

FORTY-SEVENTH DAY - MARCH 23, 2004**LEGISLATIVE JOURNAL****NINETY-EIGHTH LEGISLATURE
SECOND SESSION****FORTY-SEVENTH DAY**

Legislative Chamber, Lincoln, Nebraska
Tuesday, March 23, 2004

PRAYER

The prayer was offered by Senator Redfield.

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 Dw. Pedersen who was excused; and Senators Aguilar, Brashear, Byars, Maxwell, Mines, Price, and Schrock who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the forty-sixth day was approved.

RESOLUTION

LEGISLATIVE RESOLUTION 277. Introduced by Hudkins, 21.

WHEREAS, Clark Lester Lacy of Troop 42, Malcolm, Nebraska, within the Cornhusker Council, Boy Scouts of America, earned the rank of Eagle Scout, the highest advancement rank in Scouting, on February 26, 2004; and

WHEREAS, the rank of Eagle Scout was bestowed by the Boy Scouts of America in recognition of Clark Lester Lacy's years of hard work, selfless dedication and commitment to both the organization and the community at large, as well as the steadfastness and determination that he has displayed in carrying out his Scouting duties and responsibilities; and

WHEREAS, in the course of earning the numerous merit badges required in order to attain the rank of Eagle Scout, Clark Lester Lacy carried out a community service project entailing the construction of a much-needed nature trail and bridge behind Malcolm High School in Malcolm, Nebraska; and

WHEREAS, only 1.2 million boys have achieved the rank of Eagle Scout since 1911, and only 2 in 100 that join the Boy Scouts, or 0.5% of the male population, earn an Eagle Scout badge; and

WHEREAS, Clark Lester Lacy joins the ranks of such great Eagle Scouts as Gerald Ford, the thirty-sixth president of the United States, professional baseball legend Henry "Hank" Aaron, Pulitzer Prize-winning author Wallace Stegner, astronaut Neil Armstrong, the first man on the moon, journalist Walter Cronkite, current Secretary of Defense Donald H. Rumsfeld, Apollo astronaut James A. Lovell, Jr., and Togo D. West, Jr., former Secretary of the Army and Secretary of Veterans Affairs.

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

1. That the Legislature congratulates Clark Lester Lacy on his achievement of the elite rank of Eagle Scout in the Boy Scouts of America and recognizes his outstanding community service in Malcolm, Nebraska.
2. That a copy of this resolution be sent to Clark Lester Lacy and his family.

Laid over.

GENERAL FILE

LEGISLATIVE BILL 1005A. Title read. Considered.

Senator Jensen offered the following amendment:
AM3324

1. On page 2, line 16, strike "177" and insert "175".

The Jensen amendment was adopted with 29 ayes, 0 nays, 12 present and not voting, and 8 excused and not voting.

Advanced to E & R for review with 32 ayes, 0 nays, 11 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 914A. Title read. Considered.

Advanced to E & R for review with 28 ayes, 0 nays, 15 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 1241. Title read. Considered.

The Standing Committee amendment, AM2818, found on page 798, was considered.

Senator Vrtiska renewed the Vrtiska-Hartnett pending amendment, AM3256, found on page 1159, to the Standing Committee amendment.

The Vrtiska-Hartnett amendment was adopted with 25 ayes, 1 nay, 18 present and not voting, and 5 excused and not voting.

Senator Vrtiska withdrew his pending amendment, AM3257, found on page

1159.

Senator Vrtiska renewed his pending amendment, AM3269, found on page 1185, to the Standing Committee amendment.

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

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

FA1584

Amend AM2818

Strike Claim No. 03-699, on Page 1, lines 3 through 6.

Senator Engel moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 28 ayes, 0 nays, and 21 not voting.

The Wehrbein amendment was adopted with 31 ayes, 2 nays, 12 present and not voting, and 4 excused and not voting.

The Standing Committee amendment, as amended, was adopted with 32 ayes, 0 nays, 13 present and not voting, and 4 excused and not voting.

Senator Chambers renewed his pending amendment, AM3276, found on page 1185.

The Chambers amendment was adopted with 27 ayes, 0 nays, 18 present and not voting, and 4 excused and not voting.

Advanced to E & R for review with 30 ayes, 0 nays, 15 present and not voting, and 4 excused and not voting.

AMENDMENTS - Print in Journal

Senator Brown filed the following amendment to LB 625:
AM3215

(Amendments to Final Reading copy)

- 1 1. On page 2, line 24, strike "copies of all"; in line
- 2 25 strike "copies of"; and in line 26 after "investigation" insert
- 3 "as provided in subsections (2) and (3) of section 20-330".
- 4 2. On page 4, strike the new matter and reinstate the
- 5 stricken matter; and after line 7 insert the following new
- 6 subsection:
- 7 "(3) Notwithstanding subsection (1) of this section, in
- 8 any case in which the complaint is filed by the commission and
- 9 there is no aggrieved person, or in which a complaint is filed and
- 10 the only aggrieved person is a tester or a testing organization,
- 11 the commission shall provide to the respondent at any time, upon

12 request, copies of all information derived from an investigation
 13 and copies of any final investigative report relating to that
 14 investigation. All personal identification information of testers
 15 shall be removed from the copies provided. The commission may
 16 charge a fee, not to exceed actual cost, for copies provided under
 17 this subsection."

Senators Landis, Baker, Connealy, Hartnett, Janssen, Raikes, and Redfield filed the following amendment to LB 1017:
 (Amendment, AM3292, is printed separately and available in the Bill Room, Room 1104.)

Senators Landis, Baker, Bourne, Connealy, Hartnett, Janssen, Raikes, and Redfield filed the following amendment to LB 1017:
 AM3293

1 1. Strike section 77-2704.55 and all amendments thereto
 2 and insert the following new section:
 3 "Sec. 16. Section 77-2704.55, Reissue Revised Statutes
 4 of Nebraska, is amended to read:
 5 77-2704.55. (1) Sales and use taxes shall not be imposed
 6 on the gross receipts for the labor of a contractor as determined
 7 in subdivision (10)(e) of section 77-2701.16 purchased in
 8 connection with the following types of construction projects:
 9 (a) The first or original construction of a new
 10 structure, building, or unit;
 11 (b) ~~The addition of an entire room or floor to any~~
 12 ~~existing building;~~
 13 (c) ~~The completion of an unfinished portion of an~~
 14 ~~existing structure;~~
 15 (d) ~~The restoration, reconstruction, or replacement of a~~
 16 ~~structure damaged or destroyed by fire, flood, tornado, lightning,~~
 17 ~~explosion, ice storm, or other natural disaster;~~
 18 (e) The construction, repair, or annexation of any
 19 structure used for the generation, transmission, or distribution of
 20 electricity; or
 21 ~~(f) (c) The major addition, remodeling, restoration,~~
 22 ~~repair, or renovation of an existing structure or building or a~~
 23 ~~unit of an existing building described in subdivision (2)(e)(ii) of~~
 24 ~~this section. The exemption granted in this subdivision shall be~~
 1 ~~conditioned upon notice from the contractor to the Department of~~
 2 ~~Revenue of the nature of the project and an explanation of why the~~
 3 ~~renovation will qualify for the exemption that is a single~~
 4 ~~construction project of any type that costs at least forty percent~~
 5 ~~of the current assessed value of the existing structure or building~~
 6 ~~or unit of an existing building. For a project on a building other~~
 7 ~~than an existing dwelling designed for occupancy by one family or a~~
 8 ~~duplex designed for occupancy by two families, to qualify for this~~
 9 ~~exemption, the taxpayer must seek prior approval from the~~
 10 ~~department that the project, if substantially completed according~~

11 to designs, plans, specifications, or other materials submitted
 12 with the application to the department, meets the requirements for
 13 a major addition, remodeling, restoration, repair, or renovation
 14 under this subdivision and the labor performed in annexing the
 15 building materials to real estate will be exempt from tax. For a
 16 project on an existing dwelling designed for occupancy by one
 17 family or a duplex designed for occupancy by two families, the
 18 exemption may be granted either upon approval by the department
 19 that the project, if substantially completed according to designs,
 20 plans specifications, or other materials submitted with the
 21 application to the department, meets the requirements for a major
 22 addition, remodeling, restoration, repair, or renovation under this
 23 subdivision or notice from the contractor to the department of the
 24 nature of the project and an explanation of why the addition,
 25 remodeling, restoration, repair, or renovation will qualify for the
 26 exemption. Approval may be granted in accordance with the
 27 procedures set forth in subsection (4) of this section.

- 1 (2) For purposes of this section:
- 2 (a) Building means any freestanding structure annexed to
 3 land, enclosed within a roof and exterior walls, regardless of
 4 whether enclosed on all sides;
- 5 (b) ~~Building materials means items that will be annexed~~
 6 ~~to land or an improvement on land. Building materials do not~~
 7 ~~include tools, supplies, or items that will not be annexed;~~
- 8 (c) Contractor means any person who repairs property
 9 annexed to or who annexes property to real estate, including leased
 10 property, by attaching building materials to the improvement or
 11 annexed property being built or repaired. This includes the
 12 installation of fixtures and the repair of a building, structure,
 13 or fixture;
- 14 (d) Fixture means a piece of equipment that must be
 15 annexed to the building or structure in order to properly function,
 16 yet remains identifiable as a separate item;
- 17 (e) Major renovation of an existing building or a unit of
 18 an existing building means a single renovation project that:
- 19 (i) Increases the market value of the building or unit by
 20 at least one hundred percent; or
- 21 (ii) Entails the renovation of no less than seventy five
 22 percent of the square feet of the building or unit;
- 23 (f) Renovation means the rehabilitation, replacement, or
 24 reconfiguration of walls or fixtures. Mere replacement of floor
 25 coverings does not constitute renovation for purposes of
 26 subdivision (1)(f) of this section;
- 27 (g) Structure means any construction composed of parts
 1 arranged and fitted together in some way. Structure includes, but
 2 is not limited to, streets and roadways, street lighting, and
 3 sewers and waterlines; and
- 4 (h) (c) Unit means a physical portion of a building
 5 designated for separate ownership, rental, or occupancy.

6 (3) A taxpayer shall be entitled to a refund of any sales
7 tax paid ~~on construction, annexation, or repair labor for any major~~
8 ~~renovation described in subdivision (2)(e)(i) of this section on~~
9 ~~the gross receipts for the labor of a contractor for any major~~
10 ~~addition, remodeling, restoration, repair, or renovation described~~
11 ~~in this section.~~ The refund granted in this section shall be
12 conditioned upon filing a claim for the refund on a form developed
13 by the Tax Commissioner. The requirements imposed by the Tax
14 Commissioner shall be related to ensuring that the ~~labor purchased~~
15 ~~project~~ qualifies for the refund. Any information received
16 pursuant to the requirements of this subsection may be disclosed to
17 any tax official in this state. Any taxpayer who provides false
18 information on the forms required by the Tax Commissioner for
19 purposes of this subsection shall be subject to the penalties
20 provided in subsection (8) of section 77-2705.

21 (4)(a) A taxpayer may apply to the Tax Commissioner for
22 approval that a proposed construction project meets the
23 requirements for a major addition, remodeling, restoration, repair,
24 or renovation described in this section.

25 (b) The approval granted in this section shall be
26 conditioned upon filing an application on a form developed by the
27 Tax Commissioner with an application fee of five hundred dollars.
1 The application fee shall be remitted to the State Treasurer for
2 credit to the Department of Revenue Contractor Enforcement Fund.
3 The application shall be supported by designs, plans,
4 specifications, or other materials, signed by a licensed architect
5 or engineer, that indicate the extent of the addition, remodeling,
6 restoration, repair, or renovation, the work that is planned to be
7 performed, and the estimated cost of the project. The application
8 shall also be supported by a document showing the current assessed
9 value of the existing structure or building or unit of an existing
10 building. Any requirements imposed by the Tax Commissioner shall
11 be related to ensuring that the project qualifies for the exemption
12 so long as the project is completed in substantial conformity with
13 the designs, plans, specifications, or other materials submitted
14 with the application.

15 (c) The Tax Commissioner shall approve or deny the
16 application within sixty business days after receiving the
17 application. Within sixty days after the completion of the
18 renovation, a licensed architect or engineer shall certify to the
19 Tax Commissioner that the renovation was completed in substantial
20 conformity with the designs, plans, specifications, or other
21 materials submitted with the application or shall amend the
22 original application to describe the project as actually completed.

23 (d) Any information received pursuant to the requirements
24 of this subsection may be disclosed to any tax official in this
25 state. Any person who provides false information on the forms,
26 plans, specifications, and materials required by the Tax
27 Commissioner for purposes of this subsection shall be subject to

1 the penalties provided in subsection (8) of section 77-2705.
2 (5) The provisions of this section shall not excuse any
3 person from the obligation to collect sales tax on retail sales of
4 property not annexed to real estate or from the obligation to pay
5 the sales tax or remit the use tax on tools, services, and other
6 materials consumed that are not annexed to real estate.
7 (6) The Department of Revenue Contractor Enforcement Fund
8 is created. Any money in the fund shall be invested by the state
9 investment officer pursuant to the Nebraska Capital Expansion Act
10 and the Nebraska State Funds Investment Act."

SELECT COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 962. Placed on Select File as amended.

(E & R amendment, AM7204, is printed separately and available in the Bill Room, Room 1104.)

LEGISLATIVE BILL 962A. Placed on Select File.

(Signed) Ray Mossey, Chairperson

RESOLUTION

LEGISLATIVE RESOLUTION 278. Introduced by Schrock, 38.

PURPOSE: The Department of Natural Resources has jurisdiction over all dams in high hazard locations regardless of size or storage capacity and all other dams having a height of 25 feet or more or having a storage capacity of 50 acre-feet or more. The department insures that all jurisdictional dams are designed properly, taking into account downstream improvements which may directly impact on the assigned hazard classification of the dam and issues storage and use permits as appropriate. Nebraska has over 2,000 permitted dams built to the appropriate hazard classification at the time of construction with approximately 1,700 low-hazard dams, 250 significant hazard dams, and 100 high hazard dams. The construction of certain improvements, such as houses, businesses, roads, etc., downstream of existing dams can result in an upgrade of the hazard classification by the department if those improvements are in the area that would be flooded (breach inundation area) should the dam fail. Upgrading of the hazard classification by the department will result in an order to the owner of the dam requiring the owner of the dam to take "necessary action" to correct deficiencies and defects in order that the dam be operated and maintained in a safe condition. The Natural Resources Committee of the Legislature should study this issue in conjunction with the department, natural resources districts, the Nebraska Association of County Officials, the League of Municipalities, and others to develop a solution to keep downstream improvements from being located in potentially hazardous locations downstream of existing dams.

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

1. That the Natural Resources Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

GENERAL FILE

LEGISLATIVE BILL 1083. The second Standing Committee amendment, FA1574, found on page 1126, was renewed.

Senator Connealy withdrew his pending amendments, AM3218, AM3219, AM3220, and AM3221, found on pages 1132 and 1133.

Senator Schimek withdrew her pending amendment, AM3224, found on page 1146.

Senator Landis withdrew his pending amendment, AM3262, found on page 1159.

Senators Jensen, Bromm, Burling, Combs, Connealy, Cunningham, Johnson, and Tyson offered the following amendment to the second Standing Committee amendment:

AM3329

(Amendments to FA1574)

- 1 1. Strike section 10 and insert the following new
- 2 section:
- 3 "Sec. 10. (1) The division shall encourage and
- 4 facilitate the statewide development and provision of an
- 5 appropriate array of community-based behavioral health services and
- 6 continuum of care for the purposes of (a) providing greater access
- 7 to such services and improved outcomes for consumers of such
- 8 services, and (b) reducing the necessity and demand for regional
- 9 center behavioral health services.
- 10 (2) The division may reduce or discontinue regional
- 11 center behavioral health services only if (a) appropriate
- 12 community-based services or other regional center behavioral health
- 13 services are available for every person receiving the regional
- 14 center services that would be reduced or discontinued, (b) such
- 15 services possess sufficient capacity and capability to effectively
- 16 replace the service needs which otherwise would have been provided
- 17 at a regional center, and (c) no further commitments, admissions,
- 18 or readmissions for such services are required due to the

19 availability of community-based services or other regional center
20 services to replace such services.

21 (3) The division shall notify the Governor and the
22 Legislature of any intended reduction or discontinuation of
23 regional center services under this section. Such notice shall
1 include detailed documentation of the community-based services or
2 other regional center services that are being utilized to replace
3 such services. The Behavioral Health Oversight Commission of the
4 Legislature shall review such documentation and shall report to the
5 Governor and the Health and Human Services Committee of the
6 Legislature whether, in its opinion, the requirements of subsection
7 (2) of this section have been met with respect to such intended
8 reduction or discontinuation of regional center services and shall
9 enumerate the criteria used by the commission in making such
10 determination.

11 (4) As regional center services are reduced or
12 discontinued under this section, the division shall make
13 appropriate corresponding reductions in regional center personnel
14 and other expenditures related to the provision of such services.
15 All funding related to the provision of regional center services
16 that are reduced or discontinued under this section shall be
17 reallocated and expended by the division for purposes related to
18 the statewide development and provision of community-based
19 services.

20 (5) The division may establish state-operated
21 community-based services to replace regional center services that
22 are reduced or discontinued under this section. The division shall
23 provide regional center employees with appropriate training and
24 support to transition such employees into positions as may be
25 necessary for the provision of such state-operated services.

26 (6) When the occupancy of any regional center reaches
27 twenty percent or less of its licensed capacity, the division shall
1 notify the Governor and the Legislature of such fact. Upon such
2 notification, the division, with the approval of a majority of
3 members of the Executive Board of the Legislative Council, may
4 provide for the transfer of all remaining patients at such center
5 to appropriate community-based services or other regional center
6 services pursuant to this section and cease the operation of such
7 regional center.

8 (7) The provisions of this section are self-executing and
9 require no further authorization or other enabling legislation."

SPEAKER BROMM PRESIDING

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

The second Standing Committee amendment, as amended, was adopted with 34 ayes, 0 nays, 11 present and not voting, and 4 excused and not voting.

The third Standing Committee amendment is as follows:
FA1575

- 1 1. Strike the original sections and insert the following
2 new sections:
- 17 Sec. 11. The division shall coordinate the integration
18 and management of all funds appropriated by the Legislature or
19 otherwise received by the Nebraska Health and Human Services System
20 from any other public or private source and designated by the
21 Policy Cabinet for the provision of behavioral health services to
22 ensure the statewide availability of an appropriate array of
23 community-based behavioral health services and continuum of care
24 and the allocation of such funds to support the consumer and his or
25 her plan of treatment.
- 26 Sec. 12. (1) The Behavioral Health Services Fund is
27 created. The fund shall be administered by the division and shall
1 contain cash funds appropriated by the Legislature or otherwise
2 received by the Nebraska Health and Human Services System for the
3 provision of behavioral health services from any other public or
4 private source and directed by the Policy Cabinet or the
5 Legislature for credit to the fund.
- 6 (2) The fund shall be used to encourage and facilitate
7 the statewide development and provision of community-based
8 behavioral health services, including, but not limited to, (a) the
9 provision of grants, loans, and other assistance for such purpose
10 and (b) reimbursement to providers of such services.
- 11 (3) Any money in the fund available for investment shall
12 be invested by the state investment officer pursuant to the
13 Nebraska Capital Expansion Act and the Nebraska State Funds
14 Investment Act.

The third Standing Committee amendment was adopted with 33 ayes, 0 nays, 12 present and not voting, and 4 excused and not voting.

The fourth Standing Committee amendment is as follows:
FA1576

- 1 1. Strike the original sections and insert the following
2 new sections:
- 15 Sec. 13. (1) The State Behavioral Health Council is
16 created. The council shall consist of (a) ten members of the State
17 Advisory Committee on Mental Health Services, (b) ten members of
18 the State Advisory Committee on Substance Abuse Services, and (c)
19 ten members of the State Advisory Committee on Problem Gambling and
20 Addiction Services as appointed pursuant to sections 14 to 16 of
21 this act. The Governor shall appoint three members from each such
22 committee to serve on the council and each committee shall select
23 seven of its members to serve on the council.
- 24 (2) Members of the council and such committees shall be
25 appointed for staggered terms of three years and until their

26 successors are appointed and qualified. Vacancies for any
27 unexpired term shall be filled in the same manner as provided for
1 the original appointment. Members shall serve without compensation
2 but shall be reimbursed for their actual and necessary expenses as
3 provided in sections 81-1174 to 81-1177. The council and each such
4 committee shall annually elect a chairperson and other officers
5 from among its members. No officer shall serve more than three
6 consecutive one-year terms in any one office.

7 (3) The council shall be responsible to the division and
8 shall (a) conduct regular meetings, (b) provide advice and
9 assistance to the division relating to the provision of behavioral
10 health services in the State of Nebraska, (c) promote the interests
11 of consumers of behavioral health services and their families, and
12 (d) report annually to the Governor and the Legislature.

13 Sec. 14. (1) The State Advisory Committee on Mental
14 Health Services is created. Members of the committee shall have a
15 demonstrated interest and commitment and specialized knowledge,
16 experience, or expertise relating to the provision of mental health
17 services in the State of Nebraska. The committee shall consist of
18 twenty-three members appointed by the Governor as follows: (a) One
19 regional governing board member, (b) one regional administrator,
20 (c) twelve consumers of behavioral health services or their family
21 members, (d) two providers of behavioral health services, (e) two
22 representatives from the State Department of Education, including
23 one representative from the Division of Vocational Rehabilitation
24 of the State Department of Education, (f) three representatives
25 from the Nebraska Health and Human Services System representing
26 mental health, social services, and medicaid, (g) one
27 representative from the Nebraska Commission on Law Enforcement and
1 Criminal Justice, and (h) one representative from the Housing
2 Office of the Community and Rural Development Division of the
3 Department of Economic Development.

4 (2) The committee shall be responsible to the State
5 Behavioral Health Council and shall (a) serve as the state's mental
6 health planning council as required by Public Law 102-321, (b)
7 conduct regular meetings, (c) provide advice and assistance to the
8 council and the division relating to the provision of mental health
9 services in the State of Nebraska, (d) promote the interests of
10 consumers and their families, (e) provide reports as requested by
11 the council or the division, and (f) engage in such other
12 activities as directed or authorized by the council.

13 Sec. 15. (1) The State Advisory Committee on Substance
14 Abuse Services is created. Members of the committee shall have a
15 demonstrated interest and commitment and specialized knowledge,
16 experience, or expertise relating to the provision of substance
17 abuse services in the State of Nebraska. The committee shall
18 consist of twelve members appointed by the Governor.

19 (2) The committee shall be responsible to the State
20 Behavioral Health Council and shall (a) conduct regular meetings,

21 (b) provide advice and assistance to the council and the division
 22 relating to the provision of substance abuse services in the State
 23 of Nebraska, (c) promote the interests of consumers and their
 24 families, (d) provide reports as requested by the council or the
 25 division, and (e) engage in such other activities as directed or
 26 authorized by the council.

27 Sec. 16. (1) The State Advisory Committee on Problem
 1 Gambling and Addiction Services is created. Members of the
 2 committee shall have a demonstrated interest and commitment and
 3 specialized knowledge, experience, or expertise relating to the
 4 provision of problem gambling and addiction services in the State
 5 of Nebraska. The committee shall consist of twelve members
 6 appointed by the Governor.

7 (2) The committee shall be responsible to the State
 8 Behavioral Health Council and shall (a) conduct regular meetings,
 9 (b) provide advice and assistance to the council and the division
 10 relating to the provision of problem gambling and addiction
 11 services in the State of Nebraska, (c) evaluate applications for
 12 funding from the Problem Gamblers Assistance Fund and make
 13 recommendations relating to disbursements from the fund, (d)
 14 promote the interests of consumers and their families, (e) provide
 15 reports as requested by the council or the division, and (f) engage
 16 in such other activities as directed or authorized by the council.

17 Sec. 17. Section 83-162.04, Revised Statutes Supplement,
 18 2002, is amended to read:

19 ~~83-162.04. The Compulsive Problem Gamblers Assistance~~
 20 Fund is created. ~~The fund shall include revenue transferred from~~
 21 ~~the State Lottery Operation Trust Fund under section 9-812 and the~~
 22 ~~Charitable Gaming Operations Fund under section 9-1,101 and any~~
 23 ~~other revenue received by the division for credit to the fund from~~
 24 ~~any other public or private source, including, but not limited to,~~
 25 ~~appropriations, grants, donations, gifts, devises, or bequests.~~
 26 ~~Any money in the Compulsive Gamblers Assistance Fund on the~~
 27 ~~operative date of this section shall be transferred to the Problem~~
 1 ~~Gamblers Assistance Fund on such date. The division shall~~
 2 ~~administer the fund for the treatment of compulsive problem~~
 3 ~~gamblers as recommended by the ~~commission~~ the State Advisory~~
 4 ~~Committee on Problem Gambling and Addiction Services established~~
 5 ~~under section 16 of this act and shall spend no more than ten~~
 6 ~~percent of the money appropriated to the fund for administrative~~
 7 ~~costs. In addition to money transferred to the fund from the State~~
 8 ~~Lottery Operation Trust Fund under section 9-812 and the Charitable~~
 9 ~~Gaming Operations Fund under section 9-1,101, the department is~~
 10 ~~authorized to accept for deposit in the Compulsive Gamblers~~
 11 ~~Assistance Fund funds, donations, gifts, devises, or bequests from~~
 12 ~~any federal, state, local, public, or private source to be used by~~
 13 ~~the division in the exercise of this authority under and in the~~
 14 ~~performance of its duties in carrying out the provisions of the~~
 15 ~~Alcoholism, Drug Abuse, and Addiction Services Act which relate to~~

16 ~~compulsive gambling~~. The Director of Administrative Services shall
 17 draw warrants upon the ~~Compulsive Problem~~ Gamblers Assistance Fund
 18 upon the presentation of proper vouchers by the division. Money
 19 from the ~~Compulsive Problem~~ Gamblers Assistance Fund shall be used
 20 exclusively for the purpose of providing assistance to agencies,
 21 groups, organizations, and individuals that provide education,
 22 assistance, and counseling to individuals and families experiencing
 23 difficulty as a result of ~~problem or pathological~~ gambling, to
 24 promote the awareness of gamblers assistance programs, and to pay
 25 the costs and expenses of the division and the committee and the
 26 ~~commission~~ with regard to compulsive problem gambling. ~~Neither the~~
 27 ~~director of the division nor the~~ The division shall not provide any
 1 direct services to ~~problem or pathological~~ gamblers or their
 2 families. Funds appropriated from the ~~Compulsive Problem~~ Gamblers
 3 Assistance Fund shall not be granted or loaned to or administered
 4 by any of the ~~mental health regional governing boards created~~
 5 pursuant to the Nebraska Comprehensive Community Mental Health
 6 Services Act unless the mental health region regional behavioral
 7 health authority unless the authority is a direct provider of
 8 services dealing with the treatment of compulsive gambling a
 9 problem gamblers assistance program. Any money in the fund
 10 available for investment shall be invested by the state investment
 11 officer pursuant to the Nebraska Capital Expansion Act and the
 12 Nebraska State Funds Investment Act.

The fourth Standing Committee amendment was adopted with 35 ayes, 0
 nays, 10 present and not voting, and 4 excused and not voting.

Pending.

SELECT COMMITTEE REPORTS
Enrollment and Review

LEGISLATIVE BILL 1005A. Placed on Select File.

LEGISLATIVE BILL 914A. Placed on Select File.

(Signed) Ray Mossey, Chairperson

RESOLUTION

LEGISLATIVE RESOLUTION 279. Introduced by Janssen, 15; Mines,
 18.

WHEREAS, Council Bluff provided Nebraska its first national news two
 hundred years ago when it was reported that explorers Meriwether Lewis
 and William Clark had a friendly council with the first meeting of a forming
 Indian nation during the encampment of 1804 from July 30 through August
 2, 1804; and

WHEREAS, the recognition each one hundred years by the Legislature of

this very special event helps establish the importance of the meeting at Council Bluff. On the top of the bluff Lewis and Clark provided the name Council Bluff. At the base of the bluff, a ledge provided space for a four-day encampment site and a council meeting with local Native Americans. Although the original name of this prehistoric city of trade is not known, it was destined to be renamed Council Bluff.

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

1. That the Legislature acknowledges the bicentennial commemoration of the Meriwether Lewis and William Clark expedition in 1804.

Laid over.

MESSAGE FROM THE GOVERNOR

March 23, 2004

President, Speaker Bromm
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm and Senators:

Contingent upon your approval, the following individual was appointed as Director of the Health and Human Services System.

APPOINTEE:

Nancy Montanez, 1853 Road 57, Potter NE 69156, 308-235-8976

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

web/
Enclosure

VISITORS

Visitors to the Chamber were 44 fourth-grade students and teacher from York; Roland and Adelyne Koranda from Wahoo and Janet Koranda from Fremont; Jens Mertens from Duisburg, Germany; 48 fourth-grade students and teacher from Arlington; and Neil Rutledge from Lincoln Southeast High School.

RECESS

At 12:00 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 Dw. Pedersen who was excused; and Senators Bromm, Byars, Engel, Kruse, Landis, D. Pederson, Synowiecki, and Tyson who were excused until they arrive.

RESOLUTION

LEGISLATIVE RESOLUTION 280. Introduced by Kremer, 34.

PURPOSE: The study shall examine actions desirable at the state level to increase capabilities of the Bureau of Animal Industry of the Department of Agriculture and the state's livestock industry to prevent the introduction and proliferation of diseases of economic and human health concern in livestock in this state, including those activities relating to surveillance, regulatory compliance, animal identification and traceback, research, and eradication.

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

1. That the Agriculture Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.
2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

GENERAL FILE

LEGISLATIVE BILL 1083. The fifth Standing Committee amendment is as follows:

FA1577

1. Strike the original sections and insert the following
2 new sections:
- 13 Sec. 18. (1) The Behavioral Health Oversight Commission
14 of the Legislature is created. The commission shall consist of not
15 more than twenty members appointed by the chairperson of the Health
16 and Human Services Committee of the Legislature and confirmed by a
17 majority of members of the committee. Members of the commission

18 shall (a) include, but not be limited to, representatives of the
 19 Legislature, consumers and consumer advocacy organizations,
 20 behavioral health providers, the communities of Norfolk and
 21 Hastings, state employees, regional behavioral health authorities,
 22 mental health boards, and law enforcement, (b) possess a
 23 demonstrated interest and commitment and specialized knowledge,
 24 experience, or expertise relating to the provision of behavioral
 25 health services in the State of Nebraska, and (c) be broadly
 26 representative of all the behavioral health regions. Members of
 27 the commission shall serve without compensation but shall be
 1 reimbursed from the Nebraska Health Care Cash Fund for their actual
 2 and necessary expenses as provided in sections 81-1174 to 81-1177.
 3 (2) The commission, under the direction of and in
 4 consultation with the Health and Human Services Committee of the
 5 Legislature, shall oversee and support implementation of the
 6 Nebraska Behavioral Health Services Act and shall administer such
 7 funds as appropriated by the Legislature from the Nebraska Health
 8 Care Cash Fund and approved by the committee for such purpose. The
 9 commission may employ staff, enter into contracts, establish and
 10 utilize task forces and subcommittees, and perform such other
 11 activities as necessary and appropriate to carry out its duties
 12 under this section.
 13 (3) The commission and this section terminate on June 30,
 14 2008.

The fifth Standing Committee amendment was adopted with 30 ayes, 0 nays, 10 present and not voting, and 9 excused and not voting.

The sixth Standing Committee amendment is as follows:
 FA1578

1 1. Strike the original sections and insert the following
 2 new sections:
 15 Sec. 19. (1) The division shall prepare and submit a
 16 behavioral health implementation plan to the Governor and the
 17 Legislature on or before July 1, 2004.
 18 (2) The division shall communicate regularly with the
 19 Behavioral Health Oversight Commission and the Health and Human
 20 Services Committee of the Legislature and shall provide such
 21 reports and other information as requested by the commission or the
 22 committee during preparation of the plan. The commission shall
 23 review and provide written recommendations relating to the plan no
 24 later than October 1, 2004. The division shall provide written
 25 responses to such recommendations, including any proposed changes
 26 to the plan, no later than December 1, 2004.
 27 (3) The division shall immediately advise the committee
 1 and the commission of any proposed changes to the plan as submitted
 2 and shall provide monthly and other reports as requested by the
 3 committee or the commission during implementation of the plan.
 4 Sec. 20. The behavioral health implementation plan

5 required under section 19 of this act shall be consistent with the
6 Nebraska Behavioral Health Services Act and shall include, but not
7 be limited to, a detailed description of all completed, current,
8 and proposed activities by the division to:
9 (1) Select and appoint an administrator, chief clinical
10 officer, program administrator for consumer affairs, and other
11 staff within the division;
12 (2) Implement necessary and appropriate administrative
13 and other changes within the Nebraska Health and Human Services
14 System to carry out the Nebraska Behavioral Health Services Act;
15 (3) Describe and define the role and function of the
16 office of consumer affairs within the division;
17 (4) Describe and define the relationship between the
18 division and regional behavioral health authorities, including, but
19 not limited to, the nature and scope of the coordination and
20 oversight of such authorities by the division;
21 (5) Encourage and facilitate the statewide development
22 and provision of an appropriate array of community-based behavioral
23 health services and continuum of care for both children and adults
24 and the integration and coordination of such services with primary
25 health care services;
26 (6)(a) Identify persons currently receiving regional
1 center behavioral health services for whom community-based
2 behavioral health services would be appropriate, (b) provide for
3 the development and funding of appropriate community-based
4 behavioral health services for such persons in each behavioral
5 health region, (c) transition such persons from regional centers to
6 appropriate community-based behavioral health services, (d) reduce
7 new admissions and readmissions to regional centers, and (e)
8 establish criteria, procedures, and timelines for the closure of
9 the Norfolk Regional Center and the Hastings Regional Center and
10 policies and procedures for the recruitment, retention, training,
11 and support of regional center employees affected by such closures;
12 (7) Integrate all behavioral health funding within the
13 Nebraska Health and Human Services System and allocate such funding
14 to support the consumer and his or her plan of treatment;
15 (8) Establish (a) priorities for behavioral health
16 services and funding, (b) rates and reimbursement methodologies for
17 providers of behavioral health services and draft negotiated
18 rulemaking policies and procedures for the development and
19 implementation of such methodologies, and (c) fees to be paid by
20 consumers of behavioral health services, which fees shall not
21 exceed the actual costs of providing such services;
22 (9) Access additional public and private funding for the
23 provision of behavioral health services in each behavioral health
24 region, including additional federal funding through the medical
25 assistance program established in section 68-1018, and establish
26 programs and procedures for the provision of grants, loans, and
other assistance for the provision of such services;

- 27 (10) Encourage and facilitate activities of the State
1 Behavioral Health Council and the advisory committees making up
2 such council; and
3 (11) Promote activities in research and education to
4 improve the quality of behavioral health services, the recruitment
5 and retention of behavioral health professionals, and the
6 availability of behavioral health services.

The sixth Standing Committee amendment was adopted with 33 ayes, 0 nays, 10 present and not voting, and 6 excused and not voting.

The seventh Standing Committee amendment is as follows:
(FA1579 consists of Sections 21 through 45 of the Standing Committee amendment.)

Senator Jensen withdrew the Jensen-Redfield pending amendment, AM2951, found on page 924.

Senator Redfield renewed her pending amendment, AM3059, found on page 1061, to the seventh Standing Committee amendment.

The Redfield amendment was adopted with 34 ayes, 0 nays, 12 present and not voting, and 3 excused and not voting.

Senator Jensen renewed his pending amendment, AM3102, printed separately and referred to on page 1055, to the seventh Standing Committee amendment.

The Jensen amendment was adopted with 30 ayes, 0 nays, 16 present and not voting, and 3 excused and not voting.

The seventh Standing Committee amendment, as amended, was adopted with 34 ayes, 0 nays, 12 present and not voting, and 3 excused and not voting.

Senator Connealy withdrew his pending amendments, AM2235, AM2234, AM2225, AM2229, AM2224, AM2223, and AM2226, found on pages 303 and 304.

Senator Burling withdrew his pending amendments, AM2280, AM2286, AM2287, AM2288, AM2289, and AM2290, found on pages 376, 378, and 379.

Senator Jensen withdrew his pending amendment, AM2770, found on page 730.

Senator Cunningham withdrew his pending amendment, AM2780, found on page 738.

Advanced to E & R for review with 39 ayes, 1 nay, 6 present and not voting,

and 3 excused and not voting.

LEGISLATIVE BILL 1083A. Title read. Considered.

Senator Wehrbein renewed his pending amendment, AM3065, found on page 1130.

The Wehrbein amendment was adopted with 35 ayes, 0 nays, 11 present and not voting, and 3 excused and not voting.

Senator Wehrbein renewed his pending amendment, AM3009, found on page 1130.

The Wehrbein amendment was adopted with 31 ayes, 0 nays, 15 present and not voting, and 3 excused and not voting.

Advanced to E & R for review with 33 ayes, 0 nays, 13 present and not voting, and 3 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 869. E & R amendment, AM7185, found on page 988, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 1005. E & R amendment, AM7186, printed separately and referred to on page 1039, was adopted.

Senator Synowiecki asked unanimous consent to withdraw the Synowiecki et al. pending amendment, AM3039, found on page 984, and replace it with the Synowiecki et al. substitute pending amendment, AM3173, found on page 1116. No objections. So ordered.

The Synowiecki et al. amendment was adopted with 28 ayes, 0 nays, 18 present and not voting, and 3 excused and not voting.

Senator Cunningham withdrew his pending amendment, AM3034, printed separately and referred to on page 1038.

Senator Cunningham renewed his pending amendment, AM3187, printed separately and referred to on page 1072.

The Cunningham amendment was adopted with 25 ayes, 0 nays, 21 present and not voting, and 3 excused and not voting.

Senator Jensen offered the following amendment:
AM3134

(Amendments to E & R amendments, AM7186)

1 1. Insert the following new sections:
2 "Sec. 111. Section 71-6101, Reissue Revised Statutes of
3 Nebraska, is amended to read:
4 71-6101. Sections 71-6101 to 71-6115 and sections 114 to
5 119 and 121 of this act shall be known and may be cited as the
6 Occupational Therapy Practice Act.
7 Sec. 112. Section 71-6103, Reissue Revised Statutes of
8 Nebraska, is amended to read:
9 71-6103. For purposes of the Occupational Therapy
10 Practice Act, unless the context otherwise requires:
11 (1) Active license means the license of a person who is
12 acting, practicing, functioning, and working in compliance with the
13 requirements of a license;
14 (2) Association means a recognized national or state
15 association for occupational therapy;
16 (3) Board means the Board of Occupational Therapy
17 Practice established by section 71-6115;
18 (4) Credentialing means the process of obtaining state
19 approval to provide health care services or human services or to
20 change aspects of a current approval and includes, but is not
21 limited to, granting permission to use a protected title that
22 signifies that a person is qualified to provide the services within
23 the scope of practice of a profession;
1 (5) Deep thermal agent modalities means therapeutic
2 ultrasound and phonophoresis. Deep thermal agent modalities does
3 not include the use of diathermy or lasers;
4 (6) Department means the Department of Health and Human
5 Services Regulation and Licensure;
6 ~~(6) License means a license issued under the act;~~
7 ~~(7) Licensee means a person holding a license;~~
8 ~~(8) (7) Electrotherapeutic agent modalities means~~
9 neuromuscular electrical stimulation, transcutaneous electrical
10 nerve stimulation, and iontophoresis. Electrotherapeutic agent
11 modalities does not include the use of ultraviolet light;
12 (8) Mechanical devices means intermittent compression
13 devices. Mechanical devices does not include devices to perform
14 spinal traction;
15 (9) Occupational therapist means a person holding an
16 active license as an occupational therapist to practice
17 occupational therapy;
18 ~~(9) (10)(a)~~ Occupational therapy means the use of
19 purposeful activity with individuals who are limited by physical
20 injury or illness, psychosocial dysfunction, developmental or
21 learning disabilities, or the aging process in order to maximize
22 ~~independence~~ independent function, prevent further disability, and
23 achieve and maintain health and productivity.
24 (b) Occupational therapy encompasses evaluation,
25 treatment, and consultation and may include ~~teaching daily living~~
26 ~~skills, developing perceptual-motor skills and sensory integrative~~

27 functioning, developing prevocational capacities, designing,
 1 fabricating, or applying selected orthotic and prosthetic devices
 2 or selective adaptive equipment, using specifically designed
 3 therapeutic media and exercises to enhance functional performance,
 4 administering and interpreting tests such as manual muscle and
 5 range of motion, and adapting environments for the handicapped (i)
 6 remediation or restoration of performance abilities that are
 7 limited due to impairment in biological, physiological,
 8 psychological, or neurological processes, (ii) adaptation of task,
 9 process, or the environment, or the teaching of compensatory
 10 techniques, in order to enhance performance, (iii) disability
 11 prevention methods and techniques which facilitate the development
 12 or safe application of performance skills, and (iv) health
 13 promotion strategies and practices which enhance performance
 14 abilities;

15 ~~(10)~~ (11) Occupational therapy aide means a person who
 16 assists in the practice of occupational therapy, who works under
 17 the supervision of an occupational therapist, and whose activities
 18 require an understanding of occupational therapy but do not require
 19 professional or advanced training or licensure is not licensed by
 20 the board and who provides supportive services to occupational
 21 therapists and occupational therapy assistants;

22 ~~(11)~~ (12) Occupational therapy assistant means a person
 23 holding an active license to assist in the practice of occupational
 24 therapy;

25 (13) Physical agent modalities means modalities that
 26 produce a biophysiological response through the use of water,
 27 temperature, sound, electricity, or mechanical devices; and

1 (14) Superficial thermal agent modalities means hot
 2 packs, cold packs, ice, fluidotherapy, paraffin, water, and other
 3 commercially available superficial heating and cooling
 4 technologies, as an occupational therapy assistant; and

5 ~~(12)~~ Person means any individual, partnership, limited
 6 liability company, unincorporated organization, or corporate body.

7 Sec. 113. Section 71-6104, Reissue Revised Statutes of
 8 Nebraska, is amended to read:

9 71-6104. No person may represent himself or herself to
 10 be a licensed occupational therapist or occupational therapy
 11 assistant unless he or she is licensed in accordance with the
 12 Occupational Therapy Practice Act. Nothing in such act shall be
 13 construed to prevent:

14 (1) Any person licensed in this state pursuant to Chapter
 15 71 from engaging in the profession or occupation for which he or
 16 she is licensed;

17 (2) The activities and services of any person employed as
 18 an occupational therapist or occupational therapy assistant by the
 19 armed forces, the United States Department of Veterans Affairs, or
 20 the United States Public Health Service if such person provides
 21 occupational therapy solely under the direction or control of the

22 organization by which he or she is employed;

23 (3) The activities and services of any person pursuing an
 24 accredited course of study leading to a degree or certificate in
 25 occupational therapy if such activities and services constitute a
 26 part of a supervised course of study and if such a person is
 27 designated by a title which clearly indicates his or her status as
 1 a student or trainee;

2 (4) The activities and services of any person fulfilling
 3 the supervised fieldwork experience requirements of sections
 4 71-6106 and 71-6107 if such activities and services constitute a
 5 part of the experience necessary to meet the requirements of such
 6 sections; or

7 (5) ~~An unlicensed person from performing occupational~~
 8 ~~therapy; or~~

9 ~~(6)~~ Qualified members of other professions or
 10 occupations, including, but not limited to, recreation specialists
 11 or therapists, special education teachers, independent living
 12 specialists, work adjustment trainers, caseworkers, and persons
 13 pursuing courses of study leading to a degree or certification in
 14 such fields, from doing work similar to occupational therapy which
 15 is consistent with their training if they do not represent
 16 themselves by any title or description to be occupational
 17 therapists.

18 Sec. 114. An occupational therapy aide shall function
 19 under the guidance and responsibility of an occupational therapist
 20 and may be supervised by an occupational therapist or an
 21 occupational therapy assistant for specifically selected routine
 22 tasks for which the aide has been trained and has demonstrated
 23 competence. The aide shall comply with supervision requirements
 24 developed by the board. The board shall develop supervision
 25 requirements for aides which are consistent with prevailing
 26 professional standards.

27 Sec. 115. An occupational therapist may perform the
 1 following services:

2 (1) Evaluate, develop, improve, sustain, or restore
 3 skills in activities of daily living, work activities, or
 4 productive activities, including instrumental activities of daily
 5 living, and play and leisure activities;

6 (2) Evaluate, develop, remediate, or restore
 7 sensorimotor, cognitive, or psychosocial components of performance;

8 (3) Design, fabricate, apply, or train in the use of
 9 assistive technology or orthotic devices and train in the use of
 10 prosthetic devices;

11 (4) Adapt environments and processes, including the
 12 application of ergonomic principles, to enhance performance and
 13 safety in daily life roles;

14 (5) If certified pursuant to section 119 of this act,
 15 apply physical agent modalities as an adjunct to or in preparation
 16 for engagement in occupations when applied by a practitioner who

17 has documented evidence of possessing the theoretical background
18 and technical skills for safe and competent use;

19 (6) Evaluate and provide intervention in collaboration
20 with the client, family, caregiver, or others;

21 (7) Educate the client, family, caregiver, or others in
22 carrying out appropriate nonskilled interventions; and

23 (8) Consult with groups, programs, organizations, or
24 communities to provide population-based services.

25 Sec. 116. An occupational therapy assistant may deliver
26 occupational therapy services enumerated in section 115 of this act
27 in collaboration with and under the supervision of an occupational
1 therapist.

2 Sec. 117. (1) An occupational therapist may accept a
3 referral from a licensed health care professional for the purpose
4 of evaluation and rehabilitative treatment which may include, but
5 not be limited to, consultation, rehabilitation, screening,
6 prevention, and patient education services.

7 (2) Referrals may be for an individual case or may be for
8 an established treatment program that includes occupational therapy
9 services. If programmatic, the individual shall meet the criteria
10 for admission to the program and protocol for the treatment program
11 shall be established by the treatment team members.

12 (3) Referrals shall be in writing, except that oral
13 referrals may be accepted if they are followed by a written and
14 signed request of the person making the referral within thirty days
15 after the day on which the patient consults with the occupational
16 therapist.

17 Sec. 118. The public may have direct access to
18 occupational therapy services.

19 Sec. 119. (1) In order to apply physical agent
20 modalities, an occupational therapist shall be certified pursuant
21 to this section. The department shall issue a certificate to an
22 occupational therapist to administer a physical agent modality if
23 the occupational therapist:

24 (a) Has successfully completed a training course approved
25 by the board and passed an examination approved by the board on the
26 physical agent modality;

27 (b) Is certified as a hand therapist by the Hand Therapy
1 Certification Commission or other equivalent entity recognized by
2 the board;

3 (c) Has a minimum of five years of experience in the use
4 of the physical agent modality and has passed an examination
5 approved by the board on the physical agent modality; or

6 (d) Has completed education during a basic educational
7 program which included demonstration of competencies for
8 application of the physical agent modality.

9 (2) The department shall issue a certificate to authorize
10 an occupational therapy assistant to set up and implement treatment
11 using superficial thermal agent modalities if the occupational

12 therapy assistant has successfully completed a training course
13 approved by the board and passed an examination approved by the
14 board. Such set up and implementation shall only be done under the
15 onsite supervision of an occupational therapist certified to
16 administer superficial thermal agent modalities.

17 (3) An occupational therapist shall not delegate
18 evaluation, reevaluation, treatment planning, and treatment goals
19 for physical agent modalities to an occupational therapy assistant.

20 Sec. 120. Section 71-6113, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 71-6113. (1)(a) Licenses issued under the Occupational
23 Therapy Practice Act shall be subject to biennial renewal and shall
24 expire August 1 of each even-numbered year unless renewed in the
25 manner provided by section 71-110 upon completion of the continuing
26 competency activities as required under subsection (2) of this
27 section and upon payment of the renewal fee established as provided
1 in section 71-162.

2 (b) A licensee whose license is revoked for nonpayment of
3 the biennial renewal fee as provided in section 71-110 may be
4 reinstated upon the recommendation of the board and the payment of
5 the required fees established as provided in section 71-162, except
6 that no reinstatement of a license may be granted more than five
7 years after its expiration.

8 (2)(a) Each Nebraska-licensed occupational therapist in
9 active practice within the State of Nebraska shall, on or before
10 August 1 of each even-numbered year, complete continuing competency
11 activities as required by the board ~~pursuant to section 71-6115~~ as
12 a prerequisite to renewal of his or her license.

13 (b) Each Nebraska-licensed occupational therapy assistant
14 in active practice within the State of Nebraska shall, on or before
15 August 1 of each even-numbered year, complete continuing competency
16 activities as required by the board ~~pursuant to section 71-6115~~ as
17 a prerequisite to renewal of his or her license.

18 (3) Every occupational therapist and occupational therapy
19 assistant shall provide documentation of completing such continuing
20 competency activities as required by the board.

21 The board shall biennially select, in a random manner, a
22 representative sample of the license renewal applications for audit
23 of compliance with continuing competency requirements.

24 (4) The department, on the recommendation of the board,
25 may waive continuing competency requirements, in part or in total,
26 for any two-year licensing period when a licensee submits
27 documentation that circumstances beyond his or her control

1 prevented completion of such requirements. Such circumstances
2 shall include situations in which:

3 (a) The licensee holds a Nebraska license but does not
4 reside or practice in Nebraska;

5 (b) The licensee has served in the regular armed forces
6 of the United States during part of the twenty-four months

7 immediately preceding the license renewal date;
8 (c) The licensee has submitted proof that he or she was
9 suffering from a serious or disabling illness or physical
10 disability which prevented completion of the required continuing
11 competency activities during the twenty-four months preceding the
12 license renewal date;

13 (d) The licensee has been initially licensed by the board
14 within the twenty-four months immediately preceding the license
15 renewal date; and

16 (e) The licensee has successfully completed two or more
17 semester hours of formal credit instruction biennially offered by
18 an accredited school or college which contributes to meeting the
19 requirements of an advanced degree in a postgraduate program
20 relating to occupational therapy.

21 Sec. 121. (1) The department, with the approval of the
22 board, shall adopt and promulgate rules and regulations necessary
23 to administer the Occupational Therapy Practice Act to protect the
24 public health, safety, and welfare and to insure, to the greatest
25 extent possible, the efficient, adequate, and safe practice of
26 occupational therapy.

27 (2) The rules and regulations shall include (a)
1 definitions of unprofessional conduct, (b) definitions of conflicts
2 of interest for members of the board and procedures in the case
3 such a conflict arises, (c) role delineation for occupational
4 therapy assistants, and (d) continuing competency requirements.
5 Continuing education is sufficient to meet continuing competency
6 requirements. Such requirements may also include, but not be
7 limited to, one or more of the continuing competency activities
8 listed in section 71-161.09 which a licensed person may select as
9 an alternative to continuing education.

10 (3) Except as provided in subsection (4) of this section,
11 the department, with the approval of the board, shall adopt and
12 promulgate rules and regulations to implement this legislative bill
13 and shall provide for the changes regarding scope of practice to be
14 implemented for licensees as soon as the rules and regulations
15 become effective.

16 (4) The board may adopt and promulgate rules and
17 regulations governing the training courses for an occupational
18 therapist to be certified to administer a physical agent modality.
19 The board may adopt and promulgate rules and regulations governing
20 the training course for an occupational therapy assistant to be
21 certified to set up and implement superficial thermal agent
22 modalities. In adopting such rules and regulations, the board
23 shall give consideration to the levels of training and experience
24 which are required, in the opinion of the board, to protect the
25 public health, safety, and welfare and to insure, to the greatest
26 extent possible, the efficient, adequate, and safe practice of
27 occupational therapy. Such rules and regulations shall include the
1 approval of examinations and the passing score for such

2 examinations for certification.

3 Sec. 122. Section 71-6115, Reissue Revised Statutes of
 4 Nebraska, is amended to read:
 5 71-6115. (1) The Board of Occupational Therapy Practice
 6 is established. The board shall consist of at least four members
 7 appointed by the State Board of Health, all of whom shall be
 8 residents of this state. Any statewide association of occupational
 9 therapists may submit a list of names of qualified persons from
 10 which the State Board of Health may choose members of the Board of
 11 Occupational Therapy Practice. Three of the persons appointed
 12 shall have been engaged in rendering services to the public,
 13 teaching, or research in occupational therapy for at least five
 14 years immediately preceding their appointments. Two of the persons
 15 appointed shall be occupational therapists and one shall be either
 16 an occupational therapist or an occupational therapy assistant and
 17 all shall be holders of active licenses issued under the
 18 Occupational Therapy Practice Act during their terms. The fourth
 19 member shall be a member of the public with an interest in the
 20 rights of the consumers of health services. The members of the
 21 board shall serve five-year terms, except that the initial members
 22 of the board shall serve as follows: The member of the public
 23 shall serve one year and the remaining members shall serve terms of
 24 two, three, and four years as the State Board of Health shall
 25 designate. The term of each member shall commence on December 1
 26 following the expiration of the preceding term. No person shall
 27 serve more than two full consecutive terms on the board. The State
 1 Board of Health shall fill any vacancy for an unexpired term in the
 2 same manner as the initial appointment. The members shall not
 3 receive compensation but shall be reimbursed for their actual
 4 expenses incurred while in the performance of their duties in the
 5 same manner as state employees pursuant to sections 81-1174 to
 6 81-1177. The board shall annually elect a chairperson and such
 7 other officers as it deems necessary and shall meet at least once
 8 per year or more as the department and board shall determine.
 9 Members of the board may be removed from office on the grounds and
 10 in the manner provided by section 71-118.

11 ~~(2) The board, with the approval of the department, shall~~
 12 ~~adopt and promulgate rules and regulations necessary to administer~~
 13 ~~the Occupational Therapy Practice Act. The rules and regulations~~
 14 ~~shall include (a) definitions of unprofessional conduct, (b)~~
 15 ~~definitions of conflicts of interest for members of the board and~~
 16 ~~procedures in the case such a conflict arises, (c) role delineation~~
 17 ~~for occupational therapy assistants, and (d) continuing competency~~
 18 ~~requirements. Continuing education is sufficient to meet~~
 19 ~~continuing competency requirements. Such requirements may also~~
 20 ~~include, but not be limited to, one or more of the continuing~~
 21 ~~competency activities listed in section 71-161.09 which a licensed~~
 22 ~~person may select as an alternative to continuing education." .~~

23 2. Amend the operative date and repealer sections so

24 that the sections added by this amendment become operative three
25 calendar months after the adjournment of this legislative session.
26 3. Renumber the remaining sections accordingly.

The Jensen amendment was adopted with 31 ayes, 0 nays, 15 present and not voting, and 3 excused and not voting.

Senator Jensen offered the following amendment:
AM3135

(Amendments to E & R amendments, AM7186)

- 1 1. On page 67, line 8, strike "one or more", show as
- 2 stricken, and insert "a single county with a total population of
- 3 more than fifty thousand and not more than one hundred thousand
- 4 persons, with or without additional counties as part of the
- 5 department, or by at least three contiguous".

The Jensen amendment was adopted with 27 ayes, 0 nays, 19 present and not voting, and 3 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 1005A. Senator Cunningham offered the following amendment:
AM3344

- 1 1. On page 2, lines 15 and 16 strike "Regulation and
- 2 Licensure" and insert "Finance and Support".

The Cunningham amendment was adopted with 29 ayes, 0 nays, 17 present and not voting, and 3 excused and not voting.

Advanced to E & R for engrossment.

GENERAL FILE

LEGISLATIVE BILL 983. Title read. Considered.

Senator Connealy offered the following amendment:
FA1585
On page 75, line 20, strike "66-4,142".

Senator Connealy withdrew his amendment.

Advanced to E & R for review with 26 ayes, 0 nays, 21 present and not voting, and 2 excused and not voting.

SELECT COMMITTEE REPORT Enrollment and Review

LEGISLATIVE BILL 1047. Placed on Select File as amended.

(E & R amendment, AM7211, is printed separately and available in the Bill Room, Room 1104.)

(Signed) Ray Mossey, Chairperson

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

Montanez, Nancy - Director, Health and Human Services System - Health and Human Services

(Signed) Pat Engel, Chairperson
Legislative Council, Executive Board

RESOLUTION

LEGISLATIVE RESOLUTION 281. Introduced by Redfield, 12.

PURPOSE: The purpose of this resolution is to study whether Nebraska should enact the Market Conduct Surveillance Model Law which has been proposed by the National Conference of Insurance Legislators and which has also been under discussion by the National Association of Insurance Commissioners. The model act would establish a statutory framework for coordinated state regulatory action regarding insurers' market conduct as it affects insurance consumers, policyholders, and claimants. In order to carry out the purpose of this resolution, the committee should seek and consider the input of the Department of Insurance and interested persons as it deems necessary and beneficial.

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

1. That the Banking, Commerce and Insurance Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

SENATOR VRTISKA PRESIDING

GENERAL FILE

LEGISLATIVE BILL 1097. Title read. Considered.

The Standing Committee amendment, AM2868, printed separately and

referred to on page 883, was considered.

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

AM3198

(Amendments to Standing Committee amendments, AM2868)

- 1 1. On page 15, lines 7 and 8; and page 17, lines 10 and
- 2 11, strike "sixty-six and two-thirds" and insert "twenty-five".
- 3 2. On page 15, line 9; and page 17, line 12, strike
- 4 "thirty-three and one-third" and insert "seventy-five".
- 5 3. On page 15, line 12; and page 17, line 15, after
- 6 "children" insert "but in no case shall the benefit received by a
- 7 surviving spouse and dependent children residing with such spouse
- 8 be less than fifty percent of the amount of the officer's annuity".

The Stuhr amendment was adopted with 26 ayes, 0 nays, 21 present and not voting, and 2 excused and not voting.

The Standing Committee amendment, as amended, was adopted with 26 ayes, 0 nays, 21 present and not voting, and 2 excused and not voting.

Advanced to E & R for review with 25 ayes, 0 nays, 22 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 1207. Title read. Considered.

The Standing Committee amendment, AM2906, found on page 1029, was considered.

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

AM3343

(Amendments to Standing Committee amendments, AM2906)

- 1 1. On page 2, line 19, strike "or" and insert an
- 2 underscored comma and after "worth" insert ", or fifty million
- 3 dollars".
- 4 2. On page 3, lines 15 and 24; and page 4, line 9,
- 5 strike beginning with "fifty" through "worth" and insert "the
- 6 lesser of fifty percent of the appellant's net worth or fifty
- 7 million dollars".

The Brashear amendment was adopted with 26 ayes, 0 nays, 21 present and not voting, and 2 excused and not voting.

The Standing Committee amendment, as amended, was adopted with 26 ayes, 0 nays, 21 present and not voting, and 2 excused and not voting.

Advanced to E & R for review with 29 ayes, 0 nays, 18 present and not voting, and 2 excused and not voting.

SENATOR CUDABACK PRESIDING**LEGISLATIVE BILL 485.** Title read. Considered.

The Standing Committee amendment, AM0911, found on page 996, First Session, 2003, was adopted with 28 ayes, 1 nay, 18 present and not voting, and 2 excused and not voting.

Senator Janssen offered the following amendment:
AM3332

1 1. On page 47, line 11, strike "2004" and insert "2005".

The Janssen amendment was adopted with 26 ayes, 0 nays, 20 present and not voting, and 3 excused and not voting.

Advanced to E & R for review with 30 ayes, 1 nay, 15 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 485A. Title read. Considered.

Advanced to E & R for review with 27 ayes, 2 nays, 17 present and not voting, and 3 excused and not voting.

NOTICE OF COMMITTEE HEARING
Health and Human Services
Room 1510

Tuesday, April 6, 2004

1:15 p.m.

Nancy Montanez - Director, Health and Human Services System

(Signed) Jim Jensen, Chairperson

AMENDMENT - Print in Journal

Senators Byars and Erdman filed the following amendment to LB 841:
AM3285

(Amendments to Final Reading copy)

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

12 established pursuant to sections 68-1018 to 68-1025; and
13 (4) Net revenue means the revenue paid to an intermediate
14 care facility for the mentally retarded for resident care, room,
15 board, and services less contractual adjustments and does not
16 include revenue from sources other than operations, including, but
17 not limited to, interest and guest meals.

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

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

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

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

16 (2) For fiscal year 2004-05, proceeds from the tax
17 imposed under section 4 of this act shall be allocated as follows:

18 (a) First, fifty-five thousand dollars to the department
19 for administration of the fund;

20 (b) Second, payment to intermediate care facilities for
21 the mentally retarded for the cost of the tax;

22 (c) Third, three hundred thousand dollars, in addition to
23 any federal medicaid matching funds, for increases in payments to
24 non-state-operated intermediate care facilities for the mentally
25 retarded which shall be such facilities' only increase in payments
26 for such fiscal year;

27 (d) Fourth, three hundred twelve thousand dollars, in
1 addition to any federal medicaid matching funds, for payment to
2 providers of community-based services for the purpose of reducing
3 the waiting list of persons with developmental disabilities; and

4 (e) Fifth, any money remaining in the fund after the
5 allocations required by subdivisions (2)(a) through (d) of this
6 section have been made shall be transferred to the General Fund.

7 (3) For FY2005-06 and each fiscal year thereafter,
8 proceeds from the tax imposed pursuant to section 4 of this act
9 shall be remitted to the State Treasurer for credit as follows:

10 (a) To the ICF/MR Reimbursement Protection Fund for

11 allocation as described in this subdivision: (i) Fifty-five
12 thousand dollars for administration of the fund; (ii) the amount
13 needed to reimburse intermediate care facilities for the mentally
14 retarded for the cost of the tax; (iii) three hundred thousand
15 dollars for payment of rates to non-state-operated intermediate
16 care facilities; and (iv) three hundred twelve thousand dollars for
17 community-based services for persons with developmental
18 disabilities; and

19 (b) To the General Fund: The remainder of the proceeds.

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

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

3 Sec. 7. (1) Collection of the tax imposed by section 4
4 of this act shall be discontinued if:

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

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

11 (c) The department or any other state agency attempts to
12 utilize the money in the ICF/MR Reimbursement Protection Fund for
13 any use other than uses permitted pursuant to the ICF/MR
14 Reimbursement Protection Act.

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

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

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

3 Sec. 9. An intermediate care facility for the mentally
4 retarded that has paid a tax that is not required by section 4 of
5 this act may file a claim for refund with the department. The

6 department may by rule and regulation establish procedures for
 7 filing and consideration of such claims.
 8 Sec. 10. The department may adopt and promulgate rules
 9 and regulations to carry out the ICF/MR Reimbursement Protection
 10 Act.
 11 Sec. 11. Sections 1, 12, and 13 of this act become
 12 operative on October 1, 2004. The other sections of this act
 13 become operative on their effective date.
 14 Sec. 13. The following section is outright repealed:
 15 Section 77-2704.37, Reissue Revised Statutes of Nebraska.
 16 Sec. 14. Since an emergency exists, this act takes
 17 effect when passed and approved according to law."
 18 2. On page 1, strike lines 4 and 5 and insert
 19 "exemptions; to adopt the ICF/MR Reimbursement Protection Act; to
 20 eliminate a filing requirement; to provide operative dates; to
 21 repeal the original section; to outright repeal section 77-2704.37,
 22 Reissue Revised Statutes of Nebraska; and to declare an
 23 emergency."

GENERAL FILE

LEGISLATIVE BILL 1162. Title read. Considered.

The Standing Committee amendment, AM3193, found on page 1139, was considered.

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

AM3352

(Amendments to Standing Committee amendments, AM3193)

- 1 1. On page 1, strike beginning with line 9 through
- 2 "scale" in line 10 and insert "except for a stop of a motor truck,
- 3 truck-tractor, semitrailer, trailer, or towed vehicle at a state
- 4 weighing station".
- 5 2. On page 2, line 1, after "2002," insert "and until
- 6 January 1, 2006".
- 7 3. On page 3, lines 16 and 23, strike "2007" and insert
- 8 "2006"; and in line 22 strike the second "January", show as
- 9 stricken, and insert "April".
- 10 4. On page 4, line 2, strike "2007" and insert "2006".

The Brashear amendment was adopted with 26 ayes, 1 nay, 20 present and not voting, and 2 excused and not voting.

The Standing Committee amendment, as amended, was adopted with 29 ayes, 0 nays, 18 present and not voting, and 2 excused and not voting.

Advanced to E & R for review with 34 ayes, 0 nays, 13 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 1045. Title read. Considered.

The Standing Committee amendment, AM2410, found on page 527, was adopted with 37 ayes, 0 nays, 10 present and not voting, and 2 excused and not voting.

Advanced to E & R for review with 39 ayes, 0 nays, 8 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 943. Title read. Considered.

The Standing Committee amendment, AM2935, found on page 1024, was considered.

SENATOR SCHIMEK PRESIDING**SENATOR CUDABACK PRESIDING**

The Standing Committee amendment was adopted with 27 ayes, 0 nays, 18 present and not voting, and 4 excused and not voting.

Advanced to E & R for review with 32 ayes, 0 nays, 13 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 1231. Title read. Considered.

The Standing Committee amendment, AM2782, found on page 768, was adopted with 26 ayes, 0 nays, 17 present and not voting, and 6 excused and not voting.

Advanced to E & R for review with 27 ayes, 0 nays, 16 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 1231A. Title read. Considered.

Advanced to E & R for review with 26 ayes, 0 nays, 17 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 613. Title read. Considered.

Advanced to E & R for review with 29 ayes, 0 nays, 13 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 1048. Title read. Considered.

The Standing Committee amendment, AM2851, found on page 843, was considered.

Senator Jones offered the following motion:
Bracket until April 15, 2004.

SPEAKER BROMM PRESIDING

Pending.

AMENDMENTS - Print in Journal

Senator Brashear filed the following amendment to LB 1034:
AM3326

- 1 1. Insert the following new section:
- 2 "Section 1. Section 77-2101, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 77-2101. For purposes of sections 77-2101 to 77-2116:
- 5 (1) Estate tax means the tax due to the state under
- 6 section 77-2101.01;
- 7 (2) Generation-skipping transfer tax means the tax due to
- 8 the state under section 77-2101.02;
- 9 (3) Nebraska taxable estate means the federal taxable
- 10 estate, as determined under Chapter 11 of the Internal Revenue
- 11 Code, minus ~~one million dollars~~ an amount equal to the applicable
- 12 exclusion amount as provided in section 2010 of the Internal
- 13 Revenue Code of 1986, as amended, for the year in which decedent's
- 14 death occurs;
- 15 (4) Nebraska taxable transfer means the federal taxable
- 16 transfer, as determined under Chapter 13 of the Internal Revenue
- 17 Code, minus ~~one million dollars~~ an amount equal to the
- 18 generation-skipping tax exemption amount as provided in section
- 19 2631 of the Internal Revenue Code of 1986, as amended, for the year
- 20 in which the generation-skipping transfer occurs; and
- 21 (5) Transfer tax means the estate tax and
- 22 generation-skipping transfer tax."
- 23 2. On page 4, line 14, strike "section" and insert
- 24 "sections 77-2101 and"; and in line 15 strike "is" and insert
- 1 "are".
- 2 3. Renumber the remaining sections accordingly.

Senator Smith filed the following amendment to LB 1048:
AM3348

(Amendments to Standing Committee amendments, AM2851)

- 1 1. Strike section 35.

Senator Smith filed the following amendment to LB 1048:
AM3351

- 1 1. On page 7, lines 21 and 25; and page 8, lines 2 and
- 2 7, after "territory" insert "within the boundaries of a single
- 3 county".

Senator Smith filed the following amendment to LB 1048:
AM3349

1 1. Strike original sections 33, 44, and 45 and all
2 amendments thereto and insert the following new sections:
3 "Sec. 41. Section 79-1024, Reissue Revised Statutes of
4 Nebraska, is amended to read:
5 79-1024. (1) The department may require each district to
6 submit to the department a duplicate copy of such portions of the
7 district's budget statement as the Commissioner of Education
8 directs. The department may verify any data used to meet the
9 requirements of the Tax Equity and Educational Opportunities
10 Support Act. The Auditor of Public Accounts shall review each
11 district's budget statement for statutory compliance, make
12 necessary changes in the budget documents for districts to
13 effectuate the budget limitations imposed pursuant to sections
14 79-1023 to 79-1030, and notify the Commissioner of Education ~~(a)~~ of
15 any district failing to submit to the auditor the budget documents
16 required pursuant to this subsection by the date established in
17 subsection (1) of section 13-508 or failing to make any corrections
18 of errors in the documents pursuant to section 13-504 or 13-511,
19 ~~and (b) of any Class I district failing to submit the items~~
20 ~~required by this subsection to its high school districts by the~~
21 ~~date established in section 79-1083.03.~~
22 (2) If a school district fails to submit to the
23 department or the auditor the budget documents required pursuant to
24 subsection (1) of this section by the date established in
1 subsection (1) of section 13-508 or fails to make any corrections
2 of errors in the documents pursuant to section 13-504 or 13-511, ~~or~~
3 ~~a Class I district fails to submit the items required by subsection~~
4 ~~(1) of this section to its high school districts by the date~~
5 ~~established in section 79-1083.03,~~ the commissioner, upon
6 notification from the auditor or upon his or her own knowledge that
7 the required budget documents and any required corrections of
8 errors from any school district have not been properly filed in
9 accordance with the Nebraska Budget Act and after notice to the
10 district and an opportunity to be heard, shall direct that any
11 state aid granted pursuant to the Tax Equity and Educational
12 Opportunities Support Act be withheld until such time as the
13 required budget documents or corrections of errors are received by
14 the auditor and the department. In addition, the commissioner
15 shall direct the county treasurer to withhold all school money
16 belonging to the school district until such time as the
17 commissioner notifies the county treasurer of receipt of the
18 required budget documents or corrections of errors. The county
19 treasurer shall withhold such money. If the school district does
20 not comply with this section prior to the end of the state's
21 biennium following the biennium which included the fiscal year for
22 which state aid was calculated, the state aid funds shall revert to
23 the General Fund. The amount of any reverted funds shall be

24 included in data provided to the Governor in accordance with
 25 section 79-1031. The board of any district failing to submit to
 26 the department or the auditor the budget documents required
 27 pursuant to this section by the date established in subsection (1)
 1 of section 13-508 or failing to make any corrections of errors in
 2 the documents pursuant to section 13-504 or 13-511 ~~or the board of~~
 3 ~~a Class I district failing to submit the items required by~~
 4 ~~subsection (1) of this section to its high school districts by the~~
 5 ~~date established in section 79-1083.03~~ shall be liable to the
 6 school district for all school money which such district may lose
 7 by such failing.

8 Sec. 46. Section 79-10,124, Reissue Revised Statutes of
 9 Nebraska, is amended to read:

10 79-10,124. The amount of special tax levied under
 11 sections 79-10,122 to 79-10,125 shall not exceed five cents on each
 12 one hundred dollars upon the taxable value of all taxable property
 13 in the school district above the amount allowed by law for general
 14 school purposes when combined with the tax levied by a Class I
 15 district under section 79-10,110, and the total amount voted for
 16 the period of years shall not exceed five percent of the taxable
 17 valuation of the school district.

18 ~~For Class I districts, the school board of the primary~~
 19 ~~high school district designated pursuant to section 79-1083.02 must~~
 20 ~~approve any use of the special tax levied under sections 79-10,110~~
 21 ~~and 79-10,122 to 79-10,125 and provide written notification of such~~
 22 ~~approval to the Class I district school board."~~

23 2. On page 48, strike beginning with the comma in line 7
 24 through the comma in line 9 and show as stricken.

25 3. On page 68, line 1, strike "79-4,111"; in line 2
 26 after the third comma insert "and" and strike "and 79-1083.02,";
 27 and in line 6 strike "and" and after the last comma insert
 1 "79-4,111, 79-1083.02, and 79-1083.03,".

2 4. Amend the operative date section so that the sections
 3 added by this amendment become operative on their effective date.

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

Senator Quandahl filed the following amendment to LB 155:
 AM3363

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

3 "Section 1. Section 44-1984, Revised Statutes
 4 Supplement, 2002, is amended to read:

5 44-1984. (1) No insurer that transacts any line of
 6 business other than title insurance shall be eligible for the
 7 issuance or renewal of a certificate of authority to transact the
 8 business of title insurance in this state nor shall title insurance
 9 be transacted, underwritten, or issued by any insurer transacting
 10 or authorized to transact any other line of business.

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

21 (i) Theft of settlement funds; and

22 (ii) Failure to comply with written closing instructions

23 by the proposed insured when agreed to by the title insurance agent
24 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
27 with the issuance of a title insurance commitment or title
1 insurance policy by such title insurer. However, if no such title
2 insurance commitment or title insurance policy was issued, each
3 title insurer which appointed or maintained a written contract with
4 such title insurance agent at the time of the discovery of the
5 defalcation, conversion, or misappropriation shares in the
6 liability for the defalcation, conversion, or misappropriation in
7 the same proportion that the premium remitted to the title insurer
8 by such title insurance agent during the twelve-month period
9 immediately preceding the date of the discovery of the defalcation,
10 conversion, or misappropriation bears to the total premium remitted
11 to all title insurers by such title insurance agent during the
12 twelve-month period immediately preceding the date of the discovery
13 of the defalcation, conversion, or misappropriation.

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

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

21 44-19,106. Sections 44-19,106 to 44-19,123 and section 5
22 of this act shall be known and may be cited as the Title Insurance
23 Agent Act.

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

26 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) 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) 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) 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. 6. Section 76-238, Reissue Revised Statutes of
 13 Nebraska, is amended to read:

14 76-238. (1) All deeds, mortgages, and other instruments
 15 of writing which are required to be or which under the laws of this
 16 state may be recorded, shall take effect and be in force from and
 17 after the time of delivering ~~the same~~ such instruments to the
 18 register of deeds for recording, and not before, as to all
 19 creditors and subsequent purchasers in good faith without notice,
 20 ~~All ; and all such deeds, mortgages and other instruments shall be~~
 21 ~~adjudged~~ are void as to all ~~such~~ creditors and subsequent
 22 purchasers without notice whose deeds, mortgages, or other
 23 instruments ~~shall be first recorded~~ are recorded prior to such
 24 instruments. However, ~~;~~ **PROVIDED**, that such ~~deeds, mortgages and~~
 25 ~~other~~ instruments ~~shall be~~ are valid between the parties to the
 26 instrument.

27 (2) For purposes of this section, possession of
 1 agricultural real estate or residential real estate by a party
 2 related to the owner of record of the real estate within the third
 3 degree of consanguinity or affinity shall not serve as notice to a
 4 creditor or subsequent purchaser in any case in which such party is
 5 claiming rights in such real estate pursuant to a lease (a) entered
 6 into on or after the effective date of this act; (b) purporting to
 7 extend beyond a term of one year; and (c) which has not satisfied
 8 the requirements of section 76-211, unless the creditor or
 9 subsequent purchaser, in advance of recording a deed, mortgage, or
 10 other instrument, has received a written copy of such lease.

11 (3) For purposes of this section:

12 (a) Agricultural products includes grain and feed crops;
 13 forages and sod crops; and animal production, including breeding,
 14 feeding, or grazing of cattle, horses, swine, sheep, goats, bees,
 15 or poultry;

16 (b) Agricultural real estate means land which is
 17 primarily used for the production of agricultural products,
 18 including waste land lying in or adjacent to and in common
 19 ownership with land used for the production of agricultural
 20 products;

21 (c) Related within the third degree of consanguinity or
 22 affinity includes parents, grandparents, great-grandparents,
 23 children, grandchildren, great-grandchildren, brothers, sisters,
 24 uncles, aunts, nephews, nieces, and spouses of the same and any
 25 partnership, limited liability company, or corporation in which all
 26 of the partners, members, or shareholders are related within the
 27 third degree of consanguinity or affinity; and

1 (d) Residential real estate means real estate containing
 2 not more than four units designed for use for residential purposes.
 3 A condominium unit that is otherwise residential real estate
 4 remains so even though the condominium development contains more
 5 than four dwelling units or units for nonresidential purposes.

6 Sec. 7. Original sections 44-1993, 44-19,106, and
 7 76-238, Reissue Revised Statutes of Nebraska, and sections 44-1984
 8 and 44-19,116, Revised Statutes Supplement, 2002, are repealed.

9 Sec. 8. The following sections are outright repealed:
 10 Sections 76-261 to 76-263 and 76-265, Reissue Revised Statutes of
 11 Nebraska.".

Senators Erdman and Schimek filed the following amendment to LB 962:
 AM3227

(Amendments to E & R amendments, AM7204)

1 1. Insert the following new section:

2 "Sec. 33. Sections 46-2,131 to 46-2,137 terminate
 3 December 31, 2009."

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

Senator Landis filed the following amendment to LB 973:
 (Amendment, AM3365, is printed separately and available in the Bill Room,
 Room 1104.)

UNANIMOUS CONSENT - Add Cointroducer

Senator Aguilar asked unanimous consent to have his name added as
 cointroducer to LB 613. No objections. So ordered.

VISITORS

Visitors to the Chamber were 17 twelfth-grade students and teacher from
 Cedar Rapids; Senator Burling's daughter, Darla Erickson and her husband,
 Ron Erickson, from Hastings; and Alan Baugh from Lincoln.

The Doctor of the Day was Dr. Hal Pumphrey from Lincoln.

ADJOURNMENT

At 6:57 p.m., on a motion by Senator Schrock, the Legislature adjourned until 9:00 a.m., Wednesday, March 24, 2004.

Patrick J. O'Donnell
Clerk of the Legislature