

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.

April 1, 1981

LB 5, 40, 261, 335, 353,
428.

SPEAKER MARVEL: Meanwhile in the south balcony from Senator Dworak's District, 49 students, 4th, 5th, 6th Grades, from Humphrey Public School, Humphrey, Nebraska, Mrs. Debbie Trabert, Miss Nancy Gallop, Miss Mamie Anderson are teachers. In the south balcony, will you raise your hands so we can see where you are?

CLERK: Mr. President, Senator Richard Peterson voting yes. Senator Wagner voting yes. Senator Goodrich voting yes.

SPEAKER MARVEL: Okay, record the vote.

CLERK: 31 ayes, 8 noes on the motion to reconsider, Mr. President.

SPEAKER MARVEL: All provisions relative to procedure having been complied with, the question is, shall LB 5 pass? All those in favor vote aye, opposed vote no. 30 votes. Have you all voted? Have you all voted? Senator Beutler. Record the vote.

CLERK: (Read the record vote as found on page 1244 of the Legislative Journal.) 30 ayes, 10 nays, 6 excused and not voting, 3 present and not voting, Mr. President.

SPEAKER MARVEL: The motion is carried. Do you have some items to read in?

CLERK: Yes, sir, I do. Mr. President, your committee on Judiciary whose Chairman is Senator Nichol reports LB 428 to General File, and LB 335 to General File with amendments, and 353 General File with amendments, all signed by Senator Nichol. (See pages 1244 and 1245 of the Legislative Journal.)

The Appropriations Committee will meet in Executive Session today upon adjournment in Room 1003.

Mr. President, Senator Wesely would like to print amendments to LB 261 in the Journal. (See page 1245 of the Journal.)

SPEAKER MARVEL: I would like the attention of the Legislature, if I could. Yesterday afternoon after rather extensive debate on LB 40 the time ran out and, therefore, it is the judgment of the Chair that the time for that particular bill should be completed. Some of you have questions about the way the priorities are set. I welcome you, first of all, to visit the office and

May 1, 1981

LB 428

Legislative Journal.)

PRESIDENT: All right, go right ahead.

CLERK: Mr. President, LB 428 was a bill introduced by Senator Vard Johnson. (Read title.) The bill was read on January 20, referred to Judiciary, Mr. President, and advanced to General File. I have no amendments on the bill.

PRESIDENT: The Chair recognizes Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker and members of the body, in 1980 the American Bar Association by resolution 111, the House of Delegates made the following statement: "Be it resolved that the American Bar Association calls upon all states to assist persons of diminished mental capacity or under guardianship or conservatorship proceedings to live with maximum self-sufficiency in the general community by enacting laws allowing court appointment of limited or partial guardians, where persons of diminished capacity need some but not total assistance in making decisions concerning their personal affairs or estates, and direct the attention of the state to a special committee of the National Conference of Commissioners on Uniform State Laws, which is presently drafting an amendment to the Uniform Probate Code and a freestanding uniform act on limited guardianship". This resolution is the product of a study done by the Developmental Disability State Legislative Project of the American Bar Association Commission on the Mentally Disabled. LB 428 is a bill that would alter our guardianship practices with respect to incapacitated persons and those are person who by reason of age, by reason of physical infirmity, by reason of mental infirmity, by reason of alcoholism, or other debilitating conditions, are in need of some judicial protection. What the measure would do very simply, the type of change it would make to existing practice are these. In the first place when a petition for guardianship of such an individual is sought, there must be some inquiry made as to whether or not the alleged incapacitated person has an attorney, and if not the court must make certain that an attorney is available for the incapacitated individual. Secondly, the petitioner must set forth in his petition or her petition those acts that the individual apparently cannot engage in by virtue of the diminished capacity. Third, the court as it exists right now has the power to appoint a visitor, that is somebody who will actually go out and see the alleged incapacitated person and make a full report back to the court concerning the kinds of infirmities that incapacitated person

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LB 428

has. Fourth, the court then has a hearing in the guardianship process and at that hearing determines the nature of the guardianship order, whether it is to be a full guardianship order or a partial guardianship order. The partial concept is a new concept. Heretofore every guardianship that has been sought has been a full guardianship order. Lastly...lastly the court must review an ongoing guardianship for an incapacitated person every two years. Presently there is no injunction requiring ongoing court review of guardianship proceedings. The simple purpose of this legislation is to ensure that the nature of the judicial intervention, so to speak, in the life of an incapacitated individual is totally and fully commensurate with whatever incapacity that person has and whatever the needs of that individual are. That is the bill in a nutshell. There are... I should tell you that along the way as I handled this legislation I found the need for a few technical amendments. I decided inasmuch as this bill was on consent calendar that I wouldn't offer them this morning but rather would offer them on Select File since I only have fifteen minutes worth of time and they will be so offered. But the bill as it stands right now is in solid shape and with these technical amendments later on, I think would be an excellent piece of legislation. I move its advancement to E & R Initial.

PRESIDENT: The Chair recognizes Senator Nichol.

SENATOR NICHOL: Mr. Chairman and members of the Legislature, as Senator Vard Johnson said there are some technical amendments coming. And I also wanted to wave a red flag in front of you on this particular bill. This is a very sensitive bill and I understand that some of the attorneys and judges are coming forth with some amendments also. So don't go to sleep on this one because you may hear from some of your constituents on this later. I do not wish to hold up the bill. I wish to have it advanced.

PRESIDENT: The Chair recognizes Senator Sieck.

SENATOR SIECK: Yes. Mr. President and members of the body, I am also going to support the bill. And I do have some questions, and I think one of the questions should be cleared up, and I think this has come from several people. What about parents and how are the guardianships involved with this bill in regard to parents, Senator Johnson?

PRESIDENT: Senator Johnson, will you respond?

SENATOR V. JOHNSON: I certainly shall. The bill in a sense sets a pecking order for guardians and the first priority

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LB 428, 472A

for guardian selection is to a parent. The parent is deemed to be the most appropriate person to be the guardian of an incapacitated individual. Thus, if we are talking say, for example, about a 25 or 27 year old person who might be mentally retarded or mentally deficient, the guardian that the court is most likely to appoint is the parent, because the parent has the first crack, so to speak, at being the guardian for that individual.

SENATOR SIECK: Thank you, Vard. This assures me that the parent would have full responsibility as long as he lives, and I feel this is necessary, because a lot of parents prefer to have the guardianship in their control, but I also recognize that many of the parents are gone, or many of the parents even refuse to take care of their individual, then I feel that that individual should have a right to have a guardianship and that is where this bill comes about. And I wholeheartedly support the bill. Thank you.

PRESIDENT: All right, Senator Johnson, you may close then.

SENATOR V. JOHNSON: I do want to make just one slight corrective statement. I said the parent has the first crack, actually if it is an adult incapacitated person, his wife or her husband has the first crack and then if such a person isn't available then it would be the parent. But it is a sound bill. It is commensurate or in keeping with the movement that has been developing in the American Bar Association to more carefully tailor and limit the guardianship process. And again I move its advancement.

PRESIDENT: All right, the question then is the advance of LB 428 to E & R Initial. All those in favor vote aye, opposed nay. Record the vote.

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

PRESIDENT: The motion carries and LB 428 is advanced to E & R Initial. Mr. Clerk, do you have the 472A to follow 472 next?

CLERK: Yes, Mr. President, if I may, 472A is offered by Senator Hoagland. (Read title.)

PRESIDENT: The Chair recognizes Senator Hoagland on 472A to follow the other bill.

SENATOR HOAGLAND: I don't have that bill before me, Mr. Clerk. Could you tell us what the appropriated amount is for this?

May 4, 1981

LR 76
LB 12, 99, 228, 257, 361, 385,
LB 561, 428, 451, 472, 472A, 501

SENATOR CLARK: Senator Cullan. The question has been called for. Do I see five hands? I don't see them. Now I do. All those wishing to cease debate will vote aye, opposed no. Have you all voted to cease debate?

CLERK: Senator Clark voting aye.

SENATOR CLARK: Record the vote.

CLERK: 25 ayes, 1 nay, Mr. President, to cease debate.

SENATOR CLARK: Debate is ceased. Senator Wiitala, do you want to close?

SENATOR WIITALA: Mr. Speaker, members of the Legislature, in all due respect to my distinguished colleagues, Senator Warner and Senator Marsh, since the legislative intent has been placed in the record by their remarks as far as the responsibility to the duties of the Performance Review and Audit Committee, I would respectfully withdraw my amendment at this time. Thank you.

SENATOR CLARK: It is withdrawn. Do you have anything else on the bill?

CLERK: Mr. President, if I may read some matters in right before?

SENATOR CLARK: You go right ahead.

CLERK: Mr. President, a new resolution, LR 76 calling for a study offered by Senator Hoagland. (Read LR 76 as found on page 1724 of the Legislative Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined and reviewed LB 12 and recommend that same be placed on Select File; 501 Select File; 472 Select File with amendments; 451 Select File with amendments; 428 Select File with amendments; 472A Select File; 99 Select File with amendments; 385 Select File with amendments; 361 Select File with amendments. 228 Select File. (See pages 1725-1726 of the Journal.)

And Senator Remmers would like to print amendments to LB 257, Mr. President. (See pages 1726-1727 of the Journal.)

Mr. President, the next motion I have on LR (sic) 561 is a motion by Senator Landis to reconsider the body's action in adopting the Kremer-Schmit amendment to LB 561.

SENATOR CLARK: Senator Landis.

May 3, 1981

LB 99, 296A, 361, 428,
470, 501

is 296A.

SENATOR KILGARIN: I move we advance 296A to E & R.

SPEAKER MARVEL: All those in favor of that motion say aye, opposed no. Motion is carried. The bill is advanced. The next bill is 470.

SENATOR KILGARIN: I move we advance LE 470 to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. Motion is carried. The bill is advanced. The next bill is 501.

SENATOR KILGARIN: I move we advance LB 501 to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion is carried. The bill is advanced. The next bill is 428.

SENATOR KILGARIN: I move the E & R amendments to LB 428.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The E & R amendments are adopted. Go ahead.

SENATOR KILGARIN: I move we advance LB 428 to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion is carried. The bill is advanced. The next bill is 99.

SENATOR KILGARIN: I move the E & R amendments to LB 99.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion is carried. The E & R amendments are adopted.

SENATOR KILGARIN: I move we advance LB 99 to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. Motion is carried. The bill is advanced. The next bill is 385. Okay, just a minute, 361.

SENATOR KILGARIN: I move the E & R amendments to LB 361.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. Motion is carried. The E & R amendments are adopted.

LB 3, 11, 12, 70, 95, 99, 228,
250, 257, 266, 266A, 296A,
310, 318, 328A, 369, 381, 384,
389, 428, 441, 470, 472, 472A,
497, 501, 506, 541, 543, 556A

May 11, 1981

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by Chaplain Palmer.

REVEREND PALMER: Prayer offered.

PRESIDENT: Roll call. Record the presence, Mr. Clerk.

CLERK: Quorum present, Mr. President, plus one.

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

CLERK: Mr. President, I have no corrections.

PRESIDENT: The Journal will stand as published. Any other messages, reports or announcements?

CLERK: Mr. President, I have an Attorney General's opinion addressed to Senator Chronister regarding compensation of rural water districts. That will be inserted in the Journal. (See pages 1899-1900 of the Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports that we have carefully examined engrossed LB 3 and find the same correctly engrossed. 11 correctly engrossed, 12 correctly engrossed, 70 correctly engrossed, 95 correctly engrossed, 99 correctly engrossed, 228 correctly engrossed, 250 correctly engrossed, 257 correctly engrossed, 266 correctly engrossed, 266A correctly engrossed, 296A correctly engrossed, 310 correctly engrossed, 328A correctly engrossed, 369 correctly engrossed, 381 correctly engrossed, 384 correctly engrossed, 389 correctly engrossed, 428 correctly engrossed, 441 correctly engrossed, 470 correctly engrossed, 472 correctly engrossed, 472A correctly engrossed, 497 correctly engrossed, 501 correctly engrossed, 506 correctly engrossed, 541 correctly engrossed, 543 correctly engrossed. Those are all signed by Senator Kilgarin as Chair.

Mr. President, a new A bill, LB 556A, offered by the Speaker at the request of the Governor. (Read as found on page 1904 of the Legislative Journal.)

Mr. President, Senator Vard Johnson would like to print amendments in the Journal to LB 428 and Senator DeCamp to LB 318. See pages 1904-1906 of the Legislative Journal.)

PRESIDENT: The Chair recognizes Speaker Marvel for an explanation of order of business today on the agenda. Speaker Marvel.

January 28, 1982

LB 410, 428, 448, 657
LB 417, 192, 314,

dangerous and I think that we have a responsibility to ensure that that doesn't continue to happen. I urge you to advance LB 417. I don't think that it is a major problem if you are going to move a combine a great distance to drop the platform, put it on a trailer and not endanger the public. I urge you to advance the bill.

SENATOR CLARK: The question before the House is the advancement of the bill. All those in favor say aye, opposed nay. The bill is advanced. LB 421. The Clerk would like to read in.

CLERK: Mr. President, I have a series of items to read in. Senator Higgins would like to print amendments to LB 314; Senator Vard Johnson to print amendments to LB 428; Senator Vard Johnson to LB 410; Senator Vickers to LB 192; Senator Warner to LB 192 and Senator Warner to LB 448. (See pages 456-462 of the Legislative Journal.)

Mr. President, I have a reference report referring gubernatorial appointments. (See page 463 of the Legislative Journal.)

I have a notice of hearing from the Education Committee and Senator Nichol moves that LB 657 be placed on General File notwithstanding the action of the committee. That will be laid over, Mr. President. (See page 463 of the Journal.)

March 5, 1982

LB 126, 259, 428, 609, 626, 774

intact the system of evidence that exists now.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, we've spent so much time that I don't want to take time so I'll just say I respectfully oppose the amendments. I believe we've treated the issue before.

SPEAKER MARVEL: Okay, Senator Chambers, do you want to close on your motion. There are no lights up here. Do you want a roll call vote? Okay, call the roll.

CLERK: (Read roll call vote as found on page 1004 of the Legislative Journal.) 10 ayes, 33 nays, Mr. President.

SPEAKER MARVEL: The motion lost. Okay, we will now proceed with Final Reading. All legislators should be in their seats and the first bill to be read now is LB 126.

CLERK: (Read LB 126 on Final Reading.)

SPEAKER MARVEL: All provisions of law relative to procedure having been complied with, the question is, shall the bill pass. Those in favor vote aye, opposed no. Have you all voted? Clerk, record the vote.

CLERK: (Read record vote as found on page 1005 of the Legislative Journal.) 42 ayes, 2 nays, Mr. President, 3 present and not voting...3 excused and not voting, 2 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. The next bill is LB 428. Yes.

CLERK: Mr. President, if I may right before that, your committee on Enrollment and Review respectfully reports we have carefully examined and reviewed LB 626 and recommend that same be placed on Select File with amendments; LB 259 Select File with amendments; LB 774 Select File and LB 609 Select File, all signed by Senator Kilgarin as Chair. (See pages 1005-1006 of the Legislative Journal.)

I have a reference report referring gubernatorial appointments and I have an announcement from the Speaker regarding the scheduling of priority bills for special order consideration.

Mr. President, with respect to LB 428, first of all, Senator Johnson, I believe you had an amendment that you had printed

that you wished to withdraw. Is that right, Senator? Okay. And in that case, Mr. President, Senator Johnson will move to return LB 428 to Select File for a specific amendment and Senator Johnson's amendment is found on page 458 of the Legislative Journal.

SPEAKER MARVEL: Senator Johnson.

SENATOR V. JOHNSON: Mr. Speaker and members of the body, LB 428 is a bill that is known as the limited guardianship bill. This bill was initially introduced three years ago and the Judiciary Committee at that time decided not to advance the bill to the floor of the Legislature because it was a very involved bill. At the beginning of the last legislative session I took the other bill and I reworked it considerably and introduced it as a limited guardianship bill and it was heard by Judiciary a year ago this winter and it was advanced to the floor of the Legislature and it quickly moved through General File and through Select File and as it was moving I kept talking to the Nebraska Bar Association about its taking some position on 428 because I knew that it had an effect on guardianship practices and in addition I talked to county judges about the same thing. But they were not really in a position to respond quickly to the movement of the bill. In fact, this is one of those rare times when I felt the bill was moving faster than it ought to move. In fact, I think when Senator Nichol spoke to this bill he said, now you want to watch this bill carefully because it does make changes in the guardianship practice. So it came up for Final Reading last legislative session and I asked that it be held over. I asked that it be held over for the summer and fall so that the Bar Association and the county judges could have a hard look at it and they have done that. And what has happened is that I have met in November, December and January...November and December of last year and January of this year with several county judges and with the Nebraska Association for Retarded Citizens and we have worked out amendments which make the limited guardianship concept a very real and practicable concept in the guardianship context, but at the same token do not so hamstring and handicap the court system as to make the practice very cumbersome and almost unworkable and the amendments that I am going to talk about now, which you will find on page 458 of the Legislative Journal, are those amendments that have been reviewed by the county judges, have found to be acceptable amendments to the bill, have been reviewed by the Nebraska Association for Retarded Citizens, found to be acceptable amendments to the bill and the Nebraska Bar Association has taken a total hands off position in respect to this legislative bill. What does the bill with these amendments

do? It says this. When a guardianship petition is filed for someone that is deemed to be incapacitated and a person is incapacitated if they effectively by virtue of mental or physical infirmity are not able to understand... they lack sufficient understanding in effect to handle their affairs, when that petition is filed, then the court must appoint an attorney to represent the interests of the incapacitated person. That is a significant change. Today the court only...it's only discretionary as to whether or not an attorney will be appointed to represent the ward. The amendments make it very clear that the court must appoint a lawyer to represent the ward, the alleged ward. Then the court will conduct a hearing on the issue of incapacitation and if the attorney for the ward concludes that it is not in the ward's best interest to be at that hearing under the amendments the attorney can certify that to the court and the ward does not have to be present at the hearing. That situation can easily arise when the ward is comatose and that would clearly be incapacitated but the ward is comatose, staying at a hospital or a convalescence center or a long-term care center and just can't be present at the hearing. Under those circumstances the attorney can certify that it is not in the best interest of the ward to be at the hearing and the hearing can continue. At the hearing, if the court finds by clear and convincing evidence, which again is a change from the existing standard with respect to incapacitation, that the individual is incapacitated, then the court has authority to establish the guardianship for the ward. And when the court establishes that guardianship they can establish it as a full guardianship giving the guardian, in effect, every power to deal with the ward's affairs or it can limit the guardianship. It can say, "Look, we have had to conclude from the evidence before us presented by the attorney and by the ward himself and by others, that the ward is competent in certain areas." The ward could choose where the ward wants to live. The ward can manage a certain portion of the ward's estate and right on down the line. Under those circumstances the court can limit the nature of the guardianship. That is included in the amendments. The original bill said that the court starts out with limiting the guardianship at the outset and only expands those limitations to a full guardianship if it concludes that the incapacitated person requires a full guardianship. The amendments take it the other way. It says that we start out with the full guardianship but if a showing is made that the ward is basically not capable of...is capable of conducting affairs in certain areas, then a limitation can be applied. The amendments permit the court along the way to appoint a visitor. A visitor would be somebody, probably not an attorney, who would go out and gather evidence and present that evidence as necessary

to the court. The amendments also specify that when the notice of the proposed guardianship is prepared and delivered to the incapacitated person it sets forth certain provisions, i.e., that the allegedly incapacitated person has the right to have a visitor appointed, has the right to be present at the hearing and has a right to present evidence on his or her own behalf and has the right to request that the guardianship itself be limited. Furthermore the bill, as it presently is written, requires the court to annually review the situation with respect to an incapacitated person to determine whether or not guardianship should be extended, to determine whether or not the guardianship should be limited, to determine whether or not the guardianship should be made a full guardianship. But these changes effectively will give Nebraska and all of its citizens a guardianship law which I think pretty carefully balances the concerns that you and I have to make certain that the rights of nobody are treated rudely but are pretty carefully protected and assured along the way. So we have that on the one hand that person's rights are not roughly, are not ridden roughshod over, but on the other hand, we at least provide protections to society in general that guardianships can be established for incapacitated persons. At this time I would move the return of LB 428 for the specific amendments as I have articulated them and as they are found on page 458 of the Legislative Journal.

SPEAKER MARVEL: The first motion is to return the bill to Select File for a specific amendment. All those in favor of that motion vote aye, opposed vote no. Record the vote.

CLERK: 28 ayes, 0 nays, Mr. President, on the motion to return the bill.

SPEAKER MARVEL: The second motion is to adopt the amendment. All those in favor of that amendment vote aye, opposed vote no. Record the vote.

CLERK: 31 ayes, 0 nays on adoption of Senator Johnson's amendment.

SPEAKER MARVEL: The motion now is to advance the bill to E & R for engrossment. All those in favor of that motion say aye, opposed no. The motion is carried. The bill is advanced. Before we proceed with the next item of business it is my privilege to introduce to you in the North balcony from Senator Wiitala, Senator Goodrich, Senator Koch, Senator Stoney and Senator Hoagland's district, 100 seniors from Westside, Omaha, two instructors, instructor Karr and instructor Higgins, and they are in the North balcony. Where is instructor Higgins? There you are. Welcome to the Uni-

March 15, 1982

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Roll call. Record the vote, Mr. Clerk, or the presence, I mean.

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: The Journal will stand as published. Are there any other messages, reports or announcements?

CLERK: Mr. President, I have a report from the Department of Roads. That will be on file in my office.

The Committee on Business and Labor whose chairman is Senator Barrett instructs me to report LB 967 advance to General File with committee amendments attached; LB 968 as indefinitely postponed, both of those signed by Senator Barrett.

A new resolution, LR 248 offered by the Administrative Rules Committee calls for an interim study into the feasibility of employing an independent hearing examiners system for state agencies in Nebraska. (See page 1149 of the Journal.)

Your committee on Enrollment and Review respectfully reports we have carefully examined and engrossed LB 69 and find the same correctly engrossed; 359, 428, 571, 623, 659, 705, 724, 779 all correctly engrossed, those signed by Senator Kilgarin as Chair. (See page 1151 of the Legislative Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined and reviewed LB 652 and recommend that same be placed on Select File with E & R amendments attached; 522 E & R amendments attached; 568 E & R amendments attached. Those are signed by Senator Kilgarin as Chair. (See pages 1150-1151 of the Legislative Journal.)

Your committee on Public Works whose chairman is Senator Kremer reports LB 785 advance to General File and LR 212 advance to General File. Those are signed by Senator Kremer. (See page 1152 of the Legislative Journal.)

I also have a committee on Public Works report on a gubernatorial confirmation hearing.

And, Mr. President, Senator Beutler would like to add his name to LB 577 as cointroducer.

March 18, 1982

LB 827, 69, 359, 428

PRESIDENT: LB 827 passes. The next bill on Final Reading, Mr. Clerk, is LB 69.

CLERK: (Read LB 69 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 69 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Record vote read as found on page 1253, Legislative Journal.) 34 ayes, 11 nays, 2 excused and not voting, 2 present and not voting, Mr. President.

PRESIDENT: LB 69 passes. We will proceed then with the Final Reading of LB 359, Mr. Clerk.

CLERK: (Read LB 359 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 359 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read record vote as found on pages 1253 and 1254, Legislative Journal.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President.

PRESIDENT: LB 359 passes. The next bill on Final Reading is LB 428, Mr. Clerk.

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

PRESIDENT: Read the motion.

CLERK: Senator Beutler would move to return, Mr. President, LB 428 to Select File for specific amendment. (Read Beutler amendment found on page 1254, Legislative Journal.)

PRESIDENT: The Chair recognizes Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I think there is an important question that we should discuss before we proceed to pass this bill and that is a question that this Legislature as I understand it discussed a number of years ago when it passed the Uniform Probate Code, and the basic question that I am addressing with this amendment is whether in the case of guardianships the court should be required to appoint an attorney for each and every incapacitated person that comes before it or whether that should be left to the court's discretion after reviewing the facts of

the case. 428 as it now exists would require that in each of the dozens or hundreds of guardianship cases that come before the courts each year that the court appoint an attorney to represent the incapacitated person regardless of the facts and circumstances of the situation. I think that the practical effect of the bill as it is is going to be to increase the cost of having a guardian appointed from somewhere around one or two hundred dollars which is probably what it is now to somewhere up to five or six or more hundred dollars. I think that would be a fair representation. First of all, let me tell you what all the amendment does so you know exactly what we are talking about. There are three distinct points. The first thing the amendment says is that the court "may" appoint an attorney, not that the court "shall" appoint an attorney and that is by far the most important part of the amendment. The second thing that the amendment does is to strike the requirement that the incapacitated person be present unless his or her attorney certifies otherwise. Now that language, if you care to look at it, is in that blue copy of 428 which is in front of you, and if you look on page 3 of your blue copy, subsection (d) up at the top says, "The person alleged to be incapacitated is entitled to be present at the hearing unless his or her attorney certifies that it is not in the best interest of the person to be present." That sounds pretty good and by and large it is a pretty fair requirement but the problem is I think that in a number of instances there will be incapacitated persons who are bedridden and perhaps Senator Johnson would care to clarify but it does appear that in that instance unless the attorney certifies otherwise somehow the bedridden person has to be present. Now maybe you take the hearing to the nursing home or maybe that is not what is intended by the language. I would be interested in hearing Senator Johnson's comments with regard to that particular provision. But at any rate, the second part of my amendment then would strike that new language and simply leave him with the right to be present in person or the right to be represented by an attorney should he or she so choose. The third part of the amendment deals with a notice provision that is on page 10, line 20, if you wanted to turn over there. One thing that Senator Johnson has provided in this bill is that in addition to giving the incapacitated person notice that a petition for guardianship has been filed, you also have to give them in addition a notice and that notice says a number of things and you can read them there on page 10; that you have the right to have a visitor appointed; right to be present at the hearing; the right to represent evidence, to present evidence; the right to request that the power of the guardian if appointed be limited by the court. This is unusual in the sense that ordinarily in the filing of petitions

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you don't have to give this kind of an elaborate notice. Now maybe there is some argument that there should be this kind of a notice in this instance, but the third part of my amendment deals with line 20, the sentence, "The right to have a visitor appointed", and I changed the word "visitor" to "attorney" to notify them that they have the right to have an attorney appointed. Then if they have an attorney and they want an attorney, the attorney can go about having a visitor appointed, or for that matter can simply hire his own investigator to do and perform the functions that the visitor would perform. That basically is the amendment. I might mention that there have been some materials passed out to you. It looks like Senator Burrows' initials is on that sheet which is some interesting information from the Nebraska Chapter of MRAA expressing some of their concerns with the bill, a couple of which are picked up in this particular amendment. I do want to make the statement that I am not interested in killing this bill. Senator Johnson has set out a whole number of guidelines in a number of areas to be looked at by the courts and to be considered by the courts and I think they are extremely helpful and extremely valuable but I am coming in part from my own experience and the experience of some people that have talked to me. I think that by and large, probably 95% of the cases or more, there is absolutely no problem in the appointment of a guardianship. The parent of an incapacitated person or the child of an incapacitated person in the case of the elderly simply want and must take the legal action to have the guardianship appointed. There is absolutely no controversy and it makes some sense to keep the expense as low as possible. If you require the appointment of an attorney, not only is there the expense of the attorney itself, but given the limited nature of the guardianship that is now recommended basically by these provisions, I would think that any attorney doing his job well would want to examine those items that the bill requires a visitor to examine or hire a visitor to make those examinations, because without making those examinations, the lawyer cannot ascertain what his proper function is in recommending the extent of the guardianship. So what I am saying is that I think you are going to have the expense of the attorney and you are going to have the expense of a visitor that will go with it once you have the attorney, and I might also point out to you that in many of these cases, of course, the expense of that attorney and the expense of the visitor is picked up by the counties, and so there would be some expense to the counties under this bill the way it is right now. That expense I think would be limited in a reasonable manner if we continue to leave to the discretion of the court

the appointment of the attorney. We have made an effort in this Legislature to upgrade the quality of the judiciary. We have good people on the bench right now. I am really hoping that we will be reasonable with 603 that is coming up shortly as an incentive to keep good people on the bench but the reason we need them there I think is to avoid the expense of instituting elaborate procedures instead of relying to some extent on the discretion and the good judgment of the judge involved in the case and that is what we need here I think. I think that much of what Senator Johnson is recommending is good. We should proceed with it but perhaps proceed a little more cautiously than he has recommended by not requiring the appointment of the attorney. I think, Mr. Speaker, that I will end on that note. Thank you.

PRESIDENT: The Chair recognizes Senator Koch.

SENATOR KOCH: Mr. President and members of the body, I rise to support Senator Beutler's amendments. I know Mr. Brown. He is a personal friend of mine and he was in my office the other day and he represents a group of parents as he explains to you in the handout by Senator Burrows. We are concerned about the total substance of LB 428 and I am concerned also as I read his remarks, and since I have known Mr. Brown for many years as an educator and a coach and a friend, I think that this body should at least give credence to Senator Beutler's amendments realizing that Senator Johnson has worked hard on this piece of legislation. I would like to have Senator Johnson reply to these amendments and also to some comments that were placed on the desk from Mr. Brown, particularly those comments of Judge McGowan who obviously handles a large number of cases each year. And additionally other comments were made by items clear through the section of item #5. Senator Johnson, would you reply to those items there, please, for me?

PRESIDENT: The Chair recognizes Senator Vard Johnson.

SENATOR VARD JOHNSON: Senator Koch is referring to one that Senator Burrows has on your desk and it comes from Marvin Brown, the President of Mental Retardation Association. The first point that Mr. Brown makes is he does take a statement from Judge McGowan who is one of the two county judges in Douglas County who indicates, who testified to the Judiciary Committee on March 3, 1981 that as far as he was concerned we ought not to change the existing law because everything that we want to do with LB 428 as it was then written could be done under existing law. Judge McGowan and I have certainly discussed LB 428 in some

detail over the summer and fall and, in fact, there are many provisions in LB 428 that is on your desk right now that have come directly from Judge McGowan. It strikes me that if Judge McGowan was asked today about his feelings on LB 428, they would be substantially different from what he said on March 3, 1981. The second point is this will make...LB 428 will make every guardianship an adversary proceeding. What LB 428 does by requiring the appointment of a lawyer to represent the incapacitated person in every case, what will happen is the lawyer will want to make sure that whatever the rights of the incapacitated person are are adequately protected. I have no problem with Senator Beutler raising this question because I think it is a really good debate question. Now we appoint lawyers now for every mental commitment case. Everytime somebody is said to be mentally ill and we want to hold them, a lawyer has to be appointed to represent that individual. We appoint lawyers now in every neglect case in the juvenile court. Everytime we take a youngster and say this youngster could be a neglected child, we appoint a lawyer representing the neglected child. If we are going to terminate parental rights in either district court or juvenile court, everytime we are going to try to do that, we say those interests at stake are so vital we appoint a lawyer to represent the parents whose rights are about to be terminated. We have said that there are some rights of people in society that are so dear that we are prepared to pay a price and even resort to sometimes an adversary type hearing to protect those rights. I think the guardianship, you see, the guardianship issue vitally affects the rights of people. It really does and because of that I think an attorney needs to be appointed. I don't want to take too much of your time, Senator Koch. Arlyss Brown testified that she has handled a lot of guardianship proceedings as general counsel I guess for the Department of Public Institutions. The Department of Public Institutions has always had a real concern about persons down in Beatrice. I mean they really have and they get nervous whenever anybody does anything with a guardianship measure which is likely to have some effect on the Beatrice case. I think that testimony might be a little bit skewed. The more amendments to make the bill more palatable, well, I just spent a lot of time working with the court system and other folk, you know, to try to have a good limited guardianship measure. I don't know that it necessarily means it makes it more palatable, it just makes it a better bill, and finally, they don't like the fact that this particular piece of legislation was promoted by the Nebraska Association for Retarded Citizens because it was the same group that promoted the Horacek case. Well, I can't say much about that, Senator Koch.

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PRESIDENT: Senator Koch, did you ask him to reply to a question? That is what I thought. Do you want to take the rest of your time at this point?

SENATOR KOCH: I just have one other question of Senator Johnson.

PRESIDENT: Oh, you have another question. All right.

SENATOR KOCH: The amendments offered by Senator Beutler, now are those reasonable?

SENATOR VARD JOHNSON: In my opinion they are not reasonable but that doesn't mean that they are not...

SENATOR KOCH: Would they be acceptable to you?

SENATOR V. JOHNSON: No, they would not be acceptable to me and I will argue that point when my time comes.

SENATOR KOCH: Okay, thank you.

PRESIDENT: Senator Johnson, I was recognizing you on your own time but you still have a minute or so left if you would like to say anything additional.

SENATOR V. JOHNSON: Am I the next speaker?

PRESIDENT: About what?

SENATOR V. JOHNSON: Yes, let me just go on and speak for just a minute.

PRESIDENT: Go ahead.

SENATOR V. JOHNSON: This is a good question, Senator Koch, Senator Beutler. The Uniform Probate Code which Nebraska adopted in 1974 which is a uniform code requires the appointment of a lawyer in every guardianship case over an incapacitated person. I mean that is what the Uniform Probate Code does, and that is the law in those states that have adopted the Uniform Probate Code without amendment. But what happened in 1977 just before our Uniform Probate Code went into effect, we passed it in '74 but we gave the lawyers three years to get used to how to live under that system, this Legislature decided that it would lower its voice on the mandatory appointment of lawyers and guardianship proceedings and so we amended it to make it discretionary and we have operated under the discretionary system from '77 through '82. This is now '82. Now one of the things

that LB 428 does is that it says, "Look, don't it? "People who are alleged to be incapacitated", and those could be children who are mentally retarded and handicapped, those can be older people who have by virtue of senility or other physical or mental infirmities can no longer manage their affairs, "that a guardianship for those persons can be commenced", and LB 428 says, "if a guardianship for one of those individuals is commenced, a lawyer to represent that person has got to be assured". Now that can be a lawyer of the incapacitated person's own choice, or if they are not in the position of that kind to make a choice, then it will be an appointed lawyer and that lawyer will basically assist the court in developing the facts that deal with (a) the incapacitation, and (b) the nature of the guardianship that should be imposed. Now a guardianship literally strips from the individual the ability to make any decisions concerning their financial affairs, concerning where they live, concerning how they take medications, concerning how they get treated, I mean it literally removes from the individual virtually all of the human and civil rights that we know of and it seems to me that given the magnitude of the stripping away, so to speak, of basic human rights that the least that we want to do is to guarantee that before those rights are so removed that the individual has had a fair hearing and that is what the appointment of the attorney is really about.

PRESIDENT: All right, the Chair recognizes Senator Burrows.

SENATOR BURROWS: Mr. Chairman, members of the body, I will support the Beutler amendment but even with the Beutler amendment I still find the bill quite unpalatable. On page 9, Section 9, I would like to read this section to you. "The reasonable fees and costs of a guardian ad litem and visitor appointed by the court shall be allowed, disallowed, or adjusted by the court and shall be paid from the estate of the ward if the ward possesses an estate, or, if not, shall be paid by the county in which the proceedings are brought." Now you tie that back with the part of the Beutler amendment that requires they be represented, and we are talking about a lot of cases where you have got family taking the guardianship, and if you require legal representation, you are eroding that estate and forcing erosion of that estate where actually there is no reason whatsoever for it. It is a noncontroversial guardianship where the family may very well be involved, the parent, vice versa, or a child involved in that estate, taking over the guardianship, and then to require the ward pay out of the estate, I think this is an extremely unreasonable provision when you hook this with what Senator Beutler is trying to strike. So I certainly would urge to adopt the Beutler amendment, but even with

the Beutler amendment, we have an adequate working system right now. I don't think evidence has been shown that any real change is needed in the law regarding the guardianship. We have case law written in the courts and the people that came in with this handout I provided you, I wish you would look it over carefully. It is made up by Marvin Brown and he is the President of the Mental Retardation Association that represents really parents of the Beatrice residents. Most of these are severe and profoundly retarded residents and the parents have concerns that they will not get the care in the community programs and the stability of programming that they will get in an institutional environment. I don't like to see a fight developed between the community programs and the Beatrice State Home or Redevelopmental Center. That should not exist. The fight that happened some years ago in the court cases that are discussed in this handout was a very expensive fight for the State of Nebraska. It accomplished very little. I want to see good community mental retardation programs that are adequately funded but I also want to see an institutional program that is solid, that fills the needs of the most severely profoundly retarded citizens, these citizens, many of them with multiple handicaps, that cannot fit into community programs in a reasonable way. I think no action on this bill, killing the bill, putting it off at least for a year until more rationales are developed for a need for a change. I think in this one you can apply very well the old term "if it works, don't fix it". New case laws, if this bill is passed, will have to be developed in the courts, interpretations of new language, and it leaves the courts not knowing where they are going where presently decisions, court decisions, are letting it run I think quite smoothly under the existing law. So to change it in any way I think is a mistake at this point and I think any changes that are made should be very minimum changes.

PRESIDENT: One minute, Senator.

SENATOR BURROWS: And I feel this bill goes entirely too far. If it passes, I do want to see the Beutler amendment adopted but I would urge you even upon voting for the Beutler amendment that you later reject the bill and indefinitely postpone this bill. I want, if it passes, I want to see a less harmful version passed but I think it is a mistake to move in any direction on this legislation in this session of the Legislature. Thank you.

PRESIDENT: Before we recognize the next speaker, the Chair takes pleasure in introducing some 58 eighth grade students from St. Bernadette in Omaha. They are up here in the North balcony. They are guests of Senator Labedz. And the teachers, Sister Elizabeth and Sister Angela. Would you recognize the

students from St. Bernadette. Welcome to your Unicameral Legislature. The Chair recognizes Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, I would rise just briefly to support the Beutler amendment. This bill when it came in last year the Judiciary Committee showed interest in it and we were crowding Senator Vard Johnson to get his amendments in which he did, of course, and in our opinion increased the good part of the bill considerably. I think perhaps Senator Beutler's amendment to make it permissive for the judges, which they can do now, is probably good, and if we are to rely on judges which should be good people because we are paying them a reasonable amount, we should perhaps allow this discretion to them rather than saying that ~~they should do it~~. I really do think most judges take these cases seriously, and if they think it is necessary to appoint an attorney for the client, they will do so. So with that I would support...I do not speak, incidentally, for the Judiciary Committee as a whole but only individually on this point.

PRESIDENT: The Chair recognizes Senator Marsh.

SENATOR MARSH: Thank you, Mr. President, and members of the Legislature. I rise to oppose the amendment. From the conversation we have had this morning, one would think there was no problem relating to guardianships in the State of Nebraska. Some of you will remember that three years ago I chaired an interim study where we started hearing about the problems in the State of Nebraska relating to guardianships. If everything is going well, it works fine, but what about the family situation where someone is very anxious to get hold of some property and wishes someone to be declared totally incompetent to handle anything, when in fact that is not true. A limited guardianship would be much more in keeping because the person is physically frail. When someone is appointed a guardian, there needs to be a specific individual to speak for that individual whose rights are being removed. We mandate this in cases of child abuse. We mandate this for juvenile courts. We are talking about persons of all ages, not just children, not just adults. Anyone could need at some time the appointment of a guardian of some degree. I strongly feel that the person whose rights are being removed ought to have that added safeguard. You are making it sound like it is a horribly expensive thing. Taking away the rights of an individual is a horrible thing at any price. I strongly support LB 428 in its current form and I do not support the amendment which has been offered by Senator Beutler.

PRESIDENT: The Chair recognizes Senator Higgins.

SENATOR HIGGINS: Mr. President, I already told Senator Johnson this morning that I had voted the law all along with him on this bill until I received this long handout that we received this morning from I think it was the Association for the Retarded of America. In it they quoted a very good friend of mine, Judge Bob McGowan in Omaha, and I have a great deal of respect for that judge and his judgment so I called him and I told him what the handout said and I said, "Bob, I have voted for this bill all along and I certainly don't want to vote in any way, shape, or form to harm the mentally retarded in their rights", so I read him what was quoted. And he said, "Marge, that was absolutely true at the hearing. Since the hearing", he said, "I have visited with Senator Johnson and another judge in Lincoln", I forgot his name now, "also has been working with Senator Johnson", and he said, "much of what I objected to in that bill has been taken out". And he said, "My official position right now is this, I am neither for it nor am I against it". He said, "You vote your conscience", but he said, "What I objected to at the hearing has pretty much been resolved and taken out, so you do what you think is right." If Judge McGowan has changed his mind since Senator Johnson has amended this bill so much, I am wondering if the other people quoted in this handout have not also changed their minds since the public hearing. But I think in all fairness to the people that are being quoted and in fairness to Senator Johnson that I should share that information with you. Thank you, Senator.

PRESIDENT: The Chair recognizes Senator Sieck.

SENATOR SIECK: Mr. President, members of the body, I am opposed to the Beutler amendment. Anytime you take "shall" out and put "may", you really soften the bill up and you don't get the job done. I do have a son that is mentally retarded and I am his guardian but what if something would happen to me and he doesn't have any guardianship? I would sure want him to be able to have the court give him a good guardian and I just feel that "shall" has to be in there. I just can't see no other way. I do feel that the bill is proper. The visitor is another thing that I feel is very important. He should have someone to act as a visitor, as his spokesman, so to speak, besides an attorney, and I just think that is important. I think those people that oppose the bill would want that. I just can't understand it. So I oppose the amendment. Thank you.

PRESIDENT: The Chair recognizes Senator Newell. The question has been called for. 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: 28 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: Motion carries. Debate ceases. Before I recognize Senator Beutler to close, I would like to introduce some guests of Senator Jim Goll, some 15 ladies representing the Washington County Feeders Association Auxiliary. They are seated under the North balcony and, ladies, we welcome you to your Unicameral. Welcome. Senator Beutler, you may close on your motion.

SENATOR BEUTLER: Okay, once again, the important point of the amendment is that it would make the appointment of an attorney discretionary with the judge as opposed to requiring the appointment of an attorney which is what is presently in the bill. I think the Judiciary Committee and Senator Johnson have done an excellent job with this piece of legislation and I think that some of the things that they have put into the bill actually argue strongly for leaving the discretion with the judge because there are some additional protections in there. Let me tell you what I mean. If you leave the discretion with the judge, under the bill as it is and under the law as it was before but not as explicitly, if the judge has any concern at all about whether an attorney should be appointed, he can take the step of appointing a visitor, and once he appoints this person called a visitor, then there are certain things under this new statute that the visitor must explore and ascertain. Now first of all, who is this visitor? That is another thing the bill has done. Instead of the visitor being just any ordinary disinterested person, it has to be a person trained in social work or a number of other areas that are explicitly outlined in the bill. The visitor is going to be a qualified person. Once he is appointed, he has to do these things. He has to look at the ability of the incapacitated person to communicate and to carry out responsible decisions with regard to, one, selecting his or her place of abode, arranging for his or her medical care, protecting his or her personal effects, giving necessary consents, approvals, or releases, training, education, et cetera, et cetera, et cetera, down through ten different items. All those things have to be explored by the visitor. In short, the visitor is going to report back to the judge with a comprehensive view, a comprehensive disinterested objective view of what is happening in the case. Now if at that point in time the judge sees that the case is anything other than routine, he has the information, he has the ability, and he has the legal ability, the legal discretion to appoint an attorney. So I think that this new visitor provision is a means by which the judge can clearly ascertain the situation

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in a case without necessarily incurring the expense of appointing an attorney. I would mention that the provisions of the bill with regard to the limitation of guardianships and the court's ability to limit guardianships is not touched by this amendment. Making that ability on the part of the court more explicit is good in my opinion and is untouched by the amendment. Finally I would reiterate what Senator Burrows has pointed out to you that at least as far as I know there has been no statement of problems. There was no statement of problems today by Senator Johnson. There has been no parade of horrors. There hasn't even been the promenading of one ghastly instance of abuse under the present system. So in conclusion, I am merely asking you to move a little slowly in this area, put into effect some of the guidelines...most of the guidelines that Senator Johnson is asking...

PRESIDENT: One minute, Senator Beutler.

SENATOR BEUTLER: But draw back temporarily from requiring the appointment of an attorney at this point in time. Thank you.

PRESIDENT: The question is the motion to return for the Beutler specific amendment on LB 428. All those in favor vote aye, opposed vote nay. I remind you, you are on Final Reading so everybody is supposed to be at his or her desk and there is no need for a Call of the House here. We are on Final Reading. Have you all voted? Senator Beutler, do you want to...

SENATOR BEUTLER: Surely there is somebody just tottering on the edge.

PRESIDENT: All right, record the vote.

CLERK: 25 ayes, 16 nays on the motion to return the bill, Mr. President.

PRESIDENT: Motion carries and LB 428 is returned. Senator Beutler, do you wish to move adoption?

SENATOR BEUTLER: Mr. President, I would move the adoption of the amendment. I think the arguments have been clearly stated on both sides. I have no further argument.

PRESIDENT: The motion is to adopt the amendment. Senator Koch. The question then is...that is the opening and the closing...the question now is the adoption of the proposed Beutler amendment. All those in favor vote aye, opposed nay. Senator Beutler, it looks like they are tottering

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on the edge, as you say, again. Has everyone voted that is going to vote?

SENATOR BEUTLER: How many are excused, Mr. Speaker?

PRESIDENT: Pardon?

SENATOR BEUTLER: How many are excused, Mr. President?

PRESIDENT: One excused. Speaker Marvel. That is it. So the rest should all be here. Do you want to have a roll call vote?

SENATOR BEUTLER: In twenty seconds, Mr. Speaker, I would like to request a roll call vote.

PRESIDENT: Okay, a roll call vote. All right, we will have a roll call vote. Would each legislator please return to his or her seat. While you are doing that, the Chair will recognize from Senator Rex Haberman's District some 11 students from Chase County High School in Imperial, David White, up here in the North balcony. Welcome to you Imperial residents. Welcome to your Unicameral. To make sure that we know that everybody is here, we have had a lot of confusion, would you record your presence so that we know everyone is here so we can proceed with the roll call vote. Everyone record your presence. Senator Warner, Kremer, Rumery, Newell. Senator Wagner, Senator Vickers, Senator Marsh. Senator Chambers should be here, too. Senator Vickers, did you want to push that little button...thank you. Now, Senator Chambers is the only one who is not here. Senator Beutler, did you want to wait for him to get here? Proceed with the roll call vote, Mr. Clerk.

CLERK: (Roll call vote commenced.)

PRESIDENT: Just a minute. (Gavel.) It is very difficult to hear up here and please give the Clerk your attention and just speak when he asks you to give your roll call vote. Go ahead, Mr. Clerk.

CLERK: Thank you, Mr. President. (Roll call vote continued.) (See pages 1254 and 1255, Legislative Journal.) 25 ayes, 22 nays, Mr. President, on the motion to adopt the Beutler amendment.

PRESIDENT: Motion carries. The Beutler amendment is adopted. Now, Senator Beutler, do you want to move the bill back to its position.

SENATOR BEUTLER: I move the readvancement of the bill,

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LB 428, 435

Mr. President.

PRESIDENT: Motion is to readvance LB 428 to E & R for engrossment. All those in favor signify by saying aye, opposed nay. What? A machine vote, Senator Stoney? A machine vote has been requested. All those in favor vote aye, opposed nay. Clear the Board. Record the vote.

CLERK: 40 ayes, 5 nays to readvance the bill, Mr. President.

PRESIDENT: The motion carries. LB 423 is readvanced to E & R for engrossment. Motion on the desk.

CLERK: Mr. President, Senator Burrows would move to return LB 428 to Select File for a specific amendment, that amendment being to strike the enacting clause.

PRESIDENT: All right, the Chair recognizes Senator Burrows.

SENATOR BURROWS: Mr. Chairman, members of the body, the amendment does make it much more palatable than before but I feel that this area that the debate has not shown specific needs for changing the guardianship law in the manner we are justifies the passage of the bill. I still feel this bill will cause expensive cases that are going to retest guardianship laws, that it is not a solution to make this change at this time and that it does not justify passing. I will, however, withdraw my motion to indefinitely postpone. I think there has been a great deal of debate on the issue this morning and I would just urge the members not to support the passage of this bill at this point. I feel that Senator Sieck reads the bill differently than I do because I think in his own situation that it would make it more complicated for his family situation in his discussion of it. I don't think we are that far apart in what we want to eventually happen but I would urge the body to vote against the bill and I withdraw the amendment to indefinitely postpone.

PRESIDENT: The motion is withdrawn, Senator Burrows. We will take up the next bill on Final Reading, LB 435.

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

PRESIDENT: Motion on the desk. Read the motion.

CLERK: Senator Beutler would move to return LB 435 to Select File for specific amendment. The Beutler amendment would read as follows: (Read Beutler amendment as found on pages 1255 and 1256, Legislative Journal.)

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LB 522, 568, 688, 652, 480,
428, 626, 571, 573,

CLERK: (Roll call vote.) 27 ayes, 18 nays, and 4 excused and not voting. (Vote appears on pages 1311-12 of the Legislative Journal.)

PRESIDENT: Motion carries and LB 522 is advanced to E & R for Engrossment. Next bill is LB 568. Senator Nichol, are you ready? Not ready, so there are some amendments being worked on, as I understand. Do you want it just passed over until you get those amendments?

CLERK: Mr. President, Senator Beutler would like to print amendments to LB 688 in the Journal. Senator Fowler amendments to LB 652. Senator's Hoagland, Beyer and Sieck to LB 480. Senator Hoagland to 687.

Mr. President, your committee on Enrollment and Review respectfully reports that they have carefully examined and engrossed LB 428 and find the same correctly engrossed. 571, 626 all correctly engrossed.

PRESIDENT: Before we get started on the next bill, one announcement from Senator Lamb that we will work up till 4:00 p.m., just so you know about what time we are planning on adjourning. Secondly, Senator Wiitala would like us to greet some friends of his from Senator Dworak's district, Darrel and Judy Nelson and their son's John and Darren. They are located under the north balcony. Would the Nelson's stand up and be recognized. Welcome to your Legislature. Welcome, Nelson's. We are ready now, Mr. Clerk, for the next bill on Select File. Are there any E & R amendments?

CLERK: There are E & R amendments to LB 573, Mr. President.

PRESIDENT: Chair recognizes Senator Kilgarin.

SENATOR KILGARIN: I move we adopt the E & R amendments to LB 573.

PRESIDENT: Motion to adopt the E & R amendments to 573. Any discussion? All those in favor of adopting the E & R amendments on LB 573 signify by saying aye, opposed nay. The E & R amendments are adopted. Are there other amendments, Mr. Clerk?

CLERK: Senator's Wesely and Kremer would move to amend the bill, Mr. President. The amendment is on page 1099 of the Journal.

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LB 807, 428

PRESIDENT: Motion carries. LB 807 is returned. Senator Landis, do you wish to move the adoption . . .

SENATOR LANDIS: I move the adoption of the amendment.

PRESIDENT: Senator Landis moves to adopt the amendment to LB 807. Is there any further discussion? Senator Landis, is there anything further? Motion then is the adoption of the Landis amendment to LB 807. All those in favor vote aye opposed nay. Record the vote.

CLERK: 34 ayes, 0 nays Mr. President on the adoption of the Landis amendment.

PRESIDENT: Motion carries, the Landis amendment is adopted. Senator Landis do you want to just move . . . Senator Landis moves to advance LB 807 to E & R for Engrossment. Any discussion? All those in favor signify by saying aye. Opposed nay. LB 807 is advanced to E & R for Engrossment. Next bill then will be LB 428 Mr. Clerk.

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

PRESIDENT: Read the motion.

CLERK: Senator Vard Johnson moves to return LB 428 to Select File for specific amendment. That amendment would be as following: (Read Johnson amendment).

PRESIDENT: Chair recognizes Senator Vard Johnson.

SENATOR V. JOHNSON: (mike not activated) . . . amendment is a fairly straight forward amendment. This is one of the few substantive amendments to actually come up this morning. What this amendment does is it says this, in every guardianship proceeding initiated on behalf or for an incapacitated person, if that person does not have an attorney to represent him, then the court shall appoint a lawyer to represent the incapacitated person. Now 428 has had a fairly lengthy history in this body. LB 428 began not in the 1981 session but in the 1980 session with another bill, a limited guardianship bill and this bill has been thrashed about by the Nebraska Bar Association by county judges and by persons that deal with retarded individuals. It has been worked through very, very carefully. When it came up for Final Reading a week or so ago, on the morning of Final Reading Senator Beutler offered an amendment to make some changes to 428. One of the changes to 428 was to remove the mandatory

appointment of a lawyer to represent an incapacitated person and to make it a discretionary appointment by the court system. That amendment did carry. There were a few other changes that were made that were essentially innocuous changes to the bill. But I got thinking about that and thinking about that, and to me it is a very troublesome issue. It is the issue that I think is of central importance to this measure. It does not do this body a lot of good to carefully articulate rights for incapacitated people without assuring to those incapacitated people that those rights will be well argued in the court system. That is one reason we have lawyers and one reason we have appointed lawyers is to make certain that rights can be fully aired in the judicial process. If we remove from this legislation the mandatory appointment of counsel, if we remove it from this legislation, which is what 428 currently does, what we have done is we have set up a very fine framework in my opinion of solid rights for people who are haled before the county court and are thought to be incapacitated but we have left them essentially voiceless, we have left them without an attorney to represent their interests. You know over the long pull one of the things that we have done in society is we have tried to assure people whose liberty is about to be taken away that they will have a lawyer to represent them. We have done that in the criminal arena. We first started out in all capital offense cases and we said if you are charged with a capital offense then you have to have a lawyer appointed, then we did that with felony cases, if you are charged with a felony offense and you can go to jail you have to have a lawyer appointed. Then we did it with misdemeanor cases. We said if you are charged with a misdemeanor offense you can go to jail for even as short as one day, you have to have a lawyer appointed. Then we did it in juvenile court cases. We said if you are brought before the well intentioned, well meaning juvenile court, the purpose of which is not to label a juvenile as a criminal but simply to assist that juvenile, rehabilitate that juvenile, bring that juvenile into the wholesome system you have to have a lawyer appointed. We do that in mental illness cases. If you are haled before the mental commitment board and you are going to be charged with some type of mental illness and you have a possibility of being confined in a mental institution, you have to have a lawyer appointed. Now we get down to the guardianship area. The thing that you and I know about a guardianship is this. A guardianship effectively strips from the individual every civil right that individual has. That individual no longer has the freedom to deal with the

individual's economic wealth. That individual no longer has the freedom to make personal choices about where that person is going to live, about the medical services that person is going to have. All that is left to the individual is to eat and to sleep, carry on bodily functions and that is essentially it. The truth of the matter is that that is a sever stripping away of human rights. It strikes me that in the full development over the long haul of articulation of rights of people we have to make sure there is a lawyer appointed. Now, the appointment of a lawyer does two things besides protecting the right of the individual. (A) it raises a transactional cost of getting a guardianship and that is something people don't like and (B) it inconveniences well intentioned petitioners who bring a case into the court to have a parent who appears to be senile placed under guardianship or a youngster who appears to be retarded placed under guardianship or anyone else who appears to be incapacitated are placed under a guardianship. It is an inconveniencing factor. Now I of course have been troubled by the inconveniencing. I have been troubled by the increase in transactional costs but I finally come down by saying that it is important to us to fully assure people in our society that rights that are essentially inalienable, will not be taken away except with utmost care. In my opinion that does require the appointment of counsel in every case, unless the incapacitated person already has a lawyer of his or her own choosing. That is what my amendment to 428 does. What it does very simply is it says 428 is a good bill, it will articulate a bill but it takes that one additional step that says those good qualities in that bill can only be articulated and heard in every case when there is a lawyer appointed in the first instance to at least represent the incapacitated person. I would ask you to bring this back to Select File for the specific amendment, to make the appointment of lawyers mandatory, to place that amendment on it and to then readvance the bill.

PRESIDENT: Chair recognizes Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, we argued for a couple of hours a week ago on this very same subject. All of the different factors, pro and con were brought out, I thought, very articulately by one person or another. We reached the decision on the logic of the matter, on the facts presented to us and we heard all the facts, we reached a decision. Now, one week later the lobby is unhappy with the decision, they have activated and now they are brow beating people so they can switch a

few votes so the decision that we reached on the merits one week ago will be reversed. It seems to me that if there is a time wasting process that is going on, it is this one of rehashing the same argument within a matter of a few days. But, since the subject has been brought up let me remind you of some of the arguments on the other side again. First of all the process that you are instituting will be a costly process that is probably not going to be needed in 99% of the cases and in the cases where it is needed, more likely than not the judge will have a lawyer appointed. First of all don't forget the basic principle, as this bill provides, a notice has to be given to each and every person for whom guardianship proceedings are instigated. That notice now has to specifically say, in accordance with this bill, that certain things are going to be done, that they have a right to go out and get an attorney. So, this bill doesn't take away anybody's right to get an attorney. They have a right to go down and get an attorney. But now what you are saying is that there has to be an attorney in every case. The process of setting up guardianship's in my opinion from costing a hundred to two hundred dollars in each case, and maybe not even that, is going to be jacked up to \$500 to a \$1,000 each case and maybe more in some cases. If you are concerned about a litigious society and how litigious our society is becoming, you are going to be contributing to this process for no good reason, in my opinion, by expanding a necessity for lawyers in these types of guardianship proceedings as comprehended by Senator Johnson's amendment. Let me point out to you again that the bill, in addition to the notice provision that I just talked about, has a whole set of proceedings in it that the judge can use to determine whether a lawyer is necessary. For example, the judge can appoint a visitor and the visitor, if a visitor is appointed has to go out and look at the place of abode, has to look at the patients or the alleged incompetent persons ability to arrange his own medical care, to protect his own medical effect, to give consent and releases, training, education, rehabilitation, a whole list of ten different items that the judge can have a visitor inquire into to determine whether it is necessary to have a lawyer or not. It may be that some day in the future that we will decide that lawyers are necessary in every case. But, I think that 428 without the provision requiring a lawyer...

PRESIDENT: One minute Senator Beutler.

SENATOR BEUTLER: Is a good step in the direction of the protection of those for whom guardianship's are set up without going to the extreme of requiring a lawyer at this point and time. It is a good compromise, I think we should stick to the decision we made one week ago and not allow the lobby to influence that decision. Thank you.

March 30, 1982

LB 428

PRESIDENT: Before I call on the next speaker, the Chair would like to introduce guests of Senator Wiitala, 39 students from Horace Mann school in Omaha, Chris Katronis their teacher, up here in the south balcony. We welcome Horace Mann to their Unicameral. Welcome. Chair recognizes Senator Nichol.

SENATOR NICHOL: Mr. Chairman and members of the Legislature, Senator Vard Johnson, will you respond to a question or two? When you presented this bill last year, in 1981, did you present this particular amendment to the committee?

SENATOR V. JOHNSON: Yes.

SENATOR NICHOL: And, what was the response?

SENATOR V. JOHNSON: The bill was voted out of committee without any change whatsoever.

SENATOR NICHOL: This was in your bill at that time?

SENATOR V. JOHNSON: Yes.

SENATOR NICHOL: Where did it get out?

SENATOR V. JOHNSON: It came out on the floor a week ago on Final Reading.

SENATOR NICHOL: Correct. Thank you. Senator Beutler, has already discussed the situation again that we hashed over again a few days ago in regard to appointing an attorney for everybody that comes into court who is irresponsible. All right. We made that decision a few days ago. Here comes this particular amendment back in again. Now, it has been brought up several times this year in the Judiciary Committee the guardian's ad litem are appointed by judges and what happens? Nothing. Nothing. The attorneys do nothing. Here we are trying to put into a bill a situation where the court now has the right to appoint a guardian but must appoint a lawyer for all of these people. It seems we made this decision, lets stick to it. Lets either reject the thing or reject the bill when it comes around. But, I think we have dickered around with this bill for two years now, amending and amending and if it isn't in shape now it is getting late in the day to be changing it. I urge you not to support the Vard Johnson amendment.

PRESIDENT: Chair recognizes Senator Marsh.

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LB 428, 571, 942
LRs 272-275

SENATOR MARSH: Thank you Mr. President and members of the Legislature. I rise to support the proposed amendment. I rise because as Senator Beutler said the person who is going to have supposedly a guardian appointed receives notice, that is well and good if the individual is capable of comprehending what the notice means. It is well and good if its an adult who reads. It is well and good, but, what if it is not a person who reads? What if it not a person who comprehends what the written words mean? What if it is not an adult? It is important that the rights of each individual . . .

RECORDER MALFUNCTION - NO RECORDING

The motion to return lost with 13 ayes, 27 nays, 2 present and not voting, and 2 excused and not voting. See page 1473 of the Legislative Journal.

Senator Vickers asked unanimous consent to print an amendment to LB 942 in the Journal. (Page 1473 of the Legislative Journal).

Clerk read LRs 272, 273, 274, and 275. See pages 1473-76 of the Legislative Journal.

RECORDING RESUMES ON FINAL READING

ASSISTANT CLERK: . . . reading LB 428.

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 428 pass. All those in favor vote aye, opposed vote nay. Record the vote.

ASSISTANT CLERK: 41 ayes, 4 nays, 2 present and not voting, 2 excused and not voting. Vote appears on page 1477 of the Legislative Journal.

PRESIDENT: LB 428 passes. Next bill on Final Reading is LB 571.

CLERK: Mr. President, LB 571, I have a motion from Senator Schmit to return LB 571 to Select File for a specific amendment.

PRESIDENT: Chair recognizes Senator Schmit.

SENATOR SCHMIT: Mr. President, I move the bill be returned for a specific amendment. The specific amendment is basically

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LB 428, 571, 573, 626

PRESIDENT LUEDTKE PRESIDING

DR. AL NORDEN: Prayer offered.

PRESIDENT: Roll call. Senator Hoagland, would you honor us by letting us start. Thank you. 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 this morning, Mr. President.

PRESIDENT: The Journal will stand as published. Any messages, reports or announcements?

CLERK: Mr. President, the only items I have are the bills that were read on Final Reading yesterday are now ready for your signature.

PRESIDENT: While the Legislature is in session and capable of transacting business I propose to sign and I do sign reengrossed LB 428, reengrossed LB 571 and reengrossed LB 626. We are ready then for agenda item #4, Final Reading. The Sergeant at Arms will secure the Chamber, see that all unauthorized personnel leave the floor and all members are at their desks. As soon as everyone returns to his or her desk we will commence with Final Reading this morning. Okay, is everybody ready for Final Reading? I notice at ten-thirty we have a Mother of the Year ceremony, Nebraska Mother of the Year ceremony so we would like to move along as rapidly as we can. We are still kind of waiting to get everybody situated at his or her desk and then we will commence. One more time, if everybody would assume their desks we're ready to go. Okay, we can commence then, Mr. Clerk, with Final Reading of LB 573.

CLERK: (Read LB 573 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 573 pass. All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read record vote as found on page 1511 of the Legislative Journal.) 40 ayes, 2 nays, 6 excused and not voting, 1 present and not voting, Mr. President.

PRESIDENT: LB 573 passes. The next bill on Final Reading is LB 633.

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LB 953, 428, 571, 754, 942
LR, 282, 283, 284,

SENATOR CLARK PRESIDING

RECORDER MALFUNCTION

The following information is taken from the Legislative Journal dated March 31, 1982.

LB 953 was advanced to E & R for Review with 38 ayes, 3 nays and 8 excused and not voting (Journal page 1543).

Legislative Resolutions 282, 283, 284 were all read and referred to the Executive Board.

The Enrolling Clerk presented the following bills to the Governor: 428 and 571.

LB 754 was advanced to E & R for Engrossment.

LB 942 the E & R amendments found in the Journal on page 1412 were adopted.

Senator Schmit offer an amendment to 942 (see page 1536 of the Journal). The Schmit amendment was adopted with 27 ayes, 0 nays, 18 present and not voting, and 4 excused and not voting.

RECORDING BEGINS:

SENATOR RUMERY . . . touching this highway fund. I hope you will go along with that idea.

SENATOR CLARK: Senator Vickers, did you wish to close?

SENATOR VICKERS: Very briefly, Mr. President. Mr. President and members, just so nobody is misunderstands what I am... where I am coming from and what my position is, as I indicated earlier I would have liked to have set the sunset date for this \$3.75 in 1981, which means I am not in favor of the \$3.75, in case anybody didn't catch that. I'm not in favor of keeping that tax on the registration. I would rather fund the state patrol from the sales and income tax as they have been funded. I was one of the thirteen, remember, back last November that voted to raise the income tax. All I'm saying with this amendment is that it would seem inevitable to me that we are going to, in fact, assess a \$3.75 charge to the registration of vehicles. All I'm saying is that we

April 5, 1982

LR 293, 294, 295
LB 208, 428, 571, 633, 790, 924,
970, 500A, 970A,

CLERK: Mr. President, a few items. The Rules Committee offers a report regarding rule changes previously offered to the Rules Committee. (Page 1605 of the Journal).

I have a gubernatorial confirmation hearing from the Education Committee. (Page 1606 of the Journal).

Senator Vard Johnson would like to print amendments to LB 924. (Page 1606-07 of the Journal).

Attorney General's opinion addressed to Senator Chambers. (Page 1607-08 of the Journal).

A communication from the Governor addressed to the Clerk regarding LB 208, 633, 790, 428, and 571. (See page 1609-10 of the Legislative Journal).

Mr. President, your Committee on E & R respectfully reports we have carefully examined and engrossed LB 970 and find the same correctly engrossed. 970A correctly engrossed.

Mr. President a new resolution LR 293 (read title). LR 294 (read title). LR 295 (read title). All were laid over.

SENATOR LAMB: If I could have your attention for just a few minutes. As you probably know we have a number of priority bills that have not been considered at this point. We have a number of revenue bills and appropriation bills that need further work and so our time is pretty short. In order to consider this whole situation we are scheduling a meeting of the chairmen at noon today in Room 2102, so we can discuss the whole situation and come up with some possible solutions.

SENATOR CLARK PRESIDING

SENATOR CLARK: The first bill we are going to take up under item number four, General File, will be 520A.

CLERK: Mr. President 520A was a bill introduced by Senator Vard Johnson. (Read title). I have an amendment from Senator Johnson to the bill, Mr. President.

SENATOR CLARK: Senator Johnson.

SENATOR JOHNSON: Mr. Speaker, members of the body, LB 520 is a bill that deals with child care and licensing thereof. During the first round debate on LB 520 Senator Cope asked me what I thought this bill would ultimately cost. I indicated