr. President, I have explanation of vote from Senator Howard Peterson.

Mr. President, Senator Wesely asks unanimous consent to add his name to LB 404 as cointroducer.

PRESIDENT: No objections, so ordered.

CLERK: That is all that I have, Mr. President.

PRESIDENT: All right, we are ready then for the next bill on Final Reading, is LB 344, Mr. Clerk. We might ask... Speaker Marvel, there have been some questions about when we want to break for lunch. Do you wish to give some indication so that they know we are?

SPEAKER MARVEL: I think it would be a good idea if we broke at noon and then recess until one-thirty. The way we are going this morning, we are going to have trouble meeting the deadline.

PRESIDENT: All right, thank you.

SPEAKER MARVEL: The deadline when we get out of here. When you get whatever business you have I would appreciate it if you would recognize Senator Newell. He has a proposal that he wants to make.

PRESIDENT: Senator Newell, do you want to...? What is this? Senator Newell, we recognize you for whatever purpose. Okay, go ahead, Senator Newell.

SENATOR NEWELL: Mr. President, members of the Legislature, the Omaha delegation has asked me to present this plaque to Senator Fitzgerald for his tremendous sacrifice, primarily giving up his legislative district, which is important so that I could still serve in the Legislature next year and, very important as you can well understand. Senator Fitzgerald, if you would come forward the delegation would like to present you this for your hard work and your sacrifice. (Applause.)

April 13, 1982

LB 404

SENATOR BEUTLER: Isn't there another motion to reconsider up there?

SENATOR CLARK: No, she has withdrawn her motion.

SENATOR BEUTLER: I'm sorry. I thought there was another motion up there.

SENATOR CLARK: There is nothing before us now that I know of. She has withdrawn her motion on 242. We are ready for LB 404.

CLERK: Mr. President, if I may right before that, I have two Attorney General's opinions, one to Senator Nichol and one to Senator Chambers. Both of those will be inserted in the Legislative Journal. (See pages 1880-1881 of the Legislative Journal.)

Mr. President, with respect to LB 404 I have...well I have a series of amendments, Mr. President. Senator Warner, you had an amendment on page 2073 of last year's Journal. Do you want to withdraw that? Okay. Mr. President, Senator Schmit has an amendment on page 2165. That is from last year.

SENATOR CLARK: Is Senator Schmit in the room?

CLERK: Mr. President, my best information is that Senator Schmit wants to withdraw that.

SENATOR CLARK: Well we will consider it withdrawn until he changes it otherwise.

CLERK: Mr. President, Senator Warner would now move to return LB 404 to Select File for a specific amendment.

SENATOR CLARK: Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, is this the one I handed in today, Mr. Clerk?

CLERK: I believe so, yes, sir.

SENATOR WARNER: This is a technical amendment that if the bill passes it would transfer the equipment and so forth that the agency currently has to the new agency and it is needed if the bill is to pass so that it also would allocate the appropriations that is in 761 to the new agency in the event that the bill passes. So it is a technical amendment that needs to be attached if the bill is to be operable. I would move its adoption.

April 13, 1982

LB 404

SENATOR CLARK: Is there any discussion on the Warner amendment. Senator Higgins.

SENATOR HIGGINS: Mr. President, I would like to ask Senator Warner a question or two.

SENATOR CLARK: Senator Warner, will you yield?

SENATOR HIGGINS: Senator Warner, what equipment are we talking about?

SENATOR WARNER: The desk, whatever it is that was in that office and that agency currently would be made the property of the new agency in the event that the bill passes.

SENATOR HIGGINS: So that it would then become the property of the state.

SENATOR WARNER: Well it is now.

SENATOR HIGGINS: I thought it belonged to the Office on Aging. Federally... I thought this equipment was all bought with federal funds and it belonged to the Office on Aging.

SENATOR WARNER: Some of it might be but it still transfers the possession or the ownership in a sense to the new agency if it passes.

SENATOR HIGGINS: In other words, it is taking it from the Commission on Aging as it now stands and puts it with the new...

SENATOR WARNER: Whatever the new name is, Department for Aging.

SENATOR HIGGINS: ...Department of Aging. And if we don't do it then the state has to spend the money to buy the equipment, right?

SENATOR WARNER: I suppose so. The purpose is to transfer...

SENATOR HIGGINS: What about the funds that are in the Office on Aging right now?

SENATOR WARNER: That would be transferred to the new agency as well.

SENATOR HIGGINS: Is that part of this amendment?

SENATOR WARNER: The old one would be out of existence.

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LB 404

SENATOR HIGGINS: Would that be part of this amendment?

SENATOR WARNER: This amendment also would transfer the appropriations for '82-'83 to the new agency in the event the bill passes.

SENATOR HIGGINS: How much money are we talking....you know originally we were talking about just equipment. Now we are talking about money that the senior citizens have in the Office on Aging. So am I misunderstanding you, Senator?

SENATOR WARNER: Yes.

SENATOR HIGGINS: Okay.

SENATOR WARNER: This amendment has no impact. The same dollars that are available now would be available with this amendment. It merely transfers the spending authority from the existing commission to the new agency as the bill sets up. It doesn't authorize...it doesn't spend anything, it just transfers the authority to spend what...

SENATOR HIGGINS: But if we voted no then it wouldn't give this new agency the authority to spend the money.

SENATOR WARNER: If you voted no the effect is the agency couldn't function and if the bill passes the old agency wouldn't exist so nothing would be done.

SENATOR HIGGINS: I see. Well under the present circumstances the present chairman of the Office on Aging has used federal funds to charter private airplanes to fly himself around the State of Nebraska supposedly on business of the aging and I'm not so sure I would just as soon see this agency go down the tube as have somebody run it that just charters private airplanes and likes to visit hither, thither and yon with state tax dollars and federal tax dollars, money that was earmarked really for the elderly. But since it is a housekeeping measure, Senator Warner, and since I trust you I think I will go along with it. Thank you.

SENATOR CLARK: Is there any further discussion on the Warner amendment? If not, the question before the House is the adoption of the Warner amendment. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: We are voting on the Warner amendment, the Warner motion to return is what it amounts to. We are returning the bill for an amendment. Record the vote.

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LB 404, 404A

CLERK: 27 ayes, 0 nays, Mr. President, on the motion to return the bill.

SENATOR CLARK: The bill is returned. Now on the amendment, Senator Warner.

SENATOR WARNER: Mr. President, I move that the amendment be adopted and again, this is not a...it is strictly a technical amendment that technically transfers the equipment and other things associated with the office as it now exists. It is necessary if the bill is going to pass.

SENATOR CLARK: Is there any debate on the amendment? If not, the question before the House is the adoption of the amendment. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? Record the vote.

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of Senator Warner's amendment.

SENATOR CLARK: The amendment is adopted. Now, Senator Warner, do you wish to return the bill, or advance it?

SENATOR WARNER: Mr. President, I move that LB 404 be re-advanced.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. The bill is readvanced. The next motion.

CLERK: Mr. President, with respect to LB 404A I have...Mr. President Senator Warner would move to return LB 404A to Select File for a specific amendment.

SENATOR CLARK: Senator Warner.

SENATOR WARNER: Mr. President, this is not technical. This amendment, I have another one if you don't like this one. This amendment would reduce the current year appropriation from approximately \$2.6 million, \$2,552,000, to \$500,000 but the second year funding would remain at the amount that is currently in the bill. Some weeks ago some of those who were interested in the bill I had visited with and indicated I thought the bill had no chance at the \$2 million plus figure and the revenue picture was a little better then than it is now and I would suggest that maybe a smaller amount might be feasible and I agreed to offer that amendment which this represents. So you would know, if you still feel this is too much I have another one that is \$300,000 for this year and \$500,000 for the

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LB 212, 212A, 404, 404A, 488,
547, 626, 816, 816A, 933

SENATOR CLARK: All right. Do you want to read the bills in.

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and re-engrossed LB 933 and find the same correctly engrossed; 547 correctly engrossed, 488 correctly re-engrossed; 816 correctly engrossed; 816A correctly engrossed; 404 correctly re-engrossed; 404A correctly re-engrossed and 212 and 212A both correctly re-engrossed, Mr. President, signed by Senator Kilgarin as Chair.

SENATOR CLARK: We are waiting on LB 255 and LB 255A. Are they on their way up? A motion to read in.

CLERK: Mr. President, Senators Hoagland and Wesely move that LB 626 become law notwithstanding the action of the Governor. That LB 626 become law notwithstanding the action of the Governor.

SENATOR CLARK: Any more motions on the desk? Who wants a point of order?

SENATOR DeCAMP: Mr. President, can this be taken up tomorrow? We're in session tomorrow, right?

SENATOR CLARK: That is right.

SENATOR DeCAMP: Is there any problem with taking the motion up tomorrow?

SENATOR CLARK: Which one, the one he just read?

SENATOR DeCAMP: The one he just read.

SENATOR CLARK: That will be taken up tomorrow. Wait a minute, wait a minute. Evidently this has to be considered today because this is the fifth day according to the Clerk.

SENATOR DeCAMP: Mr. President, and may I speak briefly? I'm the sponsor of 626. I personally have no intention of offering a veto override. I'm one of those that believes if you have the votes, you try it or reasonably have them. I don't have the votes. I think in the next six months people will learn the bill is necessary. I don't think that information is available today.

SENATOR CLARK: Well I didn't make the motion. Senator Beutler did and Senator Wesely I think, Hoagland and Wesely, I'm sorry. Senator Wesely, do you want to take it up?

April 16, 1982

LB 255A, 404

ASSISTANT CLERK: Senator Lamb voting aye.

SENATOR LAMB: Have you all voted? Record.

ASSISTANT CLERK: (Read record vote as found on page 1969 of the Legislative Journal.) The vote is 46 ayes, 0 nays, 2 present and not voting, 1 excused and not voting, Mr. President.

SENATOR LAMB: LB 255A (E) passes on Final Reading. The next bill is LB 404.

CLERK: Mr. President, I have a motion on the desk.

SENATOR LAMB: Read the motion.

CLERK: Senator Beutler would move to return LB 404 to Select File for a specific amendment, the amendment being to strike Section 13 of the bill.

SENATOR LAMB: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I want to make a few points about this bill because I think it is one that perhaps...well it is one on which I want to be sure that everyone is aware of what the bill does and the implications of the bill because I believe that it represents the creation of a major new bureaucracy. The motion itself is directed at striking Section 13 which creates the Department of Aging and what the bill does basically is create a new Department of Aging to pick up many of the functions that are being performed now and to set up a system of area agencies and a system that parallels to some extent, it appears to me, the mental retardation regions. The first point that is troublesome to me and I want to make clear at the beginning that I am not against specific programs for the aging. There are a number of problems that Senator Fowler and others have addressed that I think need to be addressed and we need to continue to address. My point in getting up today is not to oppose programs for the aging as such but to ask you to think about whether the kind of structure, the kind of formalized structure that we are setting up in government with this bill is, in fact, a good idea. Let me say first of all that I think in my opinion, that it is philosophically incorrect for government to set up agencies based on age groups, whether it is for the aging or for the young or for the middle-aged. There are truly problems associated with all the different stages of life and I don't think it is right for the government to single out a particular stage of life and say we are

going to set up a special department for this. I think what we should do and what we have been doing is basing need, is basing help, government help on need, regardless of the age group whether it is young or the middle-aged or the aging. The government should help the needy. They should help the aging when they are in need but they should not give particular help to a particular age group just because it is a particular age group. Secondly, in terms of the long-term political outlook, the number of people who are aging in our society of course is becoming greater and greater as a percentage and that always means in a democratic setting that that group will become more and more powerful. In a political sense I think if there is a danger in something that we should be looking at in the future, it is how to balance political power in the system, how to protect the small number of workers that there will be in the future against strong political majorities. And I am not saying that should be the reason for voting for or against this bill but I am saying that we should be thinking about counterbalancing political forces. We should be thinking about whether we want to institutionalize the political force of any particular age group and I think that is what you are doing if you pass this bill. The detail in the bill is really...is tremendous. The bill is very detailed. It sets up the Department of Aging and whether or not you vote for the A bill is not going to make any difference if you vote for this bill. The bureaucracy will get set up so I don't think you should talk yourself into voting this bill by promising that you are going to vote against the A bill. The damage will have been done if you agree with me that institutionalization in and of itself is philosophically incorrect. But if you would look at page...the Department of Aging is set up at the state level and then the Department of Aging sets up minimal standards for all these different area agencies that will be set up pursuant to the bill and it approves the area agencies and it is going to insist that they are comprehensive, coordinated service agencies. They are going to set up service centers. On page 4 and 5 of the bill you will see a detailed listing of the different types of activities and services that are going to be performed or that can be performed with the language "including but not limited to." So the bill is unlimited as to the types of services that can be performed by these different agencies. I think that that is overly broad and a mistake. Back on page 10 of the bill you can read the functions that the different area agencies will have and you can see that the functions are very comprehensive, conducting public hearings and studies and assessments of need, representing the interests of older people to public officials. If you don't particularly like advocacy agencies you are not going to like this one because that is what you are clearly

going to get if we are writing into statute that we want them to be an advocacy agency, monitoring, evaluating and commenting on policies, programs, hearings and community actions which affect older persons, coordinate, cooperate, plan, develop one and five year area plans and budgets, comprehensive coordinated program. These are some of the things that they will be doing. Another part of the bill that is without limitation is, as I understand it and which troubles me, is that there appears to be no limitation on need, no statutory limitation based upon need, that is, if you read on page 13 of the bill, Section 23, it appears that need is left...the determination should be left to the area agency as to what they will do and who they will do it with with regard to individual services. It will simply be based on an assessment of the individual's family circumstances and the development of a service plan. So basically the bill is without a number of important limitations from my point of view. So just to summarize, first of all, I think it is philosophically incorrect to institutionalize this type of thing as opposed to helping out with individual specific programs from time to time as they are needed, picking up some of the federal programs if needed and even if you are going to institutionalize it, I think it is not the best policy to do so without certain specific need limitations and without limiting more strictly the types of functions to be performed by the area agencies and by the Department of Aging as set up. I apologize to Steve and to others for not reading the bill closer sooner. It is one of those bills that I just again didn't get around to but it was difficult for me to let it go without at least everybody on the legislative floor understanding exactly what we are doing with LB 404. Thank you.

SENATOR LAMB: Senator Fowler.

SENATOR FOWLER: Mr. President, I would not, I guess, be as upset with Senator Beutler reading a bill that was laid over from last year, has only been slightly amended this year, reading it on the...whenver he read it but reading it out to us today on the sixtieth day to inform us if his information had been a little more accurate. Fortunately I think that there are a lot of misconceptions that he has created and he may have with regards to 404 and I cannot necessarily go through all the arguments that he threw out but I think the most significant fallacy in what he is saying is that we are creating something new here. We are creating area agencies on aging. We are creating services and programs and we are not establishing any limitations on those. The history of 404 goes back to a bill introduced three years ago that then led to an interim study that produced 404. Area agencies on aging exist now. In Lincoln you can go

down and find it about 9th and P Street in the old Federal Building. They have been in existence in the State of Nebraska for ten years and a Commission on Aging which has been instituting programs and services and spending something like \$8 to \$10 million in federal dollars has been in existence for ten years. Now when we had the interim hearings we discovered, yes, this structure is in existence but it is in existence only because the federal government has mandated and provided funds. A State Commission on Aging has assumed powers broader than the initial statute that basically created an advisory commission. Area agencies were created with inter-local agreements and we have an entity, an institution, service agency spending \$8 to \$12 million, some of that local, a little of that state, a lot of it federal in the State of Nebraska with no statutory limitations whatsoever. It grew up with the money. This Legislature never instituted anything to control it, to define responsibilities, to require plans, to require information. So we felt, the interim study committee whose sponsors are on this bill, felt that maybe it was time that something that we have allowed to be created be written into law and that some limitations be put on that structure. Now let me talk about what happens if you don't have those limitations. The State Commission on Aging which is going to be replaced with the Department of Aging, let me stress we are not creating a new entity. We are replacing one executive department with another. Let me say that again. We are replacing one executive department with another. The Commission on Aging tried a few weeks ago to limit the allocation of federal funds to the area agencies. I'm sure you may have seen some press on that and the Attorney General ruled that they had no power to do that. The money had to flow through that Commission, no controls. Why? Because we never established in statute any powers for a Department on Aging or a Commission on Aging. It is that type of thing that is going on and when Senator Beutler says this bill expands things and has no limits, I would strongly disagree. It is the current system that has no limits. It is the current \$12 million program that has no control from the state. We have a Commission that cannot control the funds. We have a Commission that only power derives from federal act, that we have not given any sort of state power and state responsibility. I can see that if Senator Beutler did not have the information, did not understand that already we have adopted a philosophy of services for the elderly nationally, at the state level and locally, that we already have a state Aging Executive Office, a Commission and we are going to replace that in this bill due to Senator Warner's amendment with a Department and a code agency. We already have a state executive entity. We have a federal policy and we have local governments in

counties joined in eight area Agencies on Aging that already exist.

SENATOR LAMB: Thirty seconds, Senator.

SENATOR FOWLER: This bill does not create anything new. It recognizes what has grown up in the State of Nebraska. This bill does not lack limits on those entities. Rather it imposes for the first time as state policy some requirements, some plans and for that reason, we felt that 404 was a necessary step in order that we establish controls and definitions on a system that has already grown up. 404 does not create something new. It simply structures what we already have. It takes an executive commission and makes it an executive department. It recognizes the area Agencies on Aging that already exist and it puts limitations, puts limitations on the aging program. So that if Senator Beutler had understood that and explained that to you on the sixtieth day of the Legislature...

SENATOR LAMB: Your time is up, Senator.

SENATOR FOWLER: ...that would have been okay.

SENATOR LAMB: Senator Wesely.

SENATOR WESELY: I guess I, too, would like to rise in opposition to Senator Beutler's motion to return and again, members of the Legislature, I think it is a little unusual that Senator Beutler on the last day of the Legislature, a bill that has been sitting there for one year would take this opportunity to try and raise some questions that I think have been resolved long ago. It is just amazing to me that he would do that. Anyway, let's go ahead and discuss the bill a little more. Senator Fowler talked about the background. We are trying to reorganize and bring together an area that needs some attention, has been looked at for three years. It was three years ago that LB 665 was introduced by former Senator Ray Powers which would have changed the same sort of things that we are talking about with LB 404. Then last year we introduced LB 404. It was moved up to Final Reading and it sat there ever since. Now we are to the third year that this idea has been discussed. It has strong support across the State of Nebraska. It is the number one priority of the Silver-haired Unicameral. You have been contacted by the older citizens across the State of Nebraska who support this idea. It has got the involvement of the senior citizens and I think it has got their support. So I think we ought to go ahead and pass this legislation and move forward with the other matters before this Legislature.

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SENATOR LAMB: Senator DeCamp.

SENATOR DeCAMP: I'll call the question.

SENATOR LAMB: Thank you, Senator, but that will not be necessary as you are the last speaker. The motion is to return the bill for a specific amendment. Those in support vote yes, those...oh, Senator Beutler to close.

SENATOR BEUTLER: Mr. Speaker, I wish to withdraw the motion. I am satisfied that everybody is aware of the issue.

SENATOR LAMB: The motion is withdrawn. Please read the bill.

ASSISTANT CLERK: (Began reading LB 404 on Final Reading.)

SENATOR LAMB: (Interruption.) We will have all of the senators in their seats. Sergeant at Arms see that all senators are in their seats, that unauthorized personnel are off the floor.

SENATOR MARSH: Are we near the end of a thirty-two page bill?

SENATOR LAMB: We are on Final Reading, Senator.

SENATOR MARSH: I think the last day of the session in the last nine sessions I have been here we have had some flexibility if people would be here to vote.

SENATOR LAMB: Please continue reading the bill.

ASSISTANT CLERK: (Read LB 404 on Final Reading.)

SENATOR LAMB: All provisions of law relative to procedure having been complied with, the question is, shall the bill pass. Since this is creating a new agency it will require 33 votes. Senator Fowler.

SENATOR FOWLER: I guess I would respectfully disagree with the Chair that we are creating a new agency. I guess I would like just for him to cite the Constitutional provision that he is using to require 33 votes for passage of this bill.

SENATOR LAMB: Senator Fowler, Article 4, Section 27, "No executive state office other than herein provided shall be created except by a two-thirds majority of all members elected to the Legislature."

SENATOR FOWLER: I would appeal the ruling of the Chair that this bill creates a new agency, executive agency, if I could I would like to, although I have had a couple of surprises on this bill I guess I would like to argue a few things with regards to that, if I may. Is that acceptable? Move to overrule your decision. The first cite I guess, following Senator Kahle's admonition, I'm trying to be calm about this. Let me first cite the concept as I indicated when Senator Beutler was discussing, we are not creating something new, we are replacing one executive office, the Commission on Aging, with another executive office, the Department on Aging. I guess the source for that I would cite, is the title of the bill itself, and it says, "To replace the Nebraska Commission on Aging with the Department", so we are replacing a commission which is one executive agency with a department which is another executive office. Now some might argue that the commission is not an executive office and I guess I would cite for foundation that in fact the commission is an executive office, the first part of the Constitution that says, there are only three divisions of government, Executive, Judicial and Legislative. I would say the Nebraska Commission on Aging is neither Legislative nor Judicial so it must in fact be Executive. Now although this motion or this ruling may have taken me a little bit by surprise I did have a chance to pull some cases and it seems that in previous court decisions as to whether or not commissions are in fact executive departments, if one was to look at Makota versus the State Board of Equalization and Assessment, they cite three other cases where this was discussed. (1) Iams versus Mellor, where it says a Stallion Registration Board was considered to be an office, within the meaning of the term, and we are talking about the Executive Office Section that Senator Lamb

cited. Another one, State versus Cornell, the court considered a Food Commission a commission, an office, executive office, and State versus Porter, a Brand and Mark Committee was classed under the term "office" as used in these provisions. So we can see a board, a commission, a committee all in Nebraska case law cited as executive offices. Now I will contend again that no new executive office is being created here, that it is a transfer of responsibilities, it is a reorganization of the executive division. I would point out the Governor's task force on reorganization endorses the 404 concept. It is a reorganization but not a new creation. Now again I apologize for not having had a lot of time to do research but I did look into some previous votes in this Legislature where I think similar situations. Now let's take the bill with regards to the Health Department. If one was to...I am sure you remember that we had a bill that took the Health Department from a board and made a code agency out of it. If you were to look in the Journal for April 28th, 1981, the 69th Day of the Legislature, with regards to Senator Lamb's bill or Senator Cullan's bill, rather, LB 249, it indicates what was the required vote for the bill to pass. Now I am not talking about the number of votes it actually had but what the presiding officer indicated at that time was the required vote. It says a constitutional majority. Now a constitutional majority is 25 as listed in our Journal. The phrase "constitutional majority" means 25. Now when it requires two-thirds, the Journal of our Legislature says a constitutional two-thirds majority was required. So when the Department of Health became changed from the board to a code agency, the situation I think is very analogous to the Commission on Aging becoming the Department on Aging, the presiding officer of the Legislature said 25 votes. In 1980 the Drug Commission was merged into the Department of Institutions and the title to that bill, LB 684, said relating to the creation of a Division of Alcoholism and Drug Abuse and eliminated a commission and created a new division. Again the Legislative Journal April 15th, 1980, the 59th Day, says a constitutional majority not two-thirds. In 1979 the State Affirmative Action Office was created and the title of the bill says to create an office. The bill only got 26 votes but it was declared law because a constitutional majority, 25 votes, not two-thirds voted in the affirmative. When the State Energy Office was created in 1977 and the title of that act said to establish the State Energy Office, a constitutional majority, 25, was all that was required. I think that a new interpretation is being cast here with regards to this provision of the Constitution. I have not seen it invoked in any of those previous circumstances. I think that although there may be particulars in each of those that might be slightly different, certainly the move of the

Board of Health into a department is as close as you possibly could come to LB 404 where the Commission on Aging is being changed to a department. Now if we are going to say that everytime we reorganize the executive division, I will contend again that commissions, boards, committees are executive according to Nebraska case law, if everytime we reorganize, simply change responsibilities, move one division to another, move responsibilities, change a title, we are saying that is the creation of a new state executive office and we are going to require 33 votes to change any of the structure of the executive branch. If this ruling stands, a small minority of this Legislature will be able to freeze the executive division of state government into its current form. I think the implications of that for this Governor and all future Governors of the State of Nebraska who wish to reorganize should be very clear to all of us here. I do not think that this constitutional provision applies in this case. I would argue that on the basis of Nebraska case law, on the basis of the precedent that I have seen in this Legislature. I think that this bill is being selected out for an application of the Constitution that has not been applied to other bills and I would urge again that you read the title of LB 404 and note the word that says "replacement" Commission on Aging with the Department on Aging. It did not take 33 votes to do this with the Department of Health. I cannot see how suddenly we need 33 votes to do it with the Commission on Aging.

SENATOR LAMB: Senator Cullan.

SENATOR CULLAN: Mr. President, I would urge the Chair to change its position. I think even though I am definitely going to vote against LB 404A I think the Chair is definitely incorrect. If you do remember the Department of Health issue last year, I think this is a very exactly an analogous situation. The Department exists whether you call it a commission or a department. We are simply changing the structure of it and I think that is not the intention of the restriction as far as the two-thirds vote is concerned. So I would urge the Chair to change its position so that we can take a vote on the issue at this time.

SENATOR LAMB: Senator Newell.

SENATOR NEWELL: Mr. President, how many more lights are on?

SENATOR LAMB: Just one more, Senator.

SENATOR NEWELL: Then let me speak very briefly. Mr. President, I can appreciate the difficulty of making that decision in such a brief period of time but it seems to me that had

we thought out the decision longer, sometimes that is one of our difficulties here on this legislative floor is that the Speaker is being asked to very promptly give opinions, those opinions sometimes are not as well researched as they need to be, but yet the precedent lingers on. Especially if anyone does any research, then the precedent really does linger on and so what we have is a precedent reversing decision by the Speaker. Now I wonder if that would jeopardize the establishment or reestablishment or changing the very basic nature of various other departments, et cetera, from time to time. I think the answer is in the future it certainly would jeopardize those kinds of activities. But I guess one of the questions that this body ought to ask itself and a very serious question at that is will it jeopardize what we have done in the past. Will this ruling create the kind of precedent that calls into question what we did with the Department of Health? If the ruling is withheld, if this Legislature votes to sustain the Speaker, and if the Speaker does not change his opinion, which he may or may not feel he can do at this point, but if he does not change his opinion and we do vote to challenge the Chair, and if the Chair should be sustained, does that create problems or a precedent that may go in fact backward? Do we reconsider what we did in the case of the Department of Health? Now frankly, I am not so sure that I would be opposed to that kind of precedent because I didn't like the Department of Health change that was made but I think that one of the things that stands here before us all as we look at whether we like LB 404 or whether we like the change on the Department of Health or the other precedents that have been set is really probably a much broader question and that question is the question of the legislative power. What rights and responsibilities, what flexibilities will we preserve for ourselves in the future? And I think that is a bigger issue than LB 404. Mr. Speaker, I have said some eloquent things and I know you can't get them to listen but if you could get them to not compete so much I would appreciate it.

SENATOR LAMB: Could we have some quiet and order, please? Senator Beutler, do you have some comments on this problem? I thought you were finished, Senator. I am sorry.

SENATOR NEWELL: No, I was only asking for a little order. I won't be much longer and I think that order is less likely, Senator Nichol says he will now listen and that is a positive sign. I guess I want to reiterate what I said, the precedent that we set today is not revolved and should not be revolved around LB 404. It is whether this Legislature wants to limit its own ability to make changes in various agencies. That is what this proposal is is to make a structural change in an existing agency. Will we limit

ourselves in requiring 33 votes a precedent that will be set today and be applied for many years in the future? I think that is a mistake. I would urge my colleagues not to sustain the Chair in this matter. In fact I would urge the Speaker to change his mind.

SENATOR LAMB: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, this is another exceedingly important point that unfortunately we have not had the benefit of some staff research on. Let me just say that I guess the way I look at it, it has got to be a question of substance and not the question of the form and when you are comparing the Commission on Aging with this new Department on Aging, I think what you have to do to make this rule meaningful and to make the constitutional provision meaningful is to compare the powers of the two different entities that are in question, and if the Department on Aging has substantially greater power than the Commission on Aging, then in effect what you are doing is creating a new executive office. If you look at the Commission on Aging, the statutes on the Commission on Aging, there are really only one, two, three, four, a couple pages of statutes on the whole Commission compared to the twenty page bill that is before you on the Department of Aging and the powers that the Commission has are, one, to collect facts and statistics, to make recommendations, to keep informed, to serve as an advisory board, to report and make recommendations, and to cooperate. The interesting thing about all these powers is that they have really no power to mandate anything. They have the power to do research themselves, to do some coordination but they have no power to force anybody to do anything it would appear. When you look at the Department of Aging as proposed in 404, if you look at pages 6 and 7 and 8, you will see that there are some extensive powers in those sections: To develop annual plans; to promulgate rules and regulations and bylaws; to review the performance of area agencies and to approve or disapprove; to designate or withdraw designations of area agencies; and then finally, #16, such other powers and duties necessary to effectuate and implement all of the sections of the act. With much appreciation for what Senator Fowler has said, it seems to me that if you are going to look at the substance of a matter and not just the form that we are in fact creating a new executive agency, and let me tell you why it is important to pay attention to the constitutional provision. I think probably what the framers had in mind is then unless you give substance or give some substance to Senator Lamb's distinction that what is going to happen is every time you want a new executive agency the first thing you will do is create some little

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trivial agency or commission that does nothing, has no power, and then the following year you will simply move to transfer those functions and to enhance those functions and to multiply those functions into what is clearly an executive office, a new branch of government, and by that means you will, if you have any brains at all, will forever succeed in avoiding the 33 votes requirement. Now surely the framers of the Constitution didn't intend for us to have such an easy mechanism for avoiding 33 votes, and for that reason I think that probably the Chair is right. Thank you.

SENATOR LAMB: At this time I would like to introduce guests of Senator Goll, Mr. and Mrs. Charles Allan, Chairman of the Village Board of Walthill, Nebraska, and Mr. and Mrs. Lloyd Ruge, member of the Village Board of Walthill, under the North balcony. Please rise and be recognized and welcome to your Legislature. Also we have guests of Senator Fowler, 20 students from Saratoga School, Mrs. Schmid, teacher, in the North balcony. Please rise and be recognized. Welcome to your Legislature. At this point, I would suggest that we use the noon hour to do more research on this subject. Senator Rumery, would you care to adjourn us or to recess us until one-thirty?

SENATOR RUMERY: We be recessed until one-thirty.

SENATOR LAMB: All those in favor say aye. We are recessed until one-thirty.

Edited by:

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PRESIDENT: All right, Mr. Clerk, do you want to bring us up to date where we are on 404?

CLERK: Mr. President, with respect to 404, the bill was presented to the Legislature on Final Reading this morning. The Chair ruled that the bill would take 33 votes to pass. Senator Fowler stood at a point of personal privilege and requested that the Chair be overruled on that particular ruling, Mr. President.

SENATOR FOWLER: I think it was a point of order, wasn't it?

CLERK: All right, point of order, you are right, Senator, excuse me.

SENATOR FOWLER: I clear that up on a point of personal privilege. I guess....

PRESIDENT: Senator Fowler.

SENATOR FOWLER:yes, I would pose the question to the presiding officer as to whether he would concur as the presiding officer as to whether or not this needs 33 votes or 25 votes.

PRESIDENT: As has been observed, the Chair...there is a different person in the Chair and I have reviewed the matter. I have reviewed some case law. I have discussed it, and this Chair will rule that it will only take 25 votes. Now you can take it from there. Now you can take it from there so we have lights on and, Senator Fowler, if you would like to while you are on your feet you may discuss it and then the others, I will recognize Vard Johnson, Senator Beutler, Senator Chambers, in that order. Okay, there is no motion. You are right, Senator Beutler, so I guess if you want to challenge I guess that would be the best way to get the thing to issue. So, Senator Beutler, go ahead.

SENATOR BEUTLER: I would move that the Chair be overruled.

PRESIDENT: All right, that gets it before us, thank you. All right, now we do have something before the House, and now, Senator Beutler, since you made that motion I will recognize you first then, so you go ahead.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, I did go back over the lunch hour and try to read the cases that were involved, and I am sure some other people did too, and you will hear a lot of...many different opinions. But I

did want to pass onto you a couple of cases that I think are important and I think are persuasive, and I think that they back up the decision of Senator Lamb when he was Speaker a short time ago. The first case and the latest case that I could find was a case called Summerville versus Johnson. In that case they said that there was in the constitutional sense that there are boards, commissions and agencies that are not executive state offices. Now, you will remember the Constitution says we have to have a two-thirds vote if we are creating an executive state office. This case says there are two kinds of executive functions; one, boards, commissions and agencies, and the other are called executive state offices, and they make this distinction based upon the history of the constitutional convention that wrote this particular language. All right, so the next question is, how do you distinguish between the two? And the court said this. They said that an executive state office and officers and departments are such officers, departments and offices as have comparable scope, functions and purposes with the offices, departments and officers specifically named in the Constitution. Okay, those cases involved...one involved the Nebraska Merit System, and in that case they said, no, that is not an executive state office because of its limited functions. Another case involved the Department of Economic Development, and in that case they said, yes, that is an executive state office. It seems to me clear from those cases that the Commission on Aging, the original Commission that we are talking about in this case, is not an executive state office. So we don't have the question of whether we are transferring functions from an executive state office to another executive state office. I think if there is one thing it's clear is that the Commission on Aging is not under the court cases as an executive state office. So the one remaining question for you to decide is whether the Department of Aging as proposed in this bill having the functions outlined on pages 6 and 7, the 16 functions, whether that agency is going to operate pretty much like the other state agencies that we have already in existence with those kinds of broad powers, or whether it is something more limited like the Merit System or like the Commission on Aging, and one can only guess at how the court will come down and you can decide as well as anybody else, but I suggest that you look at those functions closely and my guess would be that the 33 votes should be required because these functions are broad and my guess would be that the court would say that 33 votes would be required. So that is the information that I wanted to pass onto you. Thank you.

PRESIDENT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I am going to paraphrase a statement they usually make about economists. If you took all the economists in the world and laid them end to end, they couldn't reach a conclusion. Somebody added, and if they could manage to reach a conclusion, it would probably be wrong. Now that is true with reference to economists. It is true with reference to those trained in the law if you exclude me out. Now this is one of those issues where I think there can be a genuine difference of opinion because you must interpret language in the statute, in the Constitution and in the court decisions. So your vote might not be based strictly on what you hear anybody say by way of argument but it should be taken in conjunction with your own evaluation of the language as you understand it. Here is what I think is ironic about Lieutenant Governor Luedtke's position. At the tail end of last session he got in trouble for ruling that a bill had passed which had not. What is the impact of requiring 33 votes and then 33 votes not being obtained? He would have to rule that a bill was not passed, which in my opinion, in fact, would have been had it gotten at least 25. So he manages...he manages to put himself into the middle of all kinds of controversial situations. But one thing I will say about him, and this is no bull, he will take the bull by the horns although sometimes he gets gored in the process. But on this particular issue I do disagree with Senator Beutler and agree with the Chair. We had a Court of Industrial Relations, I believe that's what it was called, then they changed it to a commission, and I had argued that regardless of the name that you give it, with it performing those functions, it nevertheless is a court. And I think it was determined that the Legislature could declare that a court was just a commission. I don't remember how many votes had been obtained, but the argument we are having now did not really take on the significance in that discussion that it is taking in this one. If the 33 votes are not obtained that might give the Governor an excuse to veto this bill by saying that he thinks that 33 votes are necessary since they were not obtained, the bill, in fact, did not pass so there was nothing for him to do except return it without his signature and without vetoing it but just giving it back because it was not, in fact, legally passed, and this is deja vu, it seems like I have been here before. But this time I am on the side of the Chair, so I think that should indicate pretty conclusively that the Chair is correct. That is all that I have to say because it is going to boil down to how you interpret the language that will bear on this issue. I think 25 votes will be sufficient and I am going to vote for the bill, and I think 25 would be all that we would need.

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PRESIDENT: The Chair recognizes Senator Lamb.

SENATOR LAMB: Mr. President and members, I don't have to tell you that I am not an expert on the situation. However, I might explain the reason for my ruling before the lunch hour. Shortly before the bill came up, the Clerk indicated to me there might be a problem and that was the first I had heard about it, and his brief explanation to me indicated that it probably would take 33 votes. So my position was that as the presiding officer I did not want to rule that it took 25 votes and then found that that was an insufficient number and I had said that the bill passed when, in fact, it had not. I wanted you on the floor here to make that decision and I would admit it is a difficult decision. So I was throwing that back to you to make the decision and I am comfortable with that. I have no strong feelings one way or the other, but I did want you to know how the ruling came about.

PRESIDENT: The Chair recognizes Senator Wesely. You say you ask for the question? All right, do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. Record the vote.

CLERK: 27 ayes, 2 nays to cease debate, Mr. President.

PRESIDENT: Motion carries, debate ceases. Senator Beutler, you may close on your motion to overrule the Chair.

SENATOR BEUTLER: Mr. Speaker, I would only repeat what I think the issue is for everyone to decide and that is basically whether they think the Department of Aging as described in 404 is more like a board or a commission such as the Merit System or such as the Commission on Aging, or whether it is really more like the Department of Economic Development or agencies such as that that have broad powers over people all across the state. And I just happen to think that the court would say that it is, in fact, an executive office and that it should have required or would require 33 votes. Thank you.

PRESIDENT: The question then is, shall the Chair be overruled? All those in favor vote aye, opposed nay. How many do we have here and what will be the required number? It will take 25 votes to overrule the Chair. So the question is, shall the Chair be overruled? All those in favor vote aye, opposed nay. Record the vote. Record vote has been requested, Mr. Clerk.

CLERK: (Read the record vote as found on page 1980 of the Legislative Journal.) 17 ayes, 29 nays, Mr. President.

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LB 404, 412

PRESIDENT: Motion fails. We will go ahead and....all right, we are now ready for the vote on the bill. It has been read. All provisions of law relative to procedure having been complied with, the question is, shall LB 404 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on pages 1980 and 1981 of the Legislative Journal.) 38 ayes, 9 nays, 1 excused and not voting, 1 present and not voting, Mr. President.

PRESIDENT: LB 404 passes. The next bill, Mr. Clerk, on Final Reading is LB 404A.

CLERK: (Read LB 404A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with the question is, shall LB 404A pass? All those in favor vote aye, opposed nay. Have you all voted? Record the vote. Record vote, on Final Reading there will be a record vote.

CLERK: (Read the record vote as found on page 1981 of the Legislative Journal.) 34 ayes, 14 nays, 1 excused and not voting, Mr. President.

PRESIDENT: LB 404A passes. The next bill on Final Reading is LB 412, Mr. Clerk.

CLERK: Mr. President, if I may right before that, I have an Attorney General's Opinion addressed to Senator Haberman.

PRESIDENT: Yes, you may read it in, go ahead.

CLERK: That will be inserted in the Journal. (See page 1982 of the Journal.) Mr. President, with respect to LB 412, I have a series of motions on the bill. Mr. President, Senators Labedz and Wagner had a motion pending. Senator Labedz and Wagner would move to return the bill for a specific amendment, Mr. President.

PRESIDENT: Senator Labedz.

SENATOR LABEDZ: Thank you, Mr. President. A few days ago late in the evening I came up with an amendment to LB 412 and Senator Newell was good enough to tell me that I could use that bill to gut or strike everything in it and put an amendment that I had put on 743 which was originally my bill, LB 656. Inasmuch as we only had 15 minutes time I was also requested to add another amendment of Senator Newell to my amendment and do it as a package in order to get it done in 15 minutes. If you will recall, I stood up and explained the bill, my portion of the amendment, which was the homestead exemption

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LB 404, 404A, 488, 574,
816, 602, 602A, 759, 787,
799, 816A

SENATOR LAMB: LB 799A passes on Final Reading without the emergency clause. LB 816.

CLERK: Mr. President, the bills that have been read on Final Reading thus far are now ready for your signature.

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: While the Legislature is in session and capable of transacting business I propose to sign and I do sign LBs...engrossed LBs 404, 404A, 488, 574, 602, 602A, 759, 787 799. So let's proceed then, Mr. Clerk, with LB 816.

CLERK: (Read LB 816 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 816 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: (Read the record vote as found on page 2000 and 2001 of the Legislative Journal.) 29 ayes, 17 nays, 2 excused and not voting, 1 present and not voting, Mr. President.

PRESIDENT: The bill fails to receive the number of votes constitutionally required to pass the bill with the emergency clause, so the question now is, shall LB 816 pass without the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Senator Carsten, do you want me to record the vote? Record the vote.

CLERK: (Read the record vote as found on page 2001 of the Legislative Journal.) 29 ayes, 17 nays, 2 excused and not voting, 1 present and not voting, Mr. President.

PRESIDENT: LB 816 passes without the emergency clause attached. We are now ready, Mr. Clerk, for LB 816A, if you will read.

CLERK: (Read LB 816A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 816A pass with the emergency clause attached? All those in favor vote aye, opposed nay. Record the vote.

ASSISTANT CLERK: (Read the record vote as found on page 2002 of the Legislative Journal.) The vote is 30 ayes, 16 nays, 2 excused and not voting, 1 present and not voting, Mr. President.

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404, 404A, 488, 547, 602,
602A, 868, 761, 787, 799,
816, 816A, 799A, 412, 933

PRESIDENT: Go ahead Mr. Clerk.

CLERK: Mr. President, I would like to read a couple of items in if I may.

PRESIDENT: All right, go ahead and read some matters in.

CLERK: Senator Hefner offers explanation of vote.
(Regarding LB 868, see page 2017 of the Legislative Journal).

I have two notices of bills having been presented to the Governor. (Regarding LB 761 and 787. See page 2017 of the Legislative Journal).

Mr. President, Senator Fowler would move that the Legislature would override the line-item reduction that reduces the appropriation from the Highway Cash Fund to the Department of Roads Operation Cash Fund.

PRESIDENT: Chair recognizes Senator Fowler.

SENATOR FOWLER: Mr. President, if I could have some attention I'll briefly explain with the issue is in the veto here.

PRESIDENT: (GAVEL)...either they are all out or they are all paying attention so go ahead.

SENATOR FOWLER: Among the vetoes was three and a half million dollars in highway funds. Now, if there is anything I think that has been a priority in the Legislature, it has been and something that many people from outstate Nebraska said is a growing need is money for roads. Now the level of appropriation that we established is based on the Department of Roads request for what they felt was necessary and I think they cut that back from what they really feel is needed to build a good highway system in Nebraska. Now the Governor for reasons that I can not quite understand vetoed three and a half million dollars in highway funds. The only rationale that I can determine is that it is to maintain the gas tax at the current level. Now three and a half million dollars is a 3.2% cut in the state funds for the road construction program. The reason it was does is that revenues in the highway fund as revenues in all other funds in the state are low. What I do not understand is when we have raised every other conceivable tax and fee to make up for a lack of revenue suddenly when we get to the roads program and the gas tax and the variable gas tax that