

THIRTY-EIGHTH DAY - MARCH 8, 2004**LEGISLATIVE JOURNAL****NINETY-EIGHTH LEGISLATURE
SECOND SESSION****THIRTY-EIGHTH DAY**

Legislative Chamber, Lincoln, Nebraska
Monday, March 8, 2004

PRAYER

The prayer was offered by Pastor William Bertrand, St. Paul's Lutheran Church, Concord, and Immanuel Lutheran Church, Wakefield.

ROLL CALL

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

The roll was called and all members were present except Senator Schrock who was excused; and Senators Aguilar, Combs, Hudkins, and Kremer who were excused until they arrive.

SPEAKER BROMM PRESIDING**CORRECTIONS FOR THE JOURNAL**

The Journal for the thirty-seventh day was approved.

**SELECT COMMITTEE REPORTS
Enrollment and Review****Correctly Engrossed**

The following bills were correctly engrossed: LBs 16, 625, 835, 878, and 961.

(Signed) Ray Mossey, Chairperson

GENERAL FILE

LEGISLATIVE RESOLUTION 209CA. The Standing Committee amendment, AM2346, found on page 501 and considered on pages 883 and 899, as amended, was renewed.

Pending.

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 245 and 246 were adopted.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LRs 245 and 246.

GENERAL FILE

LEGISLATIVE RESOLUTION 209CA. The Standing Committee amendment, AM2346, found on page 501 and considered on pages 883, 899, and in this day's Journal, as amended, was renewed.

Senator Preister offered the following amendment to the Standing Committee amendment:

AM2953

(Amendments to Standing Committee amendments, AM2346)

- 1 1. On page 1, line 10, after "used" insert "primarily
- 2 for competitive grants to political subdivisions and private
- 3 entities to conserve, enhance, and restore the natural, physical,
- 4 and biological environment of Nebraska, for related transfers to
- 5 the Nebraska Environmental Endowment Fund, and for related
- 6 administrative expenses".

Senator Preister withdrew his amendment.

Senator Landis moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 1 nay, and 23 not voting.

The Standing Committee amendment, as amended, was adopted with 27 ayes, 4 nays, 13 present and not voting, and 5 excused and not voting.

Senator Chambers offered the following amendment:

FA1534

Page 2, in line 18 strike "State Fair Board" and insert "Health and Human Services System for establishment and implementation of a treatment program for HIV/AIDS";

Page 3, in line 14 strike "Nebraska State Fair" and insert "treatment of HIV/AIDS"

Senator Chambers moved for a call of the house. The motion prevailed with 25 ayes, 1 nay, and 23 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 4:

Chambers	Jensen	Louden	Raikes
----------	--------	--------	--------

Voting in the negative, 22:

Bromm	Erdman	Kruse	Price	Vrtiska
Burling	Friend	Landis	Redfield	Wehrbein
Byars	Hudkins	Maxwell	Smith	
Cudaback	Janssen	Mossey	Stuhr	
Engel	Jones	Pedersen, Dw.	Stuthman	

Present and not voting, 17:

Baker	Brown	McDonald	Quandahl	Tyson
Beutler	Foley	Mines	Schimek	
Bourne	Hartnett	Pederson, D.	Synowiecki	
Brashear	Johnson	Preister	Thompson	

Excused and not voting, 6:

Aguilar	Connealy	Kremer
Combs	Cunningham	Schrock

The Chambers amendment lost with 4 ayes, 22 nays, 17 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

Pending.

STANDING COMMITTEE REPORT General Affairs

LEGISLATIVE BILL 1109. Placed on General File as amended.
Standing Committee amendment to LB 1109:
AM2927

1 1. On page 2, line 18, strike "care"; and in line 24
2 after "year" insert "and no more than thirty-five percent of such
3 principal is used in any period of ten consecutive fiscal years.
4 (3) Nothing in this section shall be construed to limit
5 the use of any money that comes to the city or village by gift or
6 devise or otherwise that is not designated to be credited to the
7 perpetual fund or that allows greater use for purchase or
8 development of additional land to be used for cemetery purposes".
9 2. On page 3, line 12, after "year" insert "and no more
10 than thirty-five percent of the principal is used in any period of
11 ten consecutive fiscal years"; in line 20 after "designate" insert

12 "as long as no more than twenty-five percent of the principal is so
 13 used in any fiscal year and no more than thirty-five percent of the
 14 principal is used in any period of ten consecutive fiscal years";

15 and after line 23 insert:

16 "(5) Nothing in this section shall be construed to limit
 17 the use of any money that comes to the city by donation, bequest,
 18 or otherwise that is not designated to be credited to the perpetual
 19 fund or that allows greater use for purchase or development of
 20 additional land to be used for cemetery purposes.".

21 3. On page 5, line 4, after "year" insert "and no more
 22 than thirty-five percent of such principal is used in any period of
 23 ten consecutive fiscal years.

24 (4) Nothing in this section shall be construed to limit
 1 the use of any money that comes to the city or village by gift or
 2 devise or otherwise that is not designated to be credited to the
 3 perpetual fund or that allows greater use for purchase or
 4 development of additional land to be used for cemetery purposes".

(Signed) Ray Janssen, Chairperson

SELECT COMMITTEE REPORTS

Enrollment and Review

Correctly Engrossed

The following bills and resolution were correctly engrossed: LBs 818, 820, 821, 836, 911, 915, 927, 936, 937, 947, 950, 1069, and LR 211CA.

ER9106

Enrollment and Review Change to LB 818

The following changes, required to be reported for publication in the Journal, have been made:

1. On page 1, line 3, "eliminate" has been struck and "change" inserted.

ER9107

Enrollment and Review Change to LB 836

The following changes, required to be reported for publication in the Journal, have been made:

1. On page 4, line 21, "who are" has been struck.
2. On page 5, line 5, "department" has been struck and "Department of Agriculture" inserted; and in line 9 "they" has been struck and "the producer" inserted.

(Signed) Ray Mossey, Chairperson

AMENDMENT - Print in Journal

Senator Smith filed the following amendment to LB 232:
AM2172

- 1 1. On page 3, line 1, strike "2004" and insert "2005";
- 2 in line 2 strike "2008" and insert "2009"; and in line 28 strike
- 3 "2005" and insert "2006".

ATTORNEY GENERAL'S OPINIONOpinion # 04007

DATE: March 8, 2004

SUBJECT: LB 1179; Circumvention Of The Public Meetings Statutes By Electronic Communication; Electronic Communications As Public Records.

REQUESTED BY: Senator Nancy Thompson
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
Dale A. Comer, Assistant Attorney General

LB 1179 would amend several portions of the Nebraska Public Meetings Statutes, Neb. Rev. Stat. §§ 84-1408 through 84-1414 (1999, Cum. Supp. 2002), to specifically prohibit the use of e-mails, faxes and other electronic communication to circumvent the public government purposes of those laws. For example, Section 2 of LB 1179 would add the new language underlined below to § 84-1411 (3) (h):

Telephone conference calls, e-mails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in sections 84-1408 to 84-1414.

You state that concerns regarding the applicability of Legislative Bill 1179 have been raised with you by city officials who might be impacted by passage of the bill. Consequently, you have posed two questions to us, which we will discuss below.

Question No. 1: "Will [passage of] LB 1179, Section 2(3)(h) mean that a member of a city council cannot communicate by e-mails, faxes or other electronic communication with a number of members constituting a quorum of the city council without violating the open meeting statutes?"

At the present time, § 84-1410 (4) provides, in pertinent part: "[n]o closed session, informal meeting, chance meeting, social gathering, or electronic communication shall be used for the purpose of circumventing the requirements of such sections [the Public Meetings Statutes]." Similarly, §§ 84-1411 (2) and 84-1411 (3) currently prohibit the use of videoconferencing and telephone conferencing to circumvent any of the public government purposes established by the Public Meetings Statutes. As a result, passage of LB 1179 would simply broaden the number of activities subject to the circumvention prohibition set out in current law. Under those circumstances, we will begin our response to your initial question with a discussion of the law in this area under the present statutes.

We are aware of no Nebraska cases which directly address the provisions of the Public Meetings Statutes prohibiting circumvention of those statutes by certain types of electronic communication. However, absent anything to the contrary, statutory language is to be given its plain and ordinary meaning. *Spradlin v. Dairyland Ins. Co.*, 263 Neb. 521, 641 N.W.2d 356 (2002). In that regard, "circumvent" may be defined as "to surround or to circle around," or "to get the better of or prevent from happening by craft or ingenuity." WEBSTER'S NEW WORLD DICTIONARY 259 (2nd College Ed. 1982). In addition, the language in § 84-1410 (4) pertaining to circumvention of the Public Meetings Statutes was added to that statute by 1983 Neb. Laws LB 43, and the legislative history of that bill makes it clear that intent is a necessary element of the prohibited conduct. For example, the following exchange occurred during the committee hearings on LB 43:

SENATOR LANDIS: This then would be, would have to be a knowing, intentional act. Social gathering would have to be used to circumvent and here when you say be used to circumvent, you imply the intent to circumvent the open meetings law. Is that not accurate?

SENATOR HOAGLAND: Well, I hate to make any definitive statements with respect to legislative intent, Senator Landis, but and again I think we should consult with Mr. Peterson on that issue but it would be my sense that, yes, that some sort of intent to circumvent the law would need to be part of the proof.

Committee Records on LB 43, 88th Neb. Leg., 1st Sess. 5 (Jan. 27, 1983). As a result, it appears to us that the circumvention prohibition in the current statutes involves some element of intent or purposeful action on behalf of members of a public body. Whether such intent to circumvent exists in a particular instance is a factual determination which must be resolved on a case-by-case basis.

We have also previously cautioned against "extensive" correspondence among members of a public body which might constitute actionable conduct in circumvention of the Public Meetings Statutes. Op. Att'y Gen No. 94035 (May 11, 1994). Consistent with that opinion, we have generally taken the position, for enforcement purposes, that a minimal exchange of

correspondence or minimal electronic communication among members of a public body does not trigger the existing circumvention prohibitions. Our analysis in that regard has focused on the intent of the members of the public body as evidenced, at least in part, by the extent of the communication which occurred. In that context, the involvement of a quorum of the public body at issue simply provides further potential evidence of an intent to circumvent.

Based upon the discussion above, we believe that, under current law, members of a public body can communicate with other members of that body by electronic means, even if that communication is directed to a quorum of the body, so long as there is no course of communication which becomes sufficiently involved so as to evidence an intent or purpose to circumvent the Public Meetings Statutes. In that context, LB 1179 would simply add new electronic activities to the currently existing circumvention prohibitions. Therefore, in our view, the passage of LB 1179, Section 2(3)(h) would not prohibit a member of a public body from communicating on a topic with other members of that body by e-mails, faxes or other electronic communication, even if that communication was directed to a quorum of the public body at issue. On the other hand, if that communication elicited responses and further communications, then at some point, it would be possible to argue that the public body was intentionally using electronic communications to circumvent the Public Meetings Statutes.

Question No. 2: "Does LB 1179, and its' interpretation and applicability, provide that e-mails, faxes or other electronic communications between elected officials and elected officials and governmental staff constitute public records accessible by the general public?"

The Public Meetings Statutes contain few references to public records, and it does not appear to us that the language of LB 1179 amending those statutes would make e-mails, faxes or records of other electronic communications public records subject to disclosure to the general public. However, the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (1999, Cum. Supp. 2002), do govern access to public records in Nebraska, and § 84-712.01 (1) defines a "public record" to include:

. . . all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

(Emphasis added). Under the definition of public record in § 84-712.01 (1) and the Public Records Statutes generally, we believe that e-mails, faxes or records of other electronic communications between elected officials and

between elected officials and governmental staff are public records which are subject to disclosure to the general public, unless there is a specific statute in each instance which allows particular electronic materials to be kept confidential.

Sincerely yours,
 JON BRUNING
 Attorney General
 (Signed) Dale A. Comer
 Assistant Attorney General

cc. Patrick J. O'Donnell
 Clerk of the Legislature
 05-233-21

GENERAL FILE

LEGISLATIVE RESOLUTION 209CA. Senator Chambers offered the following amendment:

FA1541

Strike and show as stricken subsections (2) and (3) of Section 1;

On page 3, in line 11 strike beginning with "require" through "gambling" in line 15, and insert "eliminate the state lottery".

Senator Chambers moved for a call of the house. The motion prevailed with 31 ayes, 0 nays, and 18 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 10:

Chambers	Foley	Louden	Quandahl	Smith
Erdman	Jensen	Price	Redfield	Tyson

Voting in the negative, 15:

Bromm	Hartnett	Johnson	Maxwell	Pedersen, Dw.
Byars	Hudkins	Jones	Mines	Synowiecki
Engel	Janssen	Landis	Mossey	Thompson

Present and not voting, 19:

Aguilar	Brown	Friend	Preister	Stuthman
Baker	Burling	Kruse	Raikes	Vrtiska
Beutler	Combs	McDonald	Schimek	Wehrbein
Bourne	Cudaback	Pederson, D.	Stuhr	

Excused and not voting, 5:

Brashear	Connealy	Cunningham	Kremer	Schrock
----------	----------	------------	--------	---------

The Chambers amendment lost with 10 ayes, 15 nays, 19 present and not voting, and 5 excused and not voting.

Senator Landis moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 30 ayes, 2 nays, and 17 not voting.

Senator Chambers requested a roll call vote on the advancement of the resolution.

Voting in the affirmative, 30:

Baker	Byars	Hudkins	Maxwell	Price
Beutler	Combs	Janssen	McDonald	Schimek
Bourne	Cudaback	Johnson	Mines	Stuhr
Brashear	Cunningham	Jones	Mossey	Stuthman
Bromm	Friend	Kruse	Pedersen, Dw.	Vrtiska
Brown	Hartnett	Landis	Preister	Wehrbein

Voting in the negative, 14:

Aguilar	Erdman	Pederson, D.	Redfield	Thompson
Burling	Foley	Quandahl	Smith	Tyson
Chambers	Louden	Raikes	Synowiecki	

Present and not voting, 2:

Engel	Jensen
-------	--------

Excused and not voting, 3:

Connealy	Kremer	Schrock
----------	--------	---------

Advanced to E & R for review with 30 ayes, 14 nays, 2 present and not voting, and 3 excused and not voting.

The Chair declared the call raised.

AMENDMENTS - Print in Journal

Senator Beutler filed the following amendment to LB 1185:
AM2911

(Amendments to Standing Committee amendments, AM2485)

- 1 1. Insert the following sections:
- 2 "Section 1. Section 44-1984, Revised Statutes
- 3 Supplement, 2002, is amended to read:
- 4 44-1984. (1) No insurer that transacts any line of
- 5 business other than title insurance shall be eligible for the

6 issuance or renewal of a certificate of authority to transact the
7 business of title insurance in this state nor shall title insurance
8 be transacted, underwritten, or issued by any insurer transacting
9 or authorized to transact any other line of business.

10 (2)(a) Notwithstanding subsection (1) of this section,
11 and to the extent such coverage is lawful within this state, a
12 title insurer shall issue closing or settlement protection covering
13 a proposed insured if the title insurer issues a title insurance
14 commitment or title insurance policy. Such closing or settlement
15 protection shall conform to the terms of coverage and form of
16 instrument as required by the director and shall indemnify a
17 proposed insured solely against loss of settlement funds only
18 because of the following acts of a title insurer's named title
19 insurance agent:

20 (i) Theft of settlement funds; and

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

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

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

6 Sec. 2. Section 44-1993, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 44-1993. (1) A title insurer shall not accept title
9 insurance business from a title insurance agent unless there is in
10 force a written contract between the parties which sets forth the
11 responsibilities of each party and, when both parties share
12 responsibility for a particular function, specifies the division of
13 responsibilities.

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

25 (3) A title insurer shall, at least annually, conduct an
26 onsite review of the underwriting, claims, and escrow practices of
27 the title insurance agent which shall include a review of the title
1 insurance agent's title insurance policy form inventory and
2 processing operations. If the title insurance agent does not
3 maintain separate financial institution or trust accounts for each
4 title insurer it represents, the title insurer shall verify that

5 the funds held on its behalf are reasonably ascertainable from the
6 books of account and records of the title insurance agent.

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

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

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

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

22 (8)(a) A title insurer is liable for the defalcation,
23 conversion, or misappropriation by a title insurance agent
24 appointed by or under written contract with such title insurer of
25 escrow, settlement, closing, or security deposit funds handled by
26 such title insurance agent in contemplation of or in conjunction
1 with the issuance of a title insurance commitment or title
2 insurance policy by such title insurer. However, if no such title
3 insurance commitment or title insurance policy was issued, each
4 title insurer which appointed or maintained a written contract with
5 such title insurance agent at the time of the discovery of the
6 defalcation, conversion, or misappropriation shares in the
7 liability for the defalcation, conversion, or misappropriation in
8 the same proportion that the premium remitted to the title insurer
9 by such title insurance agent during the twelve-month period
10 immediately preceding the date of the discovery of the defalcation,
11 conversion, or misappropriation bears to the total premium remitted
12 to all title insurers by such title insurance agent during the
13 twelve-month period immediately preceding the date of the discovery
14 of the defalcation, conversion, or misappropriation.

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

20 Sec. 3. Section 44-19,106, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 44-19,106. Sections 44-19,106 to 44-19,123 and section 5
23 of this act shall be known and may be cited as the Title Insurance
24 Agent Act.

25 Sec. 4. Section 44-19,116, Revised Statutes Supplement,
26 2002, is amended to read:

44-19,116. (1)(a) A title insurance agent may operate as

27 an escrow, security, settlement, or closing agent subject to the
1 requirements of subdivisions (b) through ~~(e)~~ (f) of this
2 subsection.

3 (b) All funds deposited with the title insurance agent in
4 connection with an escrow, settlement, closing, or security deposit
5 shall be submitted for collection to or deposited in a separate
6 fiduciary trust account or accounts in a qualified financial
7 institution no later than the close of the next business day in
8 accordance with the following requirements:

9 (i) The funds shall be the property of the person or
10 persons entitled to them under the provisions of the escrow,
11 settlement, security deposit, or closing agreement and shall be
12 segregated for each depository by escrow, settlement, security
13 deposit, or closing in the records of the title insurance agent in
14 a manner that permits the funds to be identified on an individual
15 basis; and

16 (ii) The funds shall be applied only in accordance with
17 the terms of the individual instructions or agreements under which
18 the funds were accepted.

19 (c) Funds held in an escrow account shall be disbursed
20 only pursuant to a written instruction or agreement specifying how
21 and to whom such funds may be disbursed.

22 (d) Funds held in a security deposit account shall be
23 disbursed only pursuant to a written agreement specifying:

24 (i) What actions the indemnitor shall take to satisfy his
25 or her obligation under the agreement;

26 (ii) The duties of the title insurance agent with respect
27 to disposition of the funds held, including a requirement to
1 maintain evidence of the disposition of the title exception before
2 any balance may be paid over to the depositing party or his or her
3 designee; and

4 (iii) Any other provisions the director may require.

5 (e)(i) Disbursements may be made out of an escrow,
6 settlement, or closing account only if funds in an amount at least
7 equal to the disbursement have first been received and if the funds
8 received are in one of the following forms:

9 (A) Lawful money of the United States;

10 (B) Wired funds when unconditionally held by the title
11 insurance agent;

12 (C) Cashier's checks, certified checks, bank money
13 orders, or teller's checks issued by a federally insured financial
14 institution and unconditionally held by the title insurance agent;
15 and

16 (D) United States treasury checks, federal reserve bank
17 checks, federal home loan bank checks, and State of Nebraska
18 warrants.

19 (ii) For purposes of this subdivision, federally insured
20 financial institution means an institution in which monetary
21 deposits are insured by the Federal Deposit Insurance Corporation

22 or National Credit Union Administration.

23 (f) A title agent who holds funds relating to an exchange
 24 under section 1031 of the Internal Revenue Code shall provide
 25 written disclosure, at or before closing, to the person whose funds
 26 are being held, on a separate paper with no other information on
 27 the paper, which states that:

1 (i) Such services performed by a title insurance agent
 2 are not regulated by the Department of Banking and Finance, the
 3 Department of Insurance, or any other agency of the State of
 4 Nebraska or by any agency of the United States Government;
 5 (ii) The safety and security of such funds is not
 6 guaranteed by any agency of the State of Nebraska or of the United
 7 States Government or otherwise protected by law; and
 8 (iii) The owner of such funds should satisfy himself or
 9 herself as to the safety and security of such funds.

10 ~~(2) On and after January 1, 2004, every title insurance~~
 11 ~~agent shall have an annual audit made of its escrow, settlement,~~
 12 ~~closing, and security deposit accounts, conducted by a certified~~
 13 ~~public accountant on a calendar year basis at its expense within~~
 14 ~~ninety days after the close of the previous calendar year. The~~
 15 ~~title insurance agent shall provide a copy of the audit report to~~
 16 ~~each title insurer which it represents. The director may adopt and~~
 17 ~~promulgate rules and regulations setting forth the minimum~~
 18 ~~threshold level at which an audit would be required, the standards~~
 19 ~~of audit, and the form of audit report required. The director may~~
 20 ~~also require a title insurance agent to provide a copy of its audit~~
 21 ~~report to the director. Title insurance agents who are attorneys~~
 22 ~~and who issue title insurance policies as part of their legal~~
 23 ~~representation of clients are exempt from the requirements of this~~
 24 ~~subsection. However, the title insurer may, at its expense,~~
 25 ~~conduct or cause to be conducted an annual audit of the escrow,~~
 26 ~~settlement, closing, and security deposit accounts of the attorney.~~
 27 ~~Attorneys who are exclusively in the business of title insurance~~
 1 ~~are not exempt from the requirements of this subsection.~~

2 ~~(3) If the title insurance agent is appointed by two or~~
 3 ~~more title insurers and maintains fiduciary trust accounts in~~
 4 ~~connection with providing escrow, closing, or settlement services,~~
 5 ~~the title insurance agent shall allow each title insurer reasonable~~
 6 ~~access to the accounts and any or all of the supporting account~~
 7 ~~information in order to ascertain the safety and security of the~~
 8 ~~funds held by the title insurance agent.~~

9 ~~(4) (3) Nothing in the Title Insurance Agent Act shall be~~
 10 ~~deemed to prohibit the recording of documents prior to the time~~
 11 ~~funds are available for disbursement with respect to a transaction~~
 12 ~~if all parties consent to the transaction in writing.~~

13 ~~(5) (4) Nothing in this section is intended to amend,~~
 14 ~~alter, or supersede other sections of the act or the laws of this~~
 15 ~~state or the United States regarding an escrow holder's duties and~~
 16 ~~obligations.~~

17 ~~(6)~~ (5) The director may prescribe a standard agreement
 18 for escrow, settlement, closing, or security deposit funds.
 19 Sec. 5. Whenever the director has reasonable cause to
 20 believe that a title insurance agent is violating the Title
 21 Insurance Agent Act or any rules and regulations adopted and
 22 promulgated thereunder, the director may, without notice, and
 23 before a hearing, issue a summary cease and desist order. At the
 24 same time the order is issued, the director shall serve notice to
 25 the title insurance agent of the reasons for such order and that
 26 the title insurance agent may request a hearing in writing within
 27 ten business days after receipt of the order. If a hearing is
 1 requested, the director shall schedule a hearing within ten
 2 business days after receipt of the request. The hearing shall be
 3 conducted in accordance with the Administrative Procedure Act. If
 4 a hearing is not requested and none is ordered by the director, the
 5 order shall remain in effect until modified or vacated by the
 6 director. Any title insurance agent aggrieved by a final order of
 7 the director may appeal the order. The appeal shall be in
 8 accordance with the Administrative Procedure Act. In the event of
 9 noncompliance with a summary cease and desist order, the director
 10 may cause a complaint to be filed in the district court to enforce
 11 the order.
 12 Sec. 11. The following sections are outright repealed:
 13 Sections 76-261 to 76-263 and 76-265, Reissue Revised Statutes of
 14 Nebraska."
 15 2. On page 13, line 17, after "sections" insert "44-1993
 16 and 44-19,106, Reissue Revised Statutes of Nebraska, sections
 17 44-1984, 44-19,116,".
 18 3. Renumber the remaining sections accordingly.

Senator Raikes filed the following amendment to LB 1160:
 AM2937

(Amendments to Standing Committee amendments, AM2768)

- 1 1. On page 2, line 6, after the period insert "The
 2 resolution must be adopted before July 25 and it will affect the
 3 time for hearing protests for that year only."; and in line 9 after
 4 "77-1504.01" insert "for that year".

RESOLUTION

LEGISLATIVE RESOLUTION 251. Introduced by Engel, 17.

WHEREAS, the South Sioux City girls' basketball team is the champion of the 2004 Class B Girls' State Basketball Tournament, repeating its championship successes of 1995, 1996, 1997, 1998, 2000, 2001, 2002, and 2003; and

WHEREAS, the 47-37 win over the talented number two Omaha Skutt team in the final game capped the Lady Cardinals' Girls' Class B State Basketball Championship; and

WHEREAS, head coach Kelly Flynn, who guided the South Sioux City girls' basketball team, became the first nine-time champion in Nebraska girls' basketball history and extended its winning streak against Nebraska teams to 39 games; and

WHEREAS, throughout the year the South Sioux City Lady Cardinals have complemented their talents with the characteristics of sportswomanship, determination, and diligence; and

WHEREAS, the South Sioux City Lady Cardinals are positive role models for young athletes in the community and throughout the region; and

WHEREAS, such a team achievement is made possible not only by individual members' performance and coaching guidance, but also through the support of teachers, administrators, and parents.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature recognizes and congratulates the South Sioux City Lady Cardinals basketball team and its coaches, parents, and supporters.

2. That a copy of this resolution be sent to the South Sioux City Lady Cardinals' basketball team head coach Kelly Flynn.

Laid over.

VISITORS

Visitors to the Chamber were high school students and teacher from Creighton; statewide group of Women Involved in Farm Economics; and 40 Girl Scouts from western Nebraska.

RECESS

At 12:03 p.m., on a motion by Senator Janssen, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:30 p.m., Senator Cudaback presiding.

ROLL CALL

The roll was called and all members were present except Senator Schrock who was excused; and Senators Brashear, Foley, and Landis who were excused until they arrive.

SPEAKER BROMM PRESIDING

SELECT COMMITTEE REPORTS
Enrollment and Review

Correctly Engrossed

The following bills were correctly engrossed: LBs 940, 1033, and 1179.

(Signed) Ray Mossey, Chairperson

AMENDMENTS - Print in Journal

Senators Stuhr, Raikes, and Redfield filed the following amendment to LB 868:

AM2950

(Amendments to Standing Committee amendments, AM2598)

- 1 1. Strike sections 1 and 2 and insert the following new
2 sections:
3 "Section 1. Section 79-201, Reissue Revised Statutes of
4 Nebraska, is amended to read:
5 79-201. (1) For purposes of this section:
6 (a) Prior to July 1, 2005, a child is of mandatory
7 attendance age if the child (i) has reached seven years of age,
8 (ii) did not reach sixteen years of age prior to the effective date
9 of this act, and (iii) has not reached eighteen years of age; and
10 (b) On and after July 1, 2005, a child is of mandatory
11 attendance age if the child (i) will reach six years of age prior
12 to January 1 of the current school year, (ii) did not reach sixteen
13 years of age prior to the effective date of this act, and (iii) has
14 not reached eighteen years of age.
15 (2) Except as provided in section 79-202 subsection (3)
16 of this section, every person residing in a school district within
17 the State of Nebraska who has legal or actual charge or control of
18 any child who is not less than seven years of age and not more than
19 sixteen years of age or who is younger than seven years of age and
20 is of mandatory attendance age or is enrolled in any a public
21 school shall cause such child to enroll in, if such child is not
22 enrolled, and attend regularly the a public, private,
23 denominational, or parochial day schools school which meet meets
24 the requirements for legal operation prescribed in Chapter 79 or a
25 school which elects pursuant to section 79-1601 not to meet
26 accreditation or approval requirements each day that such schools
27 are school is open and in session, except when excused by school
28 authorities or when illness or severe weather conditions make
29 attendance impossible or impracticable.
30 (3) Subsection (2) of this section does not apply in the
31 case of any child who:
32 (a) Has obtained a high school diploma by meeting the

10 graduation requirements established in section 79-729;
 11 (b) Has completed the program of instruction offered by a
 12 school which elects pursuant to section 79-1601 not to meet
 13 accreditation or approval requirements;
 14 (c) Has reached the age of eighteen years;
 15 (d) Has reached the age of sixteen years and such child's
 16 parent or guardian has signed a notarized waiver on a waiver form
 17 provided by the school;
 18 (e) Will reach six years of age prior to January 1 of the
 19 current school year, but will not reach seven years of age prior to
 20 January 1 of the current school year, and such child's parent or
 21 guardian has signed an affidavit stating that the child is
 22 participating in an education program that the parent or guardian
 23 believes will prepare the child to enter grade one for the
 24 following school year; or

25 (f) Will not reach six years of age prior to January 1 of
 26 the current school year and such child was enrolled in a public
 27 school and has discontinued the enrollment according to the policy
 1 of the school board adopted pursuant to subsection (4) of section
 2 79-214. ; unless such child has graduated from high school. Any
 3 person with legal or actual charge or control of a child younger
 4 than seven years of age who is enrolled in a public school may
 5 discontinue the enrollment of such child pursuant to the policy of
 6 the school board. All school boards shall adopt policies allowing
 7 discontinuation of the enrollment of students younger than seven
 8 years of age and specifying the procedures therefor.
 9 The school term shall be as provided in section 79-214.

10 Sec. 2. Section 79-214, Reissue Revised Statutes of
 11 Nebraska, is amended to read:

12 79-214. (1) Except as provided in subsection (2) of this
 13 section, the school board of any school district shall not admit
 14 any child into the kindergarten or beginner grade of any school of
 15 such school district unless such child has reached the age of five
 16 years or will reach such age on or before October 15 of the current
 17 school year for school years prior to school year 2005-06 and
 18 before September 1 of the current year for school year 2005-06 and
 19 each school year thereafter.

20 (2) The board may admit a child who will reach the age of
 21 five ~~between~~ years of age on or after October 16 and on or before
 22 February 1 of the current school year for school years prior to
 23 school year 2005-06 and on or after September 1 and on or before
 24 December 31 of the current school year for school year 2005-06 and
 25 each school year thereafter if the parent or guardian requests such
 26 entrance and provides an affidavit stating that (a) the child
 27 attended kindergarten in another jurisdiction in the current school
 1 year, (b) the family anticipates relocation to another jurisdiction
 2 that would allow admission within the current school year, or (c)
 3 the child has demonstrated through recognized assessment procedures
 4 approved by the board that he or she is capable of carrying the

5 work of kindergarten or the beginner grade.

6 (3) The board shall comply with the requirements of
7 subsection (2) of section 43-2007 and shall require evidence of a
8 physical examination by a physician, a physician assistant, or an
9 advanced practice registered nurse within six months prior to the
10 entrance of a child into the beginner grade and the seventh grade
11 or, in the case of a transfer from out of state, to any other grade
12 of the local school, except that no such physical examination shall
13 be required of any child whose parent or guardian objects in
14 writing. The cost of such physical examination shall be borne by
15 the parent or guardian of each child who is examined.

16 (4) The board shall adopt policies allowing
17 discontinuation of the enrollment of students who will not reach
18 six years of age prior to January 1 of the current school year and
19 specifying the procedures therefor.

20 Sec. 4. The following section is outright repealed:

21 Section 79-202, Reissue Revised Statutes of Nebraska.".

Senators Jensen and Redfield filed the following amendment to LB 1083:
AM2951

(Amendments to Standing Committee amendments, AM2889)

1 1. Insert the following new section:

2 "Sec. 30. Section 58-706, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 58-706. The following activities are eligible for
5 assistance from the Affordable Housing Trust Fund:

6 (1) New construction, rehabilitation, or acquisition of
7 housing to assist low-income and very low-income families;

8 (2) Matching funds for new construction, rehabilitation,
9 or acquisition of housing units to assist low-income and very
10 low-income families;

11 (3) Technical assistance, design and finance services,
12 and consultation for eligible nonprofit community or
13 neighborhood-based organizations involved in the creation of
14 affordable housing;

15 (4) Matching funds for operating costs for housing
16 assistance groups or organizations when such grant or loan will
17 substantially increase the recipient's ability to produce
18 affordable housing;

19 (5) Mortgage insurance guarantees for eligible projects;

20 (6) Acquisition of housing units for the purpose of
21 preservation of housing to assist low-income or very low-income
22 families;

23 (7) Projects making affordable housing more accessible to
1 families with elderly members or members who have disabilities;

2 (8) Projects providing housing in areas determined by the
3 Department of Economic Development to be of critical importance for
4 the continued economic development and economic well-being of the
5 community and where, as determined by the department, a shortage of

- 6 affordable housing exists;
 7 (9) Infrastructure projects necessary for the development
 8 of affordable housing;
 9 (10) Downpayment and closing cost assistance; ~~and~~
 10 (11) Housing education programs developed in conjunction
 11 with affordable housing projects. The education programs must be
 12 directed toward:
 13 (a) Preparing potential home buyers to purchase
 14 affordable housing and postpurchase education;
 15 (b) Target audiences eligible to utilize the services of
 16 housing assistance groups or organizations; and
 17 (c) Developers interested in the rehabilitation,
 18 acquisition, or construction of affordable housing; and
 19 (12) Rental assistance for chronically mentally ill
 20 individuals."
 21 2. Amend the operative date and repealer sections so
 22 that the section added by this amendment becomes operative on its
 23 effective date.
 24 3. Renumber the remaining sections accordingly.

SELECT FILE

LEGISLATIVE RESOLUTION 14CA. The first Schimek pending amendment, FA1483, found on page 724, to the Smith pending amendment, AM2670, was renewed.

Senator Schimek asked unanimous consent to withdraw her first pending amendment, FA1483, found on page 724, and the balance of the original undivided amendment, FA1480, found on page 724, and replace it with the Schimek-Brown substitute amendment, AM2917.

Senator Smith objected.

Senator Schimek moved to withdraw her first pending amendment, FA1483, found on page 724, and the balance of the original undivided amendment, FA1480, found on page 724, and replace it with the Schimek-Brown substitute amendment, AM2917.

Senator Stuthman moved the previous question. The question is, "Shall the debate now close?" The motion failed with 24 ayes, 6 nays, and 19 not voting.

Senator Beutler moved the previous question. The question is, "Shall the debate now close?"

Senator Beutler moved for a call of the house. The motion prevailed with 28 ayes, 0 nays, and 21 not voting.

Senator Chambers requested a roll call vote on the motion to cease debate.

Voting in the affirmative, 32:

Aguilar	Byars	Hartnett	McDonald	Stuthman
Baker	Combs	Hudkins	Mines	Synowiecki
Beutler	Connealy	Janssen	Mossey	Thompson
Bourne	Cudaback	Johnson	Pederson, D.	Wehrbein
Brashear	Cunningham	Kruse	Preister	
Bromm	Engel	Landis	Raikes	
Brown	Friend	Maxwell	Schimek	

Voting in the negative, 10:

Burling	Erdman	Kremer	Quandahl	Stuhr
Chambers	Jones	Price	Smith	Tyson

Present and not voting, 5:

Jensen	Louden	Pedersen, Dw.	Redfield	Vrtiska
--------	--------	---------------	----------	---------

Excused and not voting, 2:

Foley	Schrock
-------	---------

The motion to cease debate prevailed with 32 ayes, 10 nays, 5 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

The Schimek motion to substitute prevailed with 29 ayes, 7 nays, 11 present and not voting, and 2 excused and not voting.

Senators Schimek and Brown offered the following substitute amendment to the Smith pending amendment:

AM2917

(Amendments to AM2670)

- 1 1. Strike amendments 1 and 2 and insert the following
- 2 new amendments:
- 3 "1. On page 2, line 22, strike 'eight' and insert 'two'
- 4 and after the period insert 'Subsequent to the initial legislative
- 5 authorization of any casino location, the voters of the county in
- 6 which such casino location is authorized shall either approve or
- 7 disapprove casino gaming in such county.'; and in line 23 after
- 8 'the' insert 'authorization.'; and in line 24 strike 'at' through
- 9 'locations' and insert 'whether casino gaming is authorized under
- 10 this section or by initiative measure'.
- 11 2. On page 3, line 2, strike 'eight' and insert 'two';
- 12 in line 3 after 'locations' insert 'subject to approval by voters
- 13 in the affected counties' and after 'the' insert 'authorization.';

14 and in line 4 strike 'at such locations'."

Senator Smith requested a division of the question on the Schimek-Brown amendment.

The Chair sustained the division of the question.

The first Schimek-Brown amendment, to the Smith pending amendment, is as follows:

FA1548

(Amendments to AM2670)

- 1 1. Strike amendments 1 and 2 and insert the following
- 2 new amendments:
- 3 "1. On page 2, line 22, strike 'eight' and insert 'two'
- 11 2. On page 3, line 2, strike 'eight' and insert 'two';

Senator Smith requested a ruling of the Chair on whether the Schimek-Brown amendment, FA1548, is germane to the Smith pending amendment.

The Chair ruled the Schimek-Brown amendment, FA1548, is not germane to the Smith pending amendment.

Senator Schimek challenged the ruling of the Chair. The question is, "Shall the Chair be overruled?"

Senator Schimek withdrew her motion to overrule the Chair.

The second Schimek-Brown amendment, to the Smith pending amendment, is as follows:

FA1549

(Amendments to AM2670)

- 1 1. Strike amendments 1 and 2 and insert the following
- 2 new amendments:
- 4 and after the period insert 'Subsequent to the initial legislative
- 5 authorization of any casino location, the voters of the county in
- 6 which such casino location is authorized shall either approve or
- 7 disapprove casino gaming in such county.';
- 12 in line 3 after 'locations' insert 'subject to approval by voters
- 13 in the affected counties'

Senator Schimek offered the following motion:

Invoke cloture on LR 14CA, pursuant to Rule 7, Section 10.

Senator Beutler moved for a call of the house. The motion prevailed with 29 ayes, 1 nay, and 19 not voting.

Senator Beutler requested a roll call vote on the motion to invoke cloture.

Senator Smith requested the roll call vote be taken in reverse order.

Voting in the affirmative, 32:

Aguilar	Byars	Hartnett	Mines	Stuthman
Baker	Combs	Janssen	Mossey	Synowiecki
Beutler	Connealy	Johnson	Pederson, D.	Thompson
Bourne	Cudaback	Kruse	Preister	Wehrbein
Brashear	Cunningham	Landis	Raikes	
Bromm	Engel	Maxwell	Redfield	
Brown	Friend	McDonald	Schimek	

Voting in the negative, 12:

Burling	Foley	Jones	Smith
Chambers	Hudkins	Kremer	Stuhr
Erdman	Jensen	Price	Tyson

Present and not voting, 4:

Louden	Pedersen, Dw.	Quandahl	Vrtiska
--------	---------------	----------	---------

Excused and not voting, 1:

Schrock

The Schimek motion to invoke cloture failed with 32 ayes, 12 nays, 4 present and not voting, and 1 excused and not voting.

The Chair declared the call raised.

AMENDMENTS - Print in Journal

Senator Beutler filed the following amendment to LB 999:
AM2959

- 1 1. Strike original section 4.
- 2 2. On page 33, line 17, strike "and"; and in line 22
- 3 after "state" insert "; and
- 4 (10) A credit card bank shall provide for the insurance
- 5 of deposits as described in subdivision (1)(a) of section 8-702".
- 6 3. On page 58, line 27, strike "8-208,".
- 7 4. In the Standing Committee amendments, AM2339:
- 8 a. Strike section 29;
- 9 b. On page 18, line 7, after "offer" insert ". If" and
- 10 strike "," and if" and show as stricken; and in line 10 after
- 11 "bidder" insert ", except that notice of the sale shall be given
- 12 again in the same manner as the original notice of sale was
- 13 required to be given".
- 14 c. On page 31, line 17, after "deposit" insert "or time
- 15 deposits"; and in line 26 after "deposit" insert "or time deposit";

16 and

17 d. On page 32, line 2, after "deposit" insert "or time

18 deposits"; and in line 14 strike "30-3897,".

19 5. Renumber the remaining sections and correct internal

20 references accordingly.

Senators Beutler and Mines filed the following amendment to LB 962:
AM2955

(Amendments to Standing Committee amendments, AM2733)

1 1. Insert the following new sections:

2 "Sec. 97. (1) In addition to any other fees required by
3 law, the Department of Natural Resources shall collect the
4 following annual registration fees:

5 (a) For water wells used for irrigation as defined in
6 rules and regulations of the department, for industrial purposes as
7 defined in section 46-677, and for aquaculture as defined in
8 section 2-3804.01, fifty dollars; and

9 (b) For water wells used by a public water supplier as
10 defined in section 46-638 and for owners of a surface water
11 appropriation issued pursuant to section 46-233 for direct
12 consumptive use of natural flow or pursuant to section 46-242 for
13 consumptive use of storage water excluding, in both cases,
14 appropriations for induced ground water recharge, intentional
15 underground water storage, incidental underground water storage,
16 and instream appropriations, an amount equal to the total annual
17 water used divided by the amount of water required to provide one
18 and one-half acre-feet of water to one hundred thirty acres
19 annually, multiplied by fifty dollars, but in no case shall the
20 annual fee under this subdivision be less than fifty dollars.

21 (2) The fees required by this section are due September 1
22 for each registered active water well of the types listed in
23 subsection (1) of this section and each surface water appropriation
24 in use during any part of the previous calendar year. Any water
25 well or surface water appropriation for which such fee remains
26 unpaid thirty days or more after the due date is subject to an
27 additional late fee of twenty-five dollars per month or portion
28 thereof for which the fee required pursuant to such subsection
29 remains unpaid. The department may waive all or part of such late
30 fee in the interest of fairness as the department determines.

31 (3) Money collected pursuant to this section shall be
32 remitted to the State Treasurer for credit to the Water Resources
33 Trust Fund.

34 Sec. 98. (1) The Water Resources Trust Fund is created.
35 The State Treasurer shall credit to the fund fees collected
36 pursuant to section 97 of this act, such money as is specifically
37 appropriated thereto by the Legislature, and such funds, fees,
38 donations, gifts, or bequests received by the Department of Natural
39 Resources from any federal, state, public, or private source for
40 expenditure for the purposes described in the Nebraska Ground Water

18 Management and Protection Act. Any money in the fund available for
 19 investment shall be invested by the state investment officer
 20 pursuant to the Nebraska Capital Expansion Act and the Nebraska
 21 State Funds Investment Act.

22 (2) The fund shall be administered by the department.

23 The department shall adopt and promulgate rules and regulations
 24 regarding the allocation and expenditure of money from the fund.

25 (3) Money in the fund may be expended by the department
 26 for costs incurred by the department, by natural resources
 27 districts, or by other political subdivisions in (a) determining
 1 whether river basins, subbasins, or reaches are fully appropriated
 2 in accordance with section 51 of this act, (b) developing or
 3 implementing integrated management plans for such fully
 4 appropriated river basins, subbasins, or reaches or for river
 5 basins, subbasins, or reaches designated as over-appropriated in
 6 accordance with section 51 of this act, (c) developing or
 7 implementing integrated management plans in river basins,
 8 subbasins, or reaches which have not yet become either fully
 9 appropriated or over-appropriated, or (d) attaining state
 10 compliance with an interstate water compact or decree or other
 11 formal state contract or agreement.

12 (4) Except for funds paid to a political subdivision for
 13 forgoing or reducing its own water use or for implementing projects
 14 or programs intended to aid the state in complying with an
 15 interstate water compact or decree or other formal state contract
 16 or agreement, a political subdivision that receives funds from the
 17 fund shall provide, or cause to be provided, matching funds in an
 18 amount at least equal to twenty percent of the amount received from
 19 the fund by that natural resources district or political
 20 subdivision. The department shall monitor programs and activities
 21 funded by the fund to ensure that the required match is being
 22 provided."

23 2. Renumber the remaining sections and correct internal
 24 references accordingly.

Senator Baker filed the following amendment to LB 559:
 AM2936

(Amendments to Final Reading copy)

1 1. On page 6, lines 9 and 23, strike "or a state
 2 identification card" and show as stricken; and strike line 21 and
 3 insert "an operator's license.".
 4 2. On page 33, line 2, after "(3)" insert "(a) Except
 5 for an individual under the age of eighteen years, each individual
 6 applying for a state identification card shall furnish two forms of
 7 proof of identification described in section 60-484.
 8 (b) Any individual under the age of eighteen years
 9 applying for a state identification card shall provide a certified
 10 copy of his or her birth certificate or a certified birth
 11 registration and one other form of proof of identification

12 described in section 60-484. In lieu of a certified copy of a
 13 birth certificate or a certified birth registration, the applicant
 14 shall furnish two other reliable forms of documentation providing
 15 proof of his or her identity and age accompanied by a certification
 16 signed by a parent or guardian explaining the inability to produce
 17 a copy of a birth certificate or certified birth registration. The
 18 applicant may be required to furnish proof to the examiner that the
 19 parent or guardian signing the certification is in fact the parent
 20 or guardian of such applicant.

21 (c) Any individual who presents a valid Nebraska
 22 operator's license or Nebraska state identification card may
 23 present that document for identification for issuance of a state
 1 identification card.

2 (4)"; in line 14 strike "(4)", show as stricken, and
 3 insert "(5)"; and in line 17 strike "(5)" and insert "(6)".

SELECT FILE

LEGISLATIVE BILL 906. Senator Jensen asked unanimous consent to withdraw the balance of the divided Jensen-Stuhr amendment, AM2748, found on page 710. No objections. So ordered.

Senators Stuhr, Bourne, and Jensen offered the following amendment: (Amendment, AM2963, is printed separately and available in the Bill Room, Room 1104.)

Senator Stuhr offered the following amendment to the Stuhr et al. pending amendment:

AM2973

(Amendments to AM2963)

1 1. On page 25, line 23, after the period insert "Nothing
 2 in this section shall be construed to require the performance of
 3 body art on a person under eighteen years of age.".

SENATOR CUDABACK PRESIDING

Senator Stuhr moved for a call of the house. The motion prevailed with 18 ayes, 0 nays, and 31 not voting.

Senator Stuhr requested a roll call vote on her amendment.

Voting in the affirmative, 40:

Baker	Connealy	Jensen	Pedersen, Dw.	Smith
Bourne	Cudaback	Jones	Pederson, D.	Stuhr
Bromm	Cunningham	Kremer	Preister	Stuthman
Brown	Erdman	Kruse	Price	Synowiecki
Burling	Foley	Louden	Quandahl	Thompson
Byars	Friend	McDonald	Raikes	Tyson
Chambers	Hartnett	Mines	Redfield	Vrtiska
Combs	Hudkins	Mossey	Schimek	Wehrbein

Voting in the negative, 0.

Present and not voting, 2:

Janssen Maxwell

Excused and not voting, 7:

Aguilar	Brashear	Johnson	Schrock
Beutler	Engel	Landis	

The Stuhr amendment was adopted with 40 ayes, 0 nays, 2 present and not voting, and 7 excused and not voting.

The Chair declared the call raised.

Pending.

AMENDMENTS - Print in Journal

Senator Stuhr filed the following amendment to LB 906:
AM2972

(Amendments to AM2963)

- 1 1. On page 25, strike line 27.
- 2 2. On page 26, line 1, strike "otherwise to".

Senator Byars filed the following amendment to LB 841:
AM2965

- 1 1. Insert the following new sections:
- 2 "Sec. 2. Sections 2 to 10 of this act shall be known and
- 3 may be cited as the ICF/MR Reimbursement Protection Act.
- 4 Sec. 3. For purposes of the ICF/MR Reimbursement
- 5 Protection Act:
- 6 (1) Department means the Department of Health and Human
- 7 Services Finance and Support;
- 8 (2) Intermediate care facility for the mentally retarded
- 9 has the definition found in section 71-421;
- 10 (3) Medicaid program means the medical assistance program
- 11 established pursuant to sections 68-1018 to 68-1025; and
- 12 (4) Net revenue means the revenue paid to an intermediate

13 care facility for the mentally retarded for resident care, room,
14 board, and services less contractual adjustments and does not
15 include revenue from sources other than operations, including, but
16 not limited to, interest and guest meals.

17 Sec. 4. (1) Each intermediate care facility for the
18 mentally retarded shall pay a tax equal to six percent of its net
19 revenue for the most recent State of Nebraska fiscal year.

20 (2) Taxes collected under this section shall be remitted
21 to the State Treasurer for credit to the ICF/MR Reimbursement
22 Protection Fund.

23 (3) Taxes collected pursuant to this section shall be
24 reported on a separate line on the cost report of the intermediate
1 care facility for the mentally retarded, regardless of how such
2 costs are reported on any other cost report or income statement.
3 The department shall recognize such tax as an allowable cost within
4 the state plan for reimbursement of intermediate care facilities
5 for the mentally retarded which participate in the medicaid
6 program. The tax shall be a direct pass-through and shall not be
7 subject to cost limitations.

8 Sec. 5. (1) The ICF/MR Reimbursement Protection Fund is
9 created. Any money in the fund available for investment shall be
10 invested by the state investment officer pursuant to the Nebraska
11 Capital Expansion Act and the Nebraska State Funds Investment Act.
12 Interest and income earned by the fund shall be credited to the
13 fund.

14 (2) After reimbursement of the department's
15 administrative expenses up to fifty-five thousand dollars and the
16 payment of the cost of the tax, sixty-six percent of the money in
17 the fund each year, including matching federal financial
18 participation, shall be used by the department solely for the
19 purpose of increasing payments under the medicaid program to
20 intermediate care facilities for the mentally retarded
21 participating in such program. Such payments shall be made in a
22 uniform fashion based on the medicaid resident days for each
23 facility. Money in the fund not required for payment to
24 intermediate care facilities for the mentally retarded shall be
25 used by the department for payment to providers of community-based
26 services for persons with developmental disabilities.

27 Sec. 6. (1) On or before July 1, 2004, the department
1 shall submit an application to the Centers for Medicare and
2 Medicaid Services of the United States Department of Health and
3 Human Services amending the state medicaid plan to provide for
4 utilization of money in the ICF/MR Reimbursement Protection Fund to
5 uniformly increase medicaid payments to intermediate care
6 facilities for the mentally retarded.

7 (2) The tax imposed under section 4 of this act is not
8 due and payable until such amendment to the state medicaid plan is
9 approved by the Centers for Medicare and Medicaid Services.

10 Sec. 7. (1) Collection of the tax imposed by section 4

11 of this act shall be discontinued if:

12 (a) The amendment to the state medicaid plan described in
 13 section 6 of this act is disapproved by the Centers for Medicare
 14 and Medicaid Services;

15 (b) The department reduces rates paid to intermediate
 16 care facilities for the mentally retarded to an amount less than
 17 the rates effective September 1, 2003; or

18 (c) The department or any other state agency attempts to
 19 utilize the money in the ICF/MR Reimbursement Protection Fund for
 20 any use other than uses permitted pursuant to the ICF/MR
 21 Reimbursement Protection Act.

22 (2) If collection of the tax is discontinued as provided
 23 in subsection (1) of this section, all money in the fund shall be
 24 returned to the intermediate care facilities for the mentally
 25 retarded from which the tax was collected on the same basis as the
 26 tax was assessed.

27 Sec. 8. (1) An intermediate care facility for the
 1 mentally retarded that fails to pay the tax required by section 4
 2 of this act shall be subject to a penalty of five hundred dollars
 3 per day of delinquency. The total amount of the penalty assessed
 4 under this section shall not exceed five percent of the tax due
 5 from the intermediate care facility for the mentally retarded for
 6 the year for which the tax is assessed.

7 (2) Penalties shall be collected by the department and
 8 remitted to the State Treasurer for credit to the permanent school
 9 fund.

10 Sec. 9. An intermediate care facility for the mentally
 11 retarded that has paid a tax that is not required by section 4 of
 12 this act may file a claim for refund with the department. The
 13 department may by rule and regulation establish procedures for
 14 filing and consideration of such claims.

15 Sec. 10. The department may adopt and promulgate rules
 16 and regulations to carry out the ICF/MR Reimbursement Protection
 17 Act.

18 Sec. 13. Since an emergency exists, this act takes
 19 effect when passed and approved according to law."

20 2. On page 4, line 8, strike "This act becomes" and
 21 insert "Sections 1 and 12 of this act become" and after the period
 22 insert "The other sections of this act become operative on their
 23 effective date."

24 3. Renumber the remaining sections accordingly.

Senator Chambers filed the following amendment to LB 906:
 FA1551

Amend AM2963

On page 7, in line 13 strike "or medical"

UNANIMOUS CONSENT - Add Cointroducers

Senators Byars, Johnson, Maxwell, and Stuthman asked unanimous consent to have their names added as cointroducers to LB 1083. No objections. So ordered.

VISITORS

Visitors to the Chamber were Renee Porter from Arnold, Patrick Gruber from Omaha, and members of the Governors Youth Advisory Council; 14 eighth-grade students from St. Mary's School, Lincoln; and Jacob Jaeschke, Jennifer Jaeschke, and Megan Anderson from Kearney.

The Doctor of the Day was Dr. Paul Paulman from Omaha.

ADJOURNMENT

At 4:33 p.m., on a motion by Senator Janssen, the Legislature adjourned until 9:00 a.m., Tuesday, March 9, 2004.

Patrick J. O'Donnell
Clerk of the Legislature

